

STATE OF MICHIGAN
BERRIEN COUNTY TRIAL COURT – BUSINESS COURT DOCKET

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VENOY Q. MCANDREW,

Plaintiff/Counter-Defendant,

-v-

Case No. 18-000235-CB
HON. DONNA B. HOWARD

**MICHIANA SPINE, SPORTS,
& OCCUPATIONAL REHAB, P.C.,**

Defendants,

-and-

DREW HOLDINGS, LLC,

Defendant/Counter-Plaintiff.

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OPINION AND ORDER REGARDING STATUTORY PREJUDGMENT INTEREST

At a session of the Berrien County Trial Court,
On the 14th day of September, 2020, in the
City of St. Joseph, Berrien County, Michigan

PRESENT: HON. DONNA B. HOWARD, Presiding Business Court Judge

This matter comes before the Court after hearing on Plaintiff's motion for taxable costs was held on September 8, 2020. After certain rulings of the Court on the record as to allowable taxable costs, the matter was taken under advisement for the final calculation of statutory

prejudgment interest under MCL § 600.6013(8), and the submission of the final judgment (pursuant to MCR 2.602(B)(2) or (3)). In that regard, an issue was raised concerning whether a stay period should be included in the calculation of the statutory prejudgment interest due to the limitations of Court access during the initial COVID-related Michigan Governor Executive “Stay Home” Orders, and related administrative orders of the Michigan Supreme Court and/or this Court. The Court, after further consideration and for the reasons stated herein that a stay period for the calculation of the prejudgment interest of two (2) months is warranted.

Michigan law provides that statutory prejudgment interest will not accrue where the delay is not the fault of, or caused by, the debtor. *Heyler v Dixon*, 160 MichApp 130, 152–153; 408 NW2d 121 (1987). Additional case law suggests that this rule be applied in only exceptional circumstances, such as where court personnel lost a court file, *Eley v Turner*, 193 MichApp 244, 246–247; 483 NW2d 421 (1992); the court was waiting on the outcome of relevant parallel proceedings, *Heyler, supra* at 153; or there was a stay imposed due to the opposing party’s insolvency, *Rodriguez v Solar of Michigan, Inc.*, 191 MichApp 483, 494–495; 478 NW2d 914 (1991). In this case, there can be no question that the COVID pandemic and the access limitations it imposed on this Court in the initial phases was an exceptional circumstance outside the control of the debtor (here Defendants).

In response to the Michigan Governor’s initial Executive Order, the Berrien County Trial Court immediately limited access to its courthouses by staff, including judges, effective March 20, 2020. However, as the COVID pandemic continued for the next several months, the Executive and Administrative Orders were adjusted, and this Court’s access improved. While still limited, this Court did gain more regular access to the courthouse, staff, and court files in mid-May 2020. The Court further finds that this period of COVID-related restrictions caused or contributed to a delay in the Court’s ability to issue its written Opinion and Order for Judgment after Bench Trial in this matter more timely. Consequently, the Court finds that there is good cause to impose a two-month stay for the period of March 20, 2020 to May 20, 2020, of the incurrence of statutory prejudgment interest under MCL § 600.6013(8).

IT IS HEREBY ORDERED, in light of the foregoing reasons and the Court being otherwise advised in the premises, that the calculation of the statutory prejudgment interest pursuant to MCL § 600.6013(8) include a stay period of **March 20, 2020 through May 20, 2020**,

due to COVID restrictions which caused or contributed to the delay in the Court's issuance of its Opinion and Order for Judgment After Bench Trial until on or about July 31, 2020.

SO ORDERED.

DATE: September 14, 2020

/s/ Donna B. Howard
HON. DONNA B. HOWARD (P57635)
Berrien County Trial Court – Business Court