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BARBARA A. HERRICK  
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CLERMONT COUNTY, OH

**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

**SIMS-LOHMAN, INC.** :  
Plaintiff : **CASE NO. 2014 CVC 01354**  
vs. : **Judge McBride**  
**TIMOTHY PAPPAS, et al.,** : **DECISION/ENTRY**  
Defendants :

Eberly McMahon LLC, Robert A. McMahon, counsel for the plaintiff Sims-Lohman, Inc., 2321 Kemper Lane, Suite 100, Cincinnati, Ohio 45206.

Gary A. Rosenhoffer, counsel for the defendants Timothy Pappas and Tracy Pappas, 313 E. Main Street, Batavia, Ohio 45103.

This cause is before the court for consideration of the plaintiff Sims-Lohman, Inc.'s motion for prejudgment interest.

The matter was briefed by the parties pursuant to a briefing order set forth in the court's written decision filed on April 27, 2015. The motion was taken under advisement on June 5, 2015, the day after the final memorandum was filed with the court.

Upon consideration of the motion, the record of the proceedings, the written arguments of counsel, and the applicable law, the court now renders this written decision.

## **FACTS OF THE CASE AND PROCEDURAL BACKGROUND**

In a written decision rendered on April 27, 2015, the court awarded summary judgment to the plaintiff in the case at bar on its claim for unjust enrichment in the principal amount of \$27,298.93.<sup>1</sup> This unjust enrichment claim was based on materials and products provided by the plaintiff for the construction of the defendants' home.<sup>2</sup> The evidence demonstrated that the defendants specifically selected or approved the various products purchased from Sims-Lohman.<sup>3</sup>

The plaintiff now moves this court for an award of prejudgment interest pursuant to R.C. 1343.03(A).

## **LEGAL ANALYSIS**

Pursuant to R.C. 1343.03(A):

**"In cases other than those provided for in sections 1343.01 and 1343.02 of the Revised Code, when money becomes due and payable upon any bond, bill, note, or other instrument of writing, upon any book account, upon any settlement between parties, upon all verbal contracts entered into, and upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of**

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<sup>1</sup> Decision/Entry, filed April 27, 2015 at pg. 17.

<sup>2</sup> Id. at pgs. 15-16.

<sup>3</sup> Id.

tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract. Notification of the interest rate per annum shall be provided pursuant to sections 319.19, 1901.313, 1907.202, 2303.25, and 5703.47 of the Revised Code.”

The language of R.C. 1343.03(A) is mandatory; “[o]nce a party has a judgment for a contract claim, [that party] is entitled to interest as a matter of law.”<sup>4</sup> “Prejudgment interest under R.C. 1343.03(A) is awarded from the time the amount at issue becomes ‘due and payable.’”<sup>5</sup> “Where money becomes due on a contract, interest accrues from the time that the money due should have been paid.”<sup>6</sup> After a party has a judgment on a contract claim, “\* \* \* the trial court must make the factual determinations of ‘when interest commences to run, i.e., when the claim becomes ‘due and payable.’”<sup>7</sup> “The purpose of an award of prejudgment interest is to compensate the plaintiff ‘for the period of time between accrual of the claim and judgment \* \* \* .”<sup>8</sup>

The question in the case at bar is whether R.C. 1343.03(A) applies to the damages awarded under the plaintiff’s unjust enrichment claim.

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<sup>4</sup> *Miller v. Lindsay-Green*, 10<sup>th</sup> Dist. Franklin No. 04AP-848, 2005-Ohio-6366, ¶107. See, also, *Hance v. Allstate Ins. Co.*, 12<sup>th</sup> Dist. Clermont No. CA2008-10-094, 2009-Ohio-2809, ¶ 16 (granting prejudgment interest pursuant to the statute is mandatory, rather than discretionary); and *Leach Dev., LLC v. Miami Woodworking, Inc.*, 12<sup>th</sup> Dist. Warren No. CA2009-11-154, 2010-Ohio-2433, ¶ 24.

<sup>5</sup> *Id.* at ¶106, quoting *Miller v. Wikel Mfg. Co., Inc.*, 46 Ohio St.3d 76, 80, 545 N.E.2d 76 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 107, citing *Royal Elec. Constr. Corp. v. Ohio State Univ.*, 73 Ohio St.3d 110, 115, 652 N.E.2d 687 (1995).

