



ALAN WILSON
ATTORNEY GENERAL

July 03, 2018

Sheriff Michael E. Hunt, Sr.
Aiken County
420 Hampton Avenue, NE
Aiken, SC 29801

Dear Sheriff Hunt:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request reads as follows:

The Aiken County Sheriff's Office is requesting an Opinion in applying legal rates of interest for Judgments submitted to our office.

The case facts are the following:

On May 31, 2017, The Aiken County Magistrate ... awarded \$1,434.55 with a Date of Judgment of 5/31/17. Thereafter, the plaintiffs submitted a Writ of Execution to my Office. In keeping with the Supreme Court of South Carolina's Order 2017-01-04-01, RE: Interest Rate on Money Decrees and Judgments and S.C. Code Ann. § 34-31-20(B) an interest rate of 7.75% was used to collect monies for this Writ of Execution.

On March 31, 2018, using the interest rate of 7.75% (that was used when the damages were awarded), my Office Satisfied this Writ of Execution. The plaintiff's attorney argues that the Supreme Court Order 2018-01-04-01 now entitles the plaintiff an interest rate of 8.50%. My argument is in reading Section 34-31-20(B):

(B) A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year **for which the damages are awarded**, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order

by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

S.C. Code Ann. § 34-31-20 (Supp. 2017) (emphasis added).

The question then is, if there are no damages that were awarded after 5/31/17, how then is the Plaintiff entitled to claim the 8.50% interest rate?

Law/Analysis

It appears that the plaintiff's attorney may be claiming that the post-judgment interest rate is a variable rate rather than a fixed rate. As noted in your letter, Section 34-31-20(B) describes how post-judgment interest is established through an annual order of the Supreme Court. In the year in which the above referenced judgment was awarded, Order No. 2017-01-04-01 of the South Carolina Supreme Court stated, "The Wall Street Journal for January 3, 2017, the first edition after January 1, 2017, listed the prime rate as 3.75%. Therefore, for the period January 15, 2017, through January 14, 2018, the legal rate of interest for judgments and money decrees is 7.75% compounded annually."¹ For the following year, in Order No. 2018-01-04-02 of the South Carolina Supreme Court stated, "The Wall Street Journal for January 2, 2018, the first edition after January 1, 2018, listed the prime rate as 4.50%. Therefore, for the period January 15, 2018, through January 14, 2019, the legal rate of interest for judgments and money decrees is 8.50% compounded annually."² Because the judgment was awarded during the period in which the 2017 order controlled, the 7.75% interest rate was clearly applicable through January 14, 2018. This Office understand your question is whether the interest rate is a fixed rate until the judgment is satisfied in full or whether the post-judgment interest is a variable rate such that the post-judgment interest rate of 8.50% established in the 2018 order could be interpreted to apply from January 15, 2018 through March 31, 2018.

This author's research has not identified any reported opinion of a South Carolina appellate court which directly addresses your question; however, our research has identified several non-precedential trial court opinions which at least indicate the current understanding of this question in some courts of this state. But see Op. S.C. Atty Gen., 2015 WL 7293601 (November 2, 2015) (noting that "a Circuit Court order lacks precedential value and therefore

¹ See RE: Interest Rate on Money Decrees and Judgments (January 4, 2017), available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-01-04-01>.

² See RE : Interest Rate on Money Decrees and Judgments (January 4, 2018), available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2018-01-04-02>.

can only bind the parties involved in the litigation”). In Austin v. Stokes-Craven Holding Corp., No. 2004-CP-1400135, 2013 WL 8482324 (S.C. Com. Pl. 2013), Judge George C. James, Jr. found that S.C. Code Ann. § 34-31-20(B) requires a fixed rate set by the South Carolina Supreme Court at the interest rate established for the calendar year in which damages are awarded. Judge James explained as follows:

The question now becomes the calculation of post-judgment interest pursuant to S.C. Code § 34-31-20 (B). Specifically, the question is whether the post-judgment interest rate is an annually adjusted rate or a fixed rate. ...

