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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CRP/Extell Parcel I, L.P. v Cuomo</b>                                                                                                                                                                                         |
| 2012 NY Slip Op 32329(U)                                                                                                                                                                                                         |
| September 5, 2012                                                                                                                                                                                                                |
| Supreme Court, New York County                                                                                                                                                                                                   |
| Docket Number: 113914/2010                                                                                                                                                                                                       |
| Judge: Anil C. Singh                                                                                                                                                                                                             |
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| This opinion is uncorrected and not selected for official<br>publication.                                                                                                                                                        |

**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT:** HON. ANIL C. SINGH  
SUPREME COURT JUSTICE *Justice*

**PART** 61

Index Number : 113914/2010  
 CRP/EXTCELL PARCEL 1  
 vs  
 CUOMO, ANDREW M.  
 Sequence Number : 002  
 OTHER

INDEX NO. \_\_\_\_\_  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

**Cross-Motion:** ☐ Yes ☐ No

Upon the foregoing papers, It is ordered that this motion *is decided in accordance with the attached news order decision and order.*

**DECIDED IN ACCORDANCE WITH  
 ACCOMPANYING DECISION / ORDER**

**FILED**

**SEP 10 2012**

**COUNTY CLERK'S OFFICE  
 NEW YORK**

Dated: 9/5/12

*Recy*  
HON. ANIL C. SINGH *J.S.C.*  
SUPREME COURT JUSTICE

Check one: ☒ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

☐ **SUBMIT ORDER / JUDGE**

☐ **SETTLE ORDER / JUDGE**

**MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
 FOR THE FOLLOWING REASON(S):**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 61

-----X  
CRP/EXTOLL PARCEL I, L.P.,

Petitioner,

-against-

ANDREW M. CUOMO, in his capacity as  
THE ATTORNEY GENERAL OF THE STATE  
OF NEW YORK., et al.,

Respondents.  
-----X

HON. ANIL C. SINGH, J.:

Respondents move for an order pursuant to CPLR 5001, 5002, 5004, and 2508 awarding interest at the statutory rate on their escrowed downpayments and directing petitioner to increase the amount of the undertaking to cover such interest. Petitioner opposes the motion.

The individual purchaser respondents assert that they are entitled to have 9% statutory interest awarded to them and to have the undertaking increased to account for the passage of time to date and the likely passage of time until a decision by the Appellate Division on petitioner's appeal. The purchasers argue that having downpayments (which under the Attorney General's regulations is the purchasers' own money) ranging from \$110,000 to \$1,072,500 tied up in escrow

DECISION AND  
ORDER

Index No.  
113914/2010

**FILED**

**SEP 10 2012**

**COUNTY CLERK'S OFFICE  
NEW YORK**

for years has caused purchasers significant hardship.

In opposition, petitioner points out that the parties entered into a stipulation which provides:

IT IS FURTHER STIPULATED AND AGREED, by and between the undersigned counsel for the parties herein, that the down payments, together with any accumulated interest, being held in escrow by Stroock & Stroock & Lavan LLP, shall not be released to either party pursuant to the Court's Order entered January 25, 2012, until twenty days after entry of the order resolving the appeal filed February 14, 2012, with the New York Supreme Court, Appellate Division, First Department.

(Stipulation dated February 22, 2012)

Citing the stipulation, petitioner contends that there is no basis for imposing or increasing an undertaking, as the parties have stipulated to a stay pending appeal. Petitioner contends further that, where the funds at issue are already being held in an interest-bearing escrow account, an additional undertaking is not required and is improper; that the purchasers' motion is barred by the doctrine of res judicata; and that there is no statutory right to interest.

#### Discussion

CPLR 5001 directs an award of interest for a "breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property...."

CPLR 2508 states in pertinent part:

Upon motion of any interested person, upon notice to the parties and surety, and to the sheriff, where he was required to be served with the undertaking, the court may order a new or additional undertaking....

The Rushmore Offering Plan states on page 95 that:

any Purchaser electing rescission will have their  
Deposits and any interest earned thereon returned.

“The purchaser, on the vendor’s breach of a contract for the sale of real property, is entitled to the return of his or her payments on account of the purchase price, with interest...” (91 N.Y.Jur.2d Real Property Sales and Exchanges section 216, citing Gundel v. Grady, 184 A.D.2d 548 [2d Dept., 1992], Ansonia Realty Co. v. Ansonia Associates, 142 A.D.2d 514 [1<sup>st</sup> Dept., 1988], Levitan v. Levine, 224 A.D.561 [1<sup>st</sup> Dept., 1928]).

“Damages compensate plaintiffs in money for their losses, while prejudgment interest is simply the costs of having the use of another person’s money for a specified period” (Grobman v. Chernoff, 15 N.Y.3d 525, 529 [2010] (internal quotation marks and citations omitted)). Prejudgment interest is intended to indemnify successful plaintiffs for nonpayment of what is due them, and is not meant to punish defendants for delaying final resolution of the litigation (36 N.Y.Jur.2d Damages 118).

In the instant matter, it is undisputed that the escrow agent is holding the downpayment funds of the individual purchaser respondents. The respondents are clearly being deprived of the use of their money. Under such circumstances, the undertaking must be increased to ensure that the purchasers are made whole.

For the above reasons, the motion is granted, and it is

ORDERED that petitioner is directed to increase the amount of the undertaking to \$6,000,000; and it is further

ORDERED that prejudgment interest shall accrue at the statutory rate.

Date: 9/5/12  
New York, New York

  
\_\_\_\_\_  
Anil C. Singh  
HON. ANIL C. SINGH  
SUPREME COURT JUSTICE

**FILED**  
**SEP 10 2012**  
**COUNTY CLERK'S OFFICE**  
**NEW YORK**