<sup>8</sup> *On Line Logistics, Inc. v. Amerisource Corp.*, 8<sup>th</sup> Dist. Cuyahoga No. 82056, 2003-Ohio-5381, ¶ 66, quoting, *Royal Electric*, *supra*, at syllabus.

“ ‘It is well settled that claims for unjust enrichment sound in contract rather than tort.’ ”<sup>9</sup> “\* \* \* [U]njust enrichment is a quasicontractual theory of recovery.”<sup>10</sup>

As set forth above, R.C. 1343.03(A) specifically mentions “instrument[s] of writing” and “verbal contracts[,]” but does not specifically mention money becoming due and payable pursuant to quasi-contractual claims.

However, at least one Ohio appellate court has determined that “[a] claim for unjust enrichment constitutes a quasi-contractual claim and falls under the purview of R.C. 1343.03(A) \* \* \*.”<sup>11</sup> Other Ohio appellate courts disagree, finding that a claim of unjust enrichment does not support an award of prejudgment interest under R.C. 1343.03(A).<sup>12</sup>

One court discussed the importance of whether the damages at issue were liquidated or unliquidated in the determination of prejudgment interest.<sup>13</sup> That court then held that “the amount of recovery in an unjust enrichment claim is by its very nature uncertain until the court determines the amount to which the defendant has benefited and whether it would be unjust not to award restitution to the plaintiff.”<sup>14</sup> However, the precedential value of that particular case is questionable given that it engages in no discussion of the R.C. 1343.03.

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<sup>9</sup> *Dodson v. Maines*, 6<sup>th</sup> Dist. Sandusky No. S-11-012, 2012-Ohio-2548, ¶ 38, quoting *Complete Gen. Constr. Co. v. Koker Drilling Co.*, 10<sup>th</sup> Dist. Franklin No. 02AP-63, 2002-Ohio-4778, ¶ 28, fn. 1.

<sup>10</sup> *Dalley v. Craigmyle & Son Farms, L.L.C.*, 177 Ohio App.3d 439, 2008-Ohio-4034, 894 N.E.2d 1301, ¶ 20 (4<sup>th</sup> Dist.), citing *Hummel v. Hummel*, 133 Ohio St. 520, 14 N.E.2d 923 (1938), paragraph one of the syllabus.

<sup>11</sup> *Desai v. Franklin*, 177 Ohio App.3d 679, 2008-Ohio-3957, 895 N.E.2d 875, ¶ 32 (9<sup>th</sup> Dist.), citing *Zeck v. Sokol*, 9<sup>th</sup> Dist. Medina No. 07CA0030-M, 2008-Ohio-727, ¶¶ 43-45. See also, *Magnum Steel & Trading, LLC v. Mink*, 9<sup>th</sup> Dist. Summit Nos. 26127 and 26231, 2013-Ohio-2431, ¶ 57.

<sup>12</sup> See, *Cantwell Mach. Co. v. Chicago Mach. Co.*, 184 Ohio App.3d 287, 2009-Ohio-4548, 920 N.E.2d 994 (10<sup>th</sup> Dist.), citing *Servpo of Northeast Columbus v. Reconstruction, Inc.*, 10<sup>th</sup> Dist. Franklin No. 90AP-1400, 1991 WL 224489 (Aug. 22, 1991); and, *L. Worthey Dump Truck Co. v. Glenbrook Apts.*, 8<sup>th</sup> Dist. Cuyahoga No. 50680, 1986 WL 6362 (June 5, 1986).

<sup>13</sup> *Dixon v. Smith*, 119 Ohio App.3d 308, 320-321, 695 N.E.2d 284 (3<sup>rd</sup> Dist.1997).

<sup>14</sup> *Id.* at 321, citing *Advanced Marketing Serv., Inc. v. Dayton Data Processing, Inc.*, 2<sup>nd</sup> Dist. Montgomery No. 12607, 1992 WL 41822 (Mar. 6, 1992).

The Twelfth District Court of Appeals has yet to issue a decision dealing with this precise issue. The defendants cite to the case of *Hance v. Allstate Ins. Co.*, 12<sup>th</sup> Dist. Clermont No. CA2008-10-094, 2009-Ohio-2809, in support of their argument that whether the claims sounds in tort or contract is irrelevant and that the relevant issue is when the money became “due and payable.”