§ 34-31-20 (B), amended for judgments entered on or after July 1, 2005, provides that a **“judgment of a court enrolled or entered must draw interest according to law”** and that **“[T]he legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually.”** 34-31-20 (B) further provides that the Supreme Court shall issue an order by each January 15 “confirming the annual prime rate.” Finally, 34-31-20 (B) concludes by providing that **“[F]or judgments entered between July 1, 2005 and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.”** (emphasis added). This language clearly provides that, at least for 2005 judgments, there is a fixed rate for the life of the judgment.

The instant judgment was entered on August 17, 2006. In its January 4, 2006 order, the Supreme Court stated *“for judgments entered between January 15, 2006 and January 14, 2007, the legal rate is 11.25% compounded annually.”* It appears clear that the Court was tracking the language of § 34-31-20(B) for 2005 judgments and ordered the 11.25% rate to remain constant throughout the life of a judgment entered within the designated time frame. However, it is worth noting that in its January 2007 order, the Court modified the 2006 language and stated *“for the period January 15, 2007 through January 14, 2008, the legal rate of interest for judgments and money decrees is 12.25% compounded annually.”* For every year beginning in 2007, the Court's interest rate orders have been identical, except for publication of the new rate and new effective dates.

My decision must be guided by the plain language of the statute, and the statute provides for a judgment to accrue interest at a rate “equal to the prime rate ... published for each calendar year **for which** the damages are awarded plus four percentage points, compounded annually.” The phrase “for which”, in my view, can only be interpreted to mean “during which”. Damages “are awarded” only

once. The year during which the damages were awarded in this case was 2006. The legal interest rate for damages awards entered during that year was and is 11.25%, compounded annually. ...

Id. at *2-3 (emphasis in original). This is the only case discovered while conducting research for this opinion which directly addressed the issue of whether post-judgment interest under Section 34-31-20(B) is fixed or variable. Moreover, it appears to be the practice in many trial courts to award post-judgment interest at a fixed rate. See, e.g., Amalgamated Bank v. Atrium Ne. Ltd. P'ship, No. 2013CP403328, 2013 WL 8780517, at *3 (S.C. Com. Pl. 2013) (“The amount due in the preceding paragraph ... shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 7.25% per annum, which is the post judgment interest rate as set forth in the Order of the Supreme Court dated January 3, 2013, pursuant to S.C. Code Ann. § 34-31-20(B) (Supp. 2011).”); Starr Elec. Co. v. Moseley, No. 07-CP-02-1221, 2012 WL 3142909 (S.C. Com. Pl. 2012) (“If this judgment is not paid within ten (10) days from the day it is entered, it shall then accrue interest at the legal rate of 7.25% pursuant to Section 34-31-20(b), Code of Laws of South Carolina (1976), as amended.”). Further, the Trial Handbook for South Carolina Lawyers explains how a judgment creditor should calculate post-judgment interest, as follows:

In 2005, the South Carolina General Assembly significantly altered the way post-judgment interest is computed pursuant to § 34-31-20. ...

Note also that post-judgment interest is no longer simple interest, but is to be “compounded annually.” Therefore, the judgment creditor must compute a daily rate related back to the date of the judgment and using the rate applicable on that date. On the first anniversary of that judgment, the original rate is then applied to the judgment plus any accrued interest. The same calculation should be applied on each anniversary of the judgment. Thus, a \$10,000.00 judgment entered on July 5, 2006, would draw post-judgment interest at the rate of 11.25% per annum, or \$3.08 per day. On July 5, 2007, however, the entire amount for the first year has been earned, so that \$1,125.00 would be added to the judgment, and the 11.25% rate would then be applied to \$11,125.00 for a daily rate of \$3.43. On July 5, 2008, the entire amount for that year, \$1,251.56, would be added to \$11,125.00, bringing the total amount for the coming year to \$12,376.56. This calculation would repeat until the judgment is either paid or expires. See § 36:18.

