

STATE OF MAINE

BUSINESS AND CONSUMER COURT

Cumberland, ss.

ARUNDEL VALLEY, LLC

Plaintiff

v.

Docket No. BCD-CV-13-15

BRANCH RIVER PLASTICS, INC.

Defendant

ORDER ON COSTS, INTEREST AND EXPENSES

Plaintiff and Defendant Robert Mayo have both submitted bills of costs. Plaintiff's request for full prejudgment interest is before the court, along with Defendant Branch River's request for a full or partial waiver of prejudgment interest. Also, Defendant Branch River has filed a motion for expenses for failure to admit under M.R. Civ. P. 37(c). The court elects to decide all of these without hearing, *see* M.R. Civ. P. 7(b)(7).

Prejudgment Interest

Defendant Branch River's request for a full or partial waiver of prejudgment interest is granted in part. The fact that Plaintiff Arundel Valley sued multiple parties doubtless prolonged the case, and as Branch River says, other defendants did obtain extensions of the schedule, albeit without objection by Branch River. Plaintiff's motion for reconsideration deferred a final ruling on Branch River's motion for summary judgment, although only for about two months. Branch River's other arguments for a waiver are unpersuasive. For example, it is not sufficiently clear that any delay by Arundel Valley in providing discovery materially delayed resolution of the case. Second, Branch River's claim that Arundel Valley refused to mediate is contested, and in any case, the claim should have been brought up at the time.

Branch River has shown good cause for a partial waiver of prejudgment interest. Plaintiff is hereby awarded prejudgment interest for 748 days at \$56.42 per day, for a total of \$42,202.16.

Plaintiff's Costs

From Plaintiff's bill of costs, the court awards the following:

\$755.24 in recoverable costs under section 1502-B of title 14, M.R.S.

\$1,138.60 for James DiStefano's time and mileage

\$593 for the Rick Dauphinais deposition

\$1172 for the John Vargas and Lisa Murphy depositions

\$1,483 for the Kevin Arcand deposition

\$460.20 for the deposition of Daniel Patry

\$500 for preparation and copying of trial exhibits

Defendant Mayo's Costs

Defendant Mayo seeks reimbursement for a motion to dismiss that was later withdrawn. Although Mr. Mayo did prevail on summary judgment, in the court's view, he would not have prevailed on a Rule 12(b)(6) motion to dismiss. Moreover, the withdrawal of the motion means he cannot be deemed to have prevailed as to that issue. His request for costs is denied.

Defendant Branch River's Motion for Expenses

Branch River seeks reimbursement for the expense of proving the validity of certain tests conducted by Craig Barnes, P.E. on Branch River's panels. Mr. Barnes's test results were cited by Arundel Valley's expert and came into evidence through an exhibit, not through Mr. Barnes's testimony. However, nothing about the jury verdict indicates that the proposition

Branch River claims was proved was in fact proved. The verdict indicates that the jury considered Mr. Barnes's test results either not proven or irrelevant—more likely the latter.

Defendant Branch River's Rule 37(c) Motion for Fees and Expenses is denied.

Pursuant to M.R. Civ. P. 79(a), the clerk is directed to incorporate this Order by reference in the docket.

Dated September 10, 2015

_____/S _____
A. M. Horton, Justice