

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BERONIO AND DENISE
BERONIO,
Appellants,
vs.
RALPH TRUAX AND SHARON DOLAN-
TRUAX,
Respondents.

No. 53904

FILED

SEP 28 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order setting aside an amended judgment under NRCP 60(b). Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

Appellants David and Denise Beronio initiated a construction defect action against respondents Ralph Truax and Sharon Dolan-Truax. Subsequently, the Truaxes made the Beronios an offer of judgment, pursuant to NRCP 68 and NRS 17.115, for \$45,000, which the Beronios accepted. The offer was silent as to prejudgment interest. The district court initially entered an amended judgment awarding the Beronios \$45,000 plus prejudgment interest but, upon the Truaxes' objection, entered a subsequent order setting aside the amended judgment. This appeal followed.

On appeal, the Beronios raise one primary issue—namely, whether they are entitled to prejudgment interest in addition to the Truaxes' offer of judgment. For the reasons set forth below, we conclude that the Beronios' contention is without merit. Accordingly, we affirm the district court order. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

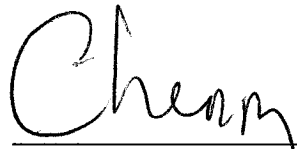
Prejudgment interest

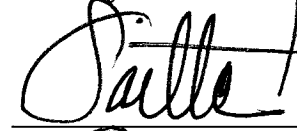
The Beronios argue that the district court erred when it set aside its prior amended judgment and determined that they were not entitled to prejudgment interest; specifically, they assert that they are entitled to the Truaxes' \$45,000 offer plus prejudgment interest. We disagree.


We review legal questions de novo. City of Reno v. Reno Gazette-Journal, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003). The text of both NRCP 68 and NRS 17.115 are silent on the topic of how to treat prejudgment interest upon acceptance when the offer is silent. Our precedent, however, is clear: When “the offer of judgment is silent about whether it includes prejudgment interest, or if the intent of the offeror cannot otherwise be clearly determined, it should be presumed that the offer includes prejudgment interest.” State Drywall v. Rhodes Design & Dev., 122 Nev. 111, 119, 127 P.3d 1082, 1087 (2006) (emphasis added); see Albios v. Horizon Communities, Inc., 122 Nev. 409, 426, 132 P.3d 1022, 1033 (2006) (“When, as here, the offer is silent regarding prejudgment interest and the intent of the offeror cannot be determined, we will presume that the offer includes prejudgment interest.”) (emphasis added); McCrary v. Bianco, 122 Nev. 102, 110 n.16, 131 P.3d 573, 578 n.16 (2006) (citing State Drywall, 122 Nev. at 119, 127 P.3d at 1087, for the proposition that, “absent language to the contrary, defense offers of judgment are presumed to include pre-offer prejudgment interest” (emphasis added)). Accordingly, such an offer, if accepted, will be treated as one that precludes an additional award of prejudgment interest. Nevada Civil Practice Manual § 24.02[7] (Matthew Bender & Company, Inc. ed., 5th ed. 2009); see also State Drywall, 122 Nev. at 119, 127 P.3d at 1087.

The Beronios rely on State Drywall in support of their argument that they are entitled to prejudgment interest in addition to the Truaxes' \$45,000 offer of judgment. The Beronios, however, plainly misinterpret State Drywall's holding and its application to the present case. Here, it is undisputed that the Truaxes' offer of judgment was silent regarding prejudgment interest. Further, the Beronios have not directed us to any evidence indicating that the Truaxes intended to exclude prejudgment interest from their offer of judgment. Under State Drywall and its progeny, because the Truaxes' offer was silent as to prejudgment interest and their intent cannot be determined, we presume that the offer of judgment, as written, included any and all prejudgment interest. Because the Beronios accepted the offer of judgment, which included prejudgment interest in the lump-sum offer, they are precluded from a separate and additional award of prejudgment interest. Accordingly, we conclude that the district court did not err when it set aside its prior amended judgment and determined that the Beronios were not entitled to prejudgment interest. Therefore, we

AFFIRM the district court order setting aside the amended judgment under NRCP 60(b).


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Lester H. Berkson, Settlement Judge
Nancy F. A. Gilbert
C. Nicholas Pereos, Ltd.
Douglas County Clerk