

This case involves a lease agreement entered into between the appellants (defendants) and the appellees (plaintiffs). Among other things, the lease obligated the defendants to pay the city and county property taxes on the leased premises during the term of the lease. Plaintiffs instituted this action to recover rent, taxes and prejudgment interest. After a bench trial the court entered a judgment against the defendants for \$32,507.09, representing rent, taxes and prejudgment interest. On this appeal, the appellants challenge only the ruling of the court regarding prejudgment interest on the amount of the taxes. We affirm the trial court.

The appellant complains that the trial court awarded judgment for prejudgment interest calculated from the date of delinquency to the date of the trial. The issue is stated by the defendants as follows:

1. Did the trial court err by calculating prejudgment interest on the unpaid taxes from the date of delinquency to the date of trial, notwithstanding plaintiffs' testimony taxes were paid at a later date?

Paragraph 16 of the lease agreement provides that the tenant shall pay and discharge, when due, as part of the rental of the premises, all property taxes and assessments charged on the premises or any improvements thereto during the term of the lease.

The agreement further provides that should the taxes become delinquent, then the plaintiffs have the right and option to pay the taxes due and that any amount so paid shall be added as additional rental. (Emphasis added).

Defendants argue that "until such taxes are paid by the appellees, there is no amount due." We respectfully disagree with the position advanced by the appellants. The appellants were not obligated to pay the taxes but merely possessed the option of paying the taxes past due. Whether the past due rents were called rent or taxes, nevertheless, the amount thereof was owed by the appellants under the express terms of the lease agreement. The court has the discretionary authority in a case such as this to ascertain the amount of and award prejudgment interest on all amounts due. Prejudgment interest is allowed as a general rule in cases where the amount of the debt is certain and not disputed on reasonable grounds. Textile Workers Union v. Brookside Mills, Inc., 205 Tenn. 394, 326 S.W2d 671 (1959). It should be allowed in accordance with the principles of equity. Schoen v. J.C. Bradford & Co., 667 S.W2d 97 (Tenn. App. 1984). "The requirements of liquidation is satisfied if the amount of the debt is certain or can be made certain by mere computations." Performance Systems v. First Am Nat'l. Bank, 554 S.W2d 616 Tenn. 1977. Here, the amount of the rents and taxes past due can be ascertained by mere computation.

T. C. A. 47-14-123 provides that prejudgment interest may be awarded as an element of damages "in accordance with the principles of equity at any rate not in excess of the maximum effective rate of ten percent (10%) per annum" See Schoen v. J.C. Bradford & Co., 667 S.W2d 97 (Tenn. App.1984), The award of prejudgment interest is within the sound discretion of the trial court and the decision will not be disturbed upon appellate review unless the record reveals a manifest and palpable abuse of discretion. See Engert v. Peerless Insurance Co., 53 Tenn. App. 310, 382 S.W2d 541 (1964); B.F. Myers & Son of Goodlettsville, Inc. v. Evans, 612 S.W2d 912 (Tenn. App.1980); In re Estate of Cooper, 689 S.W2d 870 (Tenn. App.1985); Teague Brothers, Inc. v. Martin & Bayley, Inc., 750 S.W2d 152 (Tenn. App.1987). The award of prejudgment interest as an element of damages is not considered a penalty imposed upon the defendant, but is allowed in accordance with the principles of equity. In re Estate of Davis, 719 S.W2d 526 (Tenn. App.1986). ...

Otis v. Cambridge Mt. Fire Ins. Co., 850 S.W2d 439,446 (Tenn. 1992).

We are of the opinion that the facts of this case meet the required test.

Appellants further argue that, at the time of trial, penalties and interest had been imposed by the taxing agency on the amount of the past due taxes. Thus, they argue, to impose prejudgment interest on the amount awarded for delinquent taxes constitutes a double payment of interest. Their reasoning is that when the plaintiffs paid the taxes, the interest and penalties were included through the respective dates of payment. This reasoning is fallacious. The prejudgment interest is calculated on the debt owed by the debtor. In this case, appellants' debt included penalties and interest paid by the plaintiffs or which the

plaintiffs were obliged to pay because of defendants' breach of the lease agreement. Interest is a charge made for the use of money while rent is a charge made for the use of land. Performance, supra. We find no merit in this argument.

We find no abuse of discretion nor reversible error. Accordingly, the judgment of the trial court is affirmed in all respects. Costs are taxed to the appellants and this cause is remanded to the trial court for the collection thereof.

Don T. McMuray, J.

CONCUR:

Houston M. Goddard, Presiding Judge

Herschel P. Franks, Judge

IN THE COURT OF APPEALS

ARTHUR v. CLANCY, JR. ,) KNOX CIRCUIT
KATHERINE C. MURPHY, MARY C.) C. A. NO. 03A01-9606-CV-00187
KERLEY, JOSEPHINE C. SWKARD,)
and ELIZABETH C. KIDD,)
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Plaintiffs - Appellees)
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vs.) HON. DALE C. WORKMAN
) JUDGE
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)
ERIC MICHAEL GEORGESON and) AFFIRMED AND REMANDED
JAMES R. FITZGERALD,)
)
Defendants - Appellants)

ORDER

This appeal came on to be heard upon the record from the Circuit Court of Hamilton County and briefs submitted on behalf of the parties. Upon consideration thereof, this Court is of the opinion that there was reversible no error in the trial court.

Accordingly, the judgment of the trial court is affirmed in all respects. Costs are taxed to the appellants and this cause is remanded to the trial court for the collection thereof.

PER CURI AM