

Request For Prejudgment Interest Too General

March 12, 2007

From South Carolina Lawyers Weekly, March 12, 2007 edition.

Request For Prejudgment Interest Too General

Specific Pleading In Complaint Required

By Gregory Froom

Owners of a Surfside Beach restaurant could not recover prejudgment interest in their suit over failed fire-suppression equipment that they claimed caused the building to burn, the Appeals Court has ruled in an unpublished decision.

The panel said the plaintiffs' request was insufficiently pleaded — even though the complaint asked for "interest as provided by law."

That language was too vague to satisfy South Carolina's requirements, according to the opinion issued late last month. The panel discounted case law from other jurisdictions that have held similar requests to be adequate.

The court said the plaintiffs also were not statutorily entitled to prejudgment interest because their claim could not be reduced to a liquidated amount.

Charleston attorney Daniel Francis "Frank" Blanchard III, who represented the restaurant, said the prejudgment interest in dispute totaled \$340,805.

"It's a lot of money. Our position was that we requested interest and we had sufficiently pled it," Blanchard told Lawyers Weekly.

"The trial court did not deny prejudgment interest based on a failure to plead it. That was actually an argument that BFPE, the defendant, made on appeal as an additional sustaining ground," he said.

"The master's order was very particular and he awarded damages on each category. We said that even if all of the damages are not liquidated, there are at least some components of it that are — and we should have gotten interest on those," Blanchard said.

He said he was working on a petition for rehearing at press time.

The per curiam case is Sundown Operating Co., Inc. v. Intedge Industries, Inc. et al. (South Carolina Lawyers Weekly No. 011-038-07, 11 pages). Chief Judge Kaye G. Hearn served on the panel with Judges Donald W. Beatty and Paul E. Short Jr.

Facts

Fire destroyed the restaurant on Sept. 16, 1998.

The fire was allegedly caused when a heating element failed in an electric fryer and caused cooking oil to ignite.

According to Sundown, the fryer lacked a high-limit safety thermostat which would have shut

off power once the oil reached a certain temperature.