

OP. NO. 04-028

CIVIL REMEDIES AND PROCEDURE: CERTAIN INCIDENTS OF TRIAL (JUDGMENT OR DECREE FOR INTEREST).

Costs of recovery, such as court costs and attorneys' fees; legal or contractual interest accrued prior to judgment; and statutory penalties for nonpayment of debt generally are not included in term 'principal sum awarded' and do not accrue interest.

The Honorable Barbara J. Gaden
Judge, City of Richmond General District Court
August 2, 2004

Issue Presented

You ask whether the term "principal sum awarded," as used in § 8.01-382, includes not only the original amount of the obligation sought to be recovered, but also the costs of recovery, such as court costs and attorneys' fees. You further ask whether the term includes legal or contractual interest accrued prior to judgment; and finally, you ask whether "principal sum awarded" includes statutory penalties imposed for nonpayment of debt. Section 8.01-382 generally provides that "interest on any principal sum awarded" may be awarded in actions at law or suits in equity.

Response

It is my opinion that costs of recovery, such as court costs and attorneys' fees; legal or contractual interest accrued prior to judgment; and statutory penalties imposed for nonpayment of debt are not included in the term "principal sum awarded," and, therefore, do not accrue interest pursuant to § 8.01-382.

Applicable Law and Discussion

The first sentence of § 8.01-382 provides that, "[i]n any action at law or suit in equity, the verdict of the jury, or if no jury the judgment or decree of the court, may provide for interest on any principal sum awarded, or any part thereof, and fix the period at which the interest shall commence."

1. Costs and Attorneys' Fees Typically Do Not Accrue Interest

You ask how to determine the meaning of the term "costs." The term "costs" is not defined in the Virginia Code; however, the Court of Appeals of Virginia has defined "costs" as

"[a] pecuniary allowance, made to the successful party (and recoverable from the losing party), for his expenses in prosecuting or defending an action or a distinct proceeding within an action. Generally, 'costs' *do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case.*"^[1]

As a general rule, interest will not be allowed on an amount recovered as costs,² as no statute in Virginia permits the accrual of interest on court costs.³ In Virginia, "[t]he general principle is, that costs are considered as an appendage to the judgment, rather than a part of the judgment itself; that they are considered, in some sense, as damages, and are always entered, in effect, 'as an increase of damages by the court.'"⁴ A 1991 opinion of the Attorney General addresses the issue whether interest accrues on court costs or attorneys' fees.⁵ The prior opinion determined that interest does not accrue on either attorneys' fees or other costs awarded on a judgment for the balance of a note.⁶ The 1991 opinion also states that there is no express statutory provision for the accrual of interest on either costs or attorneys' fees awarded to the prevailing party in any type of action.⁷

In light of the foregoing, it is my opinion that neither costs nor attorneys' fees are included in the "principal sum awarded," to which interest is applicable under § 8.01-382.

2. Legal or Contractual Interest Accrued Prior to Judgment Does Not Accrue Postjudgment Interest

You also ask whether legal or contractual interest accrued prior to judgment is part of the "principal sum awarded." No express statutory authority provides for the accrual of interest on legal or contractual interest accrued prior to judgment. As a general principal, interest should not bear interest absent such an expression of legislative intent.⁸ Moreover, "[t]he interest the law allows on judgments is not an element of 'damages' but a statutory award for delay in the payment of money due."⁹ As a result, allowing postjudgment interest also to accrue on an award of prior interest would permit the compounding of interest and, therefore, provide an inappropriate windfall to the prevailing party. It is my opinion, therefore, that postjudgment interest generally does not

accrue on prejudgment interest, regardless of whether such prejudgment interest is legal or contractual in nature.

3. Statutory Penalties Imposed for Nonpayment of Debt Do Not Accrue Interest

Finally, you ask whether "principal sum awarded" includes statutory penalties imposed for nonpayment of debt. No express statutory authority provides for the accrual of interest on statutory penalties imposed for nonpayment of a particular debt. Moreover, I have not found any relevant Virginia case law or other authority addressing this issue. Similar to costs, attorneys' fees and prejudgment interest, however, such penalties do not appear to be part of the "principal sum awarded." A "statutory penalty" is defined generally as "[a] penalty imposed for a statutory violation; esp[ecially], a penalty imposing automatic liability on a wrongdoer for violation of a statute's terms without reference to any actual damages suffered."¹⁰ Since such penalties are separate and distinct from the "principal sum" awarded, i.e., damages, it is my opinion that "statutory penalty" amounts are not included in the term "principal sum awarded" and, therefore, do not accrue interest pursuant to § 8.01-382.¹¹

Notwithstanding the foregoing, interest may accrue on attorneys' fees, court costs and/or penalties imposed by statute if such are expressly included in the "judgment" pursuant to statute and/or other applicable authority. For example, interest may accrue on unpaid fines and costs in certain criminal matters.¹²

Conclusion

Accordingly, it is my opinion that costs of recovery, such as court costs and attorneys' fees; legal or contractual interest accrued prior to judgment; and statutory penalties imposed for nonpayment of debt generally are not included in the term "principal sum awarded" and therefore do not accrue interest pursuant to § 8.01-382.

¹O'Loughlin v. O'Loughlin, 23 Va. App. 690, 693, 479 S.E.2d 98, 99 (1996) (quoting Black's Law Dictionary 312 (5th ed. 1979)). Section 17.1-624 denominates an attorney's fees as costs, insofar as it directs a clerk of court to assess costs against the nonprevailing party in certain types of cases and to "include therein ... the fee of such party's attorney, if he has one." See 1991 Op. Va. Att'y Gen. 23, 24 (citing § 14.1-196, predecessor to § 17.1-624).

²Ashworth v. Tramwell, 102 Va. 852, 859, 47 S.E. 1011, 1013 (1904) (citation omitted).

³Scott v. Doughty, 130 Va. 523, 527, 107 S.E. 729, 730 (1921). An exception to this general rule occurs when a party against whom costs have been assessed enjoins the collection of the judgment on grounds that do not affect its validity or furnish any foundation for retraining the plaintiff prosecuting to judgment his claim. See Shipman v. Fletcher's Adm'r, 95 Va. 585, 589-91, 29 S.E. 325, 327 (1898). While it may be proper to stay payment of the judgment in such instances, the nonprevailing party would be liable for interest on the assessed costs from the time the injunction was granted. See *id.* at 591, 29 S.E. at 327.

⁴M'Rea v. Brown, 16 Va. (2 Munf.) 46, 47-48 (1811) (citation omitted), *quoted in* 1991 Op. Va. Att'y Gen., *supra* note 1, at 23.

⁵1991 Op. Va. Att'y Gen., *supra* note 1, at 23.

⁶*Id.* at 24. The 1991 opinion distinguishes judgment entered for the balance of the note (i.e., "principal sum awarded") from the court's ability to "tax" court costs and attorney fees in addition thereto. *Id.* at 23-24. The opinion discerns that interest accrues on the former, and not the latter. *Id.* The opinion also assumes that the note itself was silent regarding whether interest accrues on an award of court costs or attorney fees. *Id.* at 23.

⁷*Id.* at 24.

⁸See Stuart, Buchanan & Co. v. Hurt, 88 Va. 343, 344-45, 13 S.E. 438, 438-39 (1891).

⁹Nationwide Mut. Ins. Co. v. Finley, 215 Va. 700, 702, 214 S.E.2d 129, 131 (1975) (citing Am. Auto Ins. Co. v. Fulcher, 201 F.2d 751, 757 (4th Cir. 1953)).

¹⁰Black's Law Dictionary 1154 (7th ed. 1999).

¹¹While statutory penalties are not subject to post or prejudgment interest, statutory damages can be. Statutory penalties are wholly punitive in nature and aimed at punishment. *Id.* Statutory damages, however, may be compensatory in nature and aimed at compensating defendants for damages incurred. See Feltner v. Columbia Pictures Telev., Inc., 523 U.S. 340, 352 (1998). The term "principal sum" includes damages. See Air Separation v. Underwriters at Lloyd's of London, 45 F.3d 288, 291 (9th Cir. 1995)

(interpreting 28 U.S.C. § 1961). Thus, a principal sum can encompass monetary sums awarded based on a statutory damage provision. See *Sid & Marty Krofft Telev. Prods., Inc. v. McDonald's Corp.*, 1983 U.S. Dist. LEXIS 20074, at *18 (C.D. Cal. Jan. 12, 1983) (awarding defendant postjudgment interest on \$1,044,000 judgment based on statutory damage provision).

¹²Section 19.2-340 assigns the character of a "civil judgment" to fines imposed or costs taxed, which is sufficient to trigger the application of § 8.01-382. See Op. Va. Att'y Gen.: 1987-1988 at 305, 307; 1986-1987 at 187, 188; 1985-1986 at 136, 137; 1978-1979 at 142, 143.

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