

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D57212
M/htr

_____AD3d_____

Submitted - September 14, 2018

WILLIAM F. MASTRO, J.P.
SANDRA L. SGROI
JOSEPH J. MALTESE
VALERIE BRATHWAITE NELSON, JJ.

2017-07736
2017-09043

DECISION & ORDER

Philip Scotti, as executor of the estate of
Ann Barrett, appellant, v Rick Barrett, respondent,
et al., defendants.

(Index No. 601679/14)

Meyers Tersigni Feldman & Gray LLP, New York, NY (Anthony L. Tersigni and
Paul K. Feldman of counsel), for appellant.

In an action, inter alia, to recover damages for conversion and to recover property on behalf of the decedent's estate, the plaintiff appeals from (1) a judgment of the Supreme Court, Nassau County (Karen V. Murphy, J.), entered June 7, 2017, and (2) an amended judgment of the same court entered July 13, 2017. The amended judgment, insofar as appealed from, failed to award prejudgment interest at the statutory rate of 9% per annum on the damages awarded in favor of the plaintiff on the cause of action to recover damages for conversion.

ORDERED that the appeal from the judgment is dismissed, as the judgment was superseded by the amended judgment and, in any event, the appeal has been rendered academic in light of our determination on the appeal from the amended judgment; and it is further,

ORDERED that the amended judgment is reversed insofar as appealed from, on the law, the judgment is vacated, and the matter is remitted to the Supreme Court, Nassau County, for the entry of a second amended judgment that includes an award of prejudgment interest at the statutory rate of 9% per annum on the damages awarded in favor of the plaintiff on the cause of action to recover damages for conversion; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

November 7, 2018

Page 1.

SCOTTI, as executor of the estate of BARRETT v BARRETT

On a prior appeal in this action, this Court awarded summary judgment to the plaintiff, inter alia, on the cause of action to recover damages for conversion in the sum of \$69,500, representing the amount of estate funds that were wrongfully converted by the defendant Rick Barrett. The Supreme Court subsequently entered an amended judgment that awarded the plaintiff the sum of \$69,500 but failed to award prejudgment interest at the statutory rate of 9% per annum on that sum. The plaintiff appeals from so much of the amended judgment as failed to award prejudgment interest at the statutory rate on the \$69,500 damages award.

“The usual measure of damages for conversion is the value of the property at the time and place of conversion, plus interest” (*Fantis Foods v Standard Importing Co.*, 49 NY2d 317, 326; see *Hoffman v Dorner*, 86 AD2d 651). Indeed, CPLR 5001(a) provides for the award of prejudgment interest upon sums awarded for the deprivation of or interference with another’s property, and relevant case law clearly establishes that such interest is properly awarded as part of the recovery on a cause of action sounding in conversion (see *23 E. 39th St. Mgt. Corp. v 23 E. 39th St. Dev., LLC*, 134 AD3d 629, 632; *Hunt v Hunt*, 13 AD3d 1041, 1043; *Zimmerman v Tarshis*, 300 AD2d 477, 478; *Eighteen Holding Corp. v Drizin*, 268 AD2d 371, 372; *Phillips v Catania*, 188 AD2d 1029, 1030). Moreover, interest is to be awarded at the statutory rate of 9% per annum (see CPLR 5004; *Zimmerman v Tarshis*, 300 AD2d at 478; *Phillips v Catania*, 188 AD2d at 1030; *Long Playing Sessions v Deluxe Labs.*, 129 AD2d 539, 540).

Accordingly, we remit the matter to the Supreme Court, Nassau County, for the entry of a second amended judgment that includes an award of prejudgment interest at the statutory rate of 9% per annum on the damages awarded in favor of the plaintiff on the cause of action to recover damages for conversion.

MASTRO, J.P., SGROI, MALTESE and BRATHWAITE NELSON, JJ., concur.

ENTER: 
Aprilanne Agostino
Clerk of the Court