Judgment interest, Trial Handbook for South Carolina Lawyers § 36:17. As the illustration in the trial handbook employs the same rate for each year of the calculation, it appears that the illustration contemplates a fixed rate as well. While the interpretations of the trial courts and the

trial handbook are not binding on our state appellate courts, they are persuasive authority which an appellate court would likely consider.

It is this Office's opinion that an appellate court would also likely find that the post-judgment interest rate established in Section 34-31-20(B) is a fixed rate. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). By using the phrase "the legal rate of interest," the plain language of Section 34-31-20(B) indicates that the General Assembly intended to employ a single interest rate. The United States Supreme Court has interpreted similar language used in the Federal Courts Improvement Act of 1982 to set a fixed interest rate as follows:

The language of each version of the statute also directs that a single applicable rate of interest be applied to the judgment: The prior version refers to "*the* rate" and the amended version to "*a* rate." See Comment, 37 Emory L.J., at 532–533, n. 207 ("[P]lain language of the [amended version] indicates that only one interest rate will apply"). We think the most logical reading of the statute is that the interest rate for any particular judgment is to be determined as of the date of the judgment, and that is the single rate applicable for the duration of the interest accrual period.

Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 838–39 (1990). In contrast, the language describing the legal rate as "equal to the prime rate... for each calendar year" could be read to allow for annual variance. See Townsend v. R.J. Reynolds Tobacco Co., 192 So.3d 1223, 1226–27 (Fla. 2016) (Florida statute which directed the legal rate of interest is "adjusted annually... each year" was held to be a variable rate). Yet, the following sentence provides further context for the legal rate being set "each calendar" wherein the South Carolina Supreme Court is directed to issue an order "each year confirming the annual prime rate." Each year the Court confirms the legal rate for judgments entered during the year based on the parameters of the prime rate listed in the Wall Street Journal, plus four percentage points. Under the prior statutory scheme the General Assembly set the legal rate by statute and any adjustment required a further legislative act. See Collins Music Co. v. IGT, 365 S.C. 544, 619 S.E.2d 1 (Ct. App. 2005) (discussing application of 2000 Act No. 344 post-judgment interest rate on judgments for causes of action which accrued prior the act's effective date). The plain language of Section 34-31-20(B) clearly evidences legislative intent to change the legal rate of interest to one which compounds annually, but it does not similarly convey in clear language that the interest rate has

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been changed from fixed to variable. Therefore, in the absence of a clearer statement of legislative intent, it is this Office's opinion that a court would likely find the legal rate of post-judgement interest remains fixed at the rate established in the year in "which the damages are awarded."

Conclusion

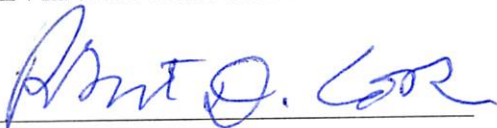
It is this Office's opinion that a court would likely find the post-judgment interest rate established in S.C. Code Ann. § 34-31-20(B) is a fixed rate. Under the prior statutory scheme the General Assembly set the legal rate by statute and any adjustment required a further legislative act. See Collins Music Co. v. IGT, 365 S.C. 544, 619 S.E.2d 1 (Ct. App. 2005) (discussing application of 2000 Act No. 344 post-judgment interest rate on judgments for causes of action which accrued prior the act's effective date). The plain language of Section 34-31-20(B) clearly evidences legislative intent to change the legal rate of interest to one which compounds annually, but it does not similarly convey in clear language that the interest rate has been changed from fixed to variable. Therefore, in the absence of a clearer statement of legislative intent, it is this Office's opinion that a court would likely find the legal rate of post-judgement interest remains fixed at the rate established in the year in "which the damages are awarded."

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General