This court agrees that the *Hance* decision stands for the proposition that the trial court has some discretion in determining the amount of prejudgment interest and that this discretion lies in the determination of when the money became “due and payable.” However, that holding does not address the central issue in the present motion as to whether the plaintiff’s unjust enrichment claim should be analyzed under R.C. 1343.03(A).

The court finds, given the quasi-contractual nature of an unjust enrichment claim, that the damages resulting from such a claim should be analyzed under R.C. 1343.03(A) and not R.C. 1343.03(C), which deals with tortious conduct.

Therefore, the court must move to the question of when the money in the present action became due and payable.

The court would note that “[t]he term ‘liquidated claim’ means one that can be determined with exactness from the agreement between the parties or by the application of definite rules of law.”<sup>15</sup> In the case at bar, while any written contract was between the principal contractor and the defendants, the unjust enrichment claim in this case was based on items that were invoiced and whose value can be easily ascertained

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<sup>15</sup> *Dixon*, supra, 119 Ohio App.3d at 321, citing *Yin v. Amino Products Co.*, 141 Ohio St. 21, 29, 46 N.E.2d 610 (1943).

through mere computation. Unlike other unjust enrichment claims, in which damages can be far less defined, the damages in this case are clear.

Furthermore, this is not a case in which the defendants were disputing the quality of the products provided or raising any other issue which would make the damages more difficult to ascertain until judgment was entered by a court of law. Instead, the defendants knew that the money for the products was due and owing and refused to pay the amount owed only because of the ongoing dispute with Gold Point Construction.<sup>16</sup> The dispute between the principal contractor and the defendants would have no bearing on whether Sims-Lohman should be paid for the products provided to build the defendants' home.

This court found in its decision on the merits of the summary judgment motion that the evidence was undisputed that the defendants owed the plaintiff the amount of \$27,298.93 after Sims-Lohman received one payment from the principal contractor in the amount of \$3,000.00.<sup>17</sup> As noted in the court's findings of fact, Roger Ollila, the Controller for Sims-Lohman, averred that this amount was owed as of July 31, 2012.<sup>18</sup> There were no affidavits submitted in opposition to the summary judgment motion disputing that claim.<sup>19</sup>

The court acknowledges the defendants' argument in their memorandum in opposition to the present motion that the plaintiff could have raised this claim in the 2012 case between Gold Point Construction and the defendants but chose not to do so. However, as discussed by this court in its prior decision, Sims-Lohman's claim in that

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<sup>16</sup> Decision/Entry, filed April 27, 2015 at pg. 16.

<sup>17</sup> Id.

<sup>18</sup> Id. at pg. 6.

<sup>19</sup> Id. at pg. 16.

case would have been a permissive cross-claim and it was not mandatory that it raise a cross-claim in the case between Gold Point Construction and the defendants.<sup>20</sup>

Therefore, Sims-Lohman did not impermissibly "sit on its rights" as suggested by the defendants. Furthermore, there was discussion of the amounts owed to Sims-Lohman during the court trial held in the 2012 case but that court ultimately decided that the defendants should pay Sims-Lohman directly and declined to award Gold Point Construction any amount based on the Sims-Lohman invoices.<sup>21</sup>

Based on the above analysis, the court finds that the \$27,298.93 owed to the plaintiff became due and owing as of July 31, 2012. As such, prejudgment interest shall be awarded at the statutory rate of 3% per annum<sup>22</sup> as of that date.

### CONCLUSION

The plaintiff's motion for prejudgment interest is well-taken and is hereby granted. The plaintiff is hereby awarded prejudgment interest from July 31, 2012 at the rate of 3% per annum on the \$27,298.93 in damages awarded in this case.

**IT IS SO ORDERED.**

DATED: 6.22-15

  
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Judge Jerry R. McBride

<sup>20</sup> Id. at pgs. 14-15.

<sup>21</sup> Id. at pgs. 2-4.

<sup>22</sup> R.C. 5703.47; and, [http://www.tax.ohio.gov/ohio\\_individual/individual/interest\\_rates.aspx](http://www.tax.ohio.gov/ohio_individual/individual/interest_rates.aspx).