

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE ALGIERS, INC., A NEVADA
CORPORATION D/B/A THE ALGIERS
HOTEL,
Appellant,
vs.
REBECCA VENTOURIS,
Respondent.

