



Missouri's Prompt Pay Act Provides for Simple Interest as Penalty for Failure to Pay

By Kathleen Hamilton on November 29, 2022
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After a more than twelve-year court battle and three separate appeals, the Missouri Court of Appeals-Eastern District has ruled that the plain language of Missouri Statute Section 34.057 (the Prompt Pay Act) calls for a penalty of simple interest computed solely on the principal. (The Prompt Pay Act allows courts to impose late payment interest of 1.5% per month on top of payments found to have been withheld from a contractor in bad faith.) The Court of Appeals held that Missouri's Prompt Pay Act did not provide for compound interest and that the trial court erred in determining that the school district owed the contractor compound interest under a judgment entered in the contractor's favor.

Case Background

This case (*Penzel Construction Company, Inc. v. Jackson R-2 School District*, ED110487), involved a dispute between a school district and a contractor over the school district's alleged failure to promptly pay for work performed by the contractor in constructing an expansion to a high school.

In 2006, Jackson R-2 School District ("District") contracted with Penzel Construction Company ("Penzel") for work in expanding a high school. As part of the bidding process, the District provided plans to Penzel and its subcontractors. Penzel's electrical subcontractor completed its electrical work significantly late, claiming the delay resulted from defects in the plans provided by the District. As a result of the delay, the District refused to pay Penzel for the work.

Penzel sued the District for breach of contract and raised a claim under Missouri's Prompt Pay Act, claiming that the District made an implied warranty that the plans were adequate. Penzel sought damages caused by the defective plans. Initially, the trial court entered summary judgment in favor of the District. However, that summary judgment was reversed and remanded when the Court of Appeals found that the District, indeed, implicitly warranted its design plans were reasonably accurate.

On remand, the matter proceeded to jury trial, and a jury awarded Penzel \$800,000 in damages. Judgment was entered by the trial court awarding Penzel: (1) the \$800,000 principal, (2) 9% annual prejudgment interest, (3) attorney's fees, and (4) a Prompt Pay penalty interest "at the rate of one and one half percent (1½%) per month." On appeal, the judgment was affirmed.

Thereafter, the District paid Penzel what it considered to be the total judgment, including the Prompt Pay penalty interest calculated at 1½% per month in simple interest. The District then moved for an order showing satisfaction of judgment, which the trial court denied, finding that the District had not satisfied the judgment because the District calculated the Prompt Pay Act penalty in simple interest instead of compound interest.

The District appealed the trial court's denial of its motion for an order showing satisfaction of the original judgment obtained by Penzel. In short, the District argued that its tender to Penzel satisfied the judgment, and the trial court improperly altered the judgment by: (1) changing the rate of interest due, and (2) requiring that the Prompt Pay penalty interest be compounded in contravention of the language of the judgment and Prompt Pay Act.

Appellate Court Ruling

The Court of Appeals-Eastern District agreed with the school district, holding that the trial court erroneously applied the law in interpreting the Prompt Pay Act to provide for compound penalty interest.

In so holding, the Court of Appeals found that the judgment itself did not award compound interest and that the language of the judgment mirrored the statutory language in the Prompt Pay Act, which provides in pertinent part:

(5) All estimates or invoices for supplies and services purchased, approved and processed, or final payments, shall be paid promptly and shall be subject to late payment charges provided in this section. Except as provided in subsection 4 of this section, if the contractor has not been paid within thirty days as set forth in subdivision (1) of subsection 1 of this section, the contracting agency shall pay the contractor, in addition to the payment due him, interest at the rate of one and one-half percent per month calculated from the expiration of the thirty-day period until fully paid ...

Section 34.057.1(5). RSMo (2000).

To promote timely payment to contractors on contracts with public owners for public works construction projects, the Prompt Pay Act allows courts to impose a late payment interest of 1.5% per month on top of payments withheld in bad faith. The statute is silent as to whether it calls for simple or compound interest. (While simple interest is interest computed solely on principal, compound interest is interest upon interest, where accrued interest is added to the principal sum and the whole treated as a new principal for the calculation of interest for the next period.) Using compound interest, 1½% interest per month totals 18% per year, which is significantly higher than the annual interest rates allowed in other statutes relied on by Penzel in arguing for compound interest to be computed.

The Court of Appeals found that the interest allowed in the Prompt Pay Act was meant to be a penalty to encourage prompt payment, and the plain meaning of "per month" used in the Statute is no different than the plain meaning of "per annum" as it is used in other statutes. As such, the Court held that the interest called for in the Prompt Pay Act is simple interest. Therefore, the Court ruled that the trial court erred both in applying the Prompt Pay Act to require compound interest and in denying the motion for satisfaction of the judgment. The Court also stated that to the extent prior case law suggested it may be compound interest, said statements are non-binding dicta and are not to be followed.

Tags: failure to Pay Penalty, Missouri Prompt Pay Act