NOT FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

WARREN M. WILLIAMS, **Plaintiff Interpleader,** **v.** **ELAINE EDWARDS and KAI MULLEY,** **Claimant Defendants.**	**ST-12-CV-175** **ACTION FOR INTERPLEADER**

MEMORANDUM OPINION

THIS MATTER is before the court on *pro se* Claimant Defendant Kai Mulley's (hereinafter "Mulley") motion for award of interest filed January 18, 2013 (hereinafter "Motion"). *Pro se* Plaintiff Interpleader Warren M. Williams, Esq., (hereinafter "Williams") filed an opposition on April 3, 2013. Mulley replied on May 8, 2013. For the reasons stated below, the Court will grant Mulley's motion.

BACKGROUND

This matter arises out of a complaint filed against Williams by Claimant Defendant Elaine Edwards (hereinafter "Edwards") with the Virgin Islands Bar Association Ethics and Grievance Committee (hereinafter "EGC"). In the mid-1970s, Edwards rented the premises at number 14 C Gamle Gade.[1] Five years later, Edwards rented the superficiary house owned by the O'Garro's on the property at 14 A Gamle Gade.[2] In 1983, Mr. O'Garro offered to sell Edwards the house with an understanding that he leased the land where the house was situated.[3] Mr. O'Garro introduced Edwards to Attorney Williams to discuss leasing the property.[4] On December 1, 1983, Edwards met with Williams and signed a rental lease for number 14 A Gamle Gade.[5] According to Edwards, Williams identified himself on the lease as "agent for Eugene Henderson… Landlord."[6] The lease was for a five-year renewable term, total rent during the initial term being $4,500 with monthly

[1] Mot., Ex. H, Affidavit of Elaine Edwards at ¶1.
[2] Id. at ¶2.
[3] Id. at ¶3.
[4] Id. at ¶4.
[5] Id. at ¶5.
[6] Id.

installments of $75 payable to the landlord's agent.[7] Edwards purchased the superficiary house on 14 A Gamle Gade from Mr. O'Garro in February 1984.[8] Upon the lease's expiration, Edward continued to rent the property as a tenant at will for approximately 24 years.[9] On several occasions, Edwards expressed interest in buying the property; and Williams assured her that she had the right of first refusal.[10]

In early 2007, Mulley advised Edwards that she was purchasing the property.[11] Edwards explained to Mulley that she was paying monthly rent to Williams for the property.[12] Mulley divulged that the property owner did not know about Edwards or her home being on the property.[13] Subsequently, Williams confirmed that the property was for sale and that he would get in touch with the owner about Edwards' interest in purchasing the property.[14] Edwards was unsuccessful in her attempts to get in contact with Williams and continued to pay him rent until May 2007.[15]

Mulley purchased 14 A Gamle Gade by Warranty Deed on April 26, 2007 and the deed was duly recorded on May 18, 2007.[16] On October 26, 2007, Eleanor S. Roston (hereinafter "Roston"), the daughter of the owner of the property, assigned all claims to Mulley.[17] In May 2007, Mulley notified Edwards that she owned the property, and increased the rent to $400 per month.[18] However, Edwards could not afford the increase because she lived on a fixed income.[19] On or about July 5, 2007, Mulley filed an action for forcible

[7] Mot., Ex. H, Affidavit of Elaine Edwards at ¶6.
[8] Id. at ¶7.
[9] Id. at ¶8.
[10] Id. at ¶¶ 9,11,13.
[11] Id. at ¶¶10,13.
[12] Id. at ¶15.
[13] Id. at ¶16.
[14] Id. at ¶¶17,18.
[15] Id. at ¶¶19,20.
[16] Mot. at ¶7, Ex. I, Warranty Deed.
[17] Id., Ex. J, Assignment of Claims.
[18] Mot., Ex. H, Affidavit of Elaine Edwards at ¶20.
[19] Id.

entry and detainer against Edwards.[20] Edwards and Mulley entered into a settlement agreement.[21] Subsequently, Edwards moved out of her home and into an apartment on November 8, 2008.[22]

Roston averred in an affidavit that her father's death certificate was recorded prior to the date of the lease; that she did not know Edwards; that she never entered into any lease with Edwards; that neither Edward nor Williams ever paid her any money for rent; that she never knew Williams, nor did she have knowledge that he was an agent with the authority to act on behalf of her father; and that Williams' purported authority to act as an agent would have terminated after her father's death.[23]

On or about February 23, 2009, Edwards filed a complaint with the EGC against Williams. On October 10, 2011, Williams executed and Offer to Consent in which he agreed to deposit $21,150 in the Superior Court.[24] On January 13, 2012, the Offer to Consent was accepted by the EGC. Because both Edwards and Mulley claimed that they were entitled to the $21,150[25] in rental proceeds held by Williams, as partial resolution of the disciplinary action, the EGC Ordered Williams to file an interpleader action for the Superior Court to determine who was entitled to the $21,150.[26]

On March 28, 2012, Williams filed a complaint in interpleader.[27] The court held a review hearing on July 23, 2012.[28] At the July 23, 2012 hearing, the court ordered that the matter be mediated by a Superior Court magistrate; that Williams deposit the money by September 7, 2012 and notify the court by September 10, 2012; and that Williams pay 4% interest from March 28, 2012 to September 10, 2012.[29] The court took the matter of

[20] Mot., Ex. H, Affidavit of Elaine Edwards at ¶21.
[21] Id. at ¶29.
[22] Id. at ¶30.
[23] Id. at ¶27.
[24] Mot. at 1.
[25] $21,150 total rental proceeds = $75 rent payments x 12 months x 23.5 years
[26] Williams' Opp'n at ¶¶3-4.
[27] Mot., Ex. A.
[28] Mot. at ¶3, Ex. D, Order entered September 11, 2012.
[29] Id.

prejudgment interest under advisement. According to the mediation agreement, Edwards is entitled to $7,000 and Mulley is entitled to the balance of the monies, $14,150, including any interest.[30]

DISCUSSION

Mulley moves for 9% prejudgment interest on the $21,150 Williams collected in rental proceeds. Williams counter argues that Mulley is not entitled to receive any interest since there was never an agreement between him and the former owner to place the rental proceeds in an interest-bearing account.[31] The question presented is whether Mulley is entitled to receive prejudgment interest on the $21,150 in rental proceeds.

The Supreme Court of the Virgin Islands (hereinafter "Supreme Court") explained that "a grievant who receives a restitution award as a result of an attorney discipline proceeding is entitled to receive interest at the same rate used to calculate prejudgment interest in Superior Court proceedings."[32]

Title 11, Section 951(a) of the Virgin Islands Code "provides for awards of prejudgment interest in situations where the amount due is easily ascertainable."[33] The Virgin Islands prejudgment interest statute provides in pertinent part:[34]

> (a) The rate of interest shall be nine (9%) per centum per annum on — (1) all monies which have become due; (2) money received to the use of another and retained beyond a reasonable time without the owner's consent, either express or implied; (3) money due upon the settlement of matured accounts from the day the balance is ascertained; and (4) money due or to become due where there is a contract and no rate is specified.

Section 951(a) (1) "applies to 'all monies which have become due,' not just money due under a contractual theory of recovery."[35] "The grant or denial of prejudgment interest remains within the sound

[30] Mot. at ¶9, Ex. D, Order entered September 11, 2012.
[31] Sur-reply at ¶5.
[32] *See In re Welcome*, 58 V.I. 604, 619 n.8 (2013) (citing *In re Suspension of Joseph*, 56 V.I. 490, 507 (2012) (the grievant was entitled to reasonable interest on that amount, based on the same rate used to calculate prejudgment interest in Superior Court proceedings)).
[33] *See Bookworm, Inc.*, 44 V.I. at 305.
[34] *See Addie v. Kjaer*, 836 F.3d 251 (3d Cir. 2016) (The Legislature of the Virgin Islands has determined that prejudgment interest is to be awarded at the rate of 9 percent). 11 V.I.C. §951(a)(1)-(4). *In re Suspension of Joseph*, *supra* erroneously referenced Title 5, Section 426 (a) of the Virgin Islands Code as the rate used to calculate prejudgment interest.
[35] *Id.*

discretion of the trial court." [36] "The assessment of prejudgment interest is permissible where the interests of justice so demand."[37] "Prejudgment interest is normally granted, except in exceptional or unusual circumstances that make the award for interest inequitable."[38] "[A]s a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of the money which was legally due."[39]

Williams' assertion that Mulley is not entitled to receive any interest because there was no agreement to place the rental proceeds in an interest bearing account is incorrect. As mentioned *supra*, to resolve the disciplinary matter filed against Williams, the EGC accepted Williams' Offer to Consent to return the $21,150 cumulative rental proceeds as restitution. The Supreme Court in *In re Suspension of Joseph* and *In re Welcome*, was clear that in attorney discipline proceedings where restitution has been ordered, the grievant is entitled to interest on the restitution amount calculated at the prejudgment rate. Ergo, because Williams consented to pay the $21,150 in restitution as part of the disciplinary proceedings, Mulley is entitled to receive reasonable interest at the prejudgment rate.

Accordingly, the prejudgment interest owed to Mulley equals the $900 in rental proceeds per year ($75 per month x 12 months) that Williams collected for 23.5 years. Interest accrued annually at the prejudgment interest rate of 9% (0.09).[40] Therefore, for every year that Williams collected $900 in rental proceeds, he should pay $81 simple interest ($900 x 0.09). Ergo, Williams owes a total of $1,903.50 prejudgment interest ($81 simple interest per year x 23.5 years). [41]

[36] *See Isaac v. Crichlow*, 63 V.I. 38, 69 (Super. Ct. 2015) (citing *DeWerd v. Bushfield*, 993 F. Supp. 365, 38 V.I. 202, 206 (D.V.I. App. Div. 1998)). *Cf. Bookworm, Inc. v. Tirado*, 44 V.I. 300, 305 (2002).
[37] *See Bookworm, Inc., supra.*
[38] *See Anderson v. Bryan*, 58 V.I. 181, 187 (Super. Ct. 2013) (citing *Anthuis v. Colt Indus. Op. Corp.*, 971 F.2d 999, 1010 (3d Cir. 1992)).
[39] *Id.* (quoting *Skretvedt v. E.I. Dupont de Nemours*, 372 F.3d 193, 208 (3d Cir. 2004)). *See also Trocki v. Mendoza*, 15 V.I. 256, 257 (1978) (The intent of statute authorizing prejudgment interest is to award interest only where the amount due is in money and therefore easily ascertainable).
[40] The rate of interest shall be nine (9%) per centum per annum. *See* 11 V.I.C. §951(a).
[41] I=PRT ($1,903.50 = $900/ year [$75x12 months] x .09 prejudgment interest rate x 23.5 years)

CONCLUSION

Based on the foregoing analysis, Mulley's motion for prejudgment interest shall be granted. Mulley is entitled to prejudgment interest on the restitution amount awarded by the EGC. Williams owes Mulley a total of $1,903.50 in prejudgment interest. The Court will issue an order consistent with this memorandum opinion.

DATED this 12th day of July, 2017.

HAROLD W. L. WILLOCKS
Administrative Judge of the Superior Court

ATTEST:
Estrella George
Clerk of the Court

By: ~~Deputy~~ Clerk Sup

Dated: 7/13/17

CERTIFIED TO BE A TRUE COPY
This 13th day of July 2017
ESTRELLA George
CLERK OF THE COURT
By __________ Court Clerk

Bookworm, Inc., 44 V.I. at 307 n.5 (Unless otherwise provided by statute, prejudgment interest is calculated as simple interest. *Cherokee Nation v. United States*, 270 U.S. 476, 490, 46 S. Ct. 428, 433-34, 70 L. Ed. 694 (1926). The formula for simple interest is I = PRT, where I is simple interest, P is the principal amount, R is the interest rate, and T is the length of time that the principal is held. AM. JUR. 2D *Desk Book*, Item No. 268 (2d ed. 1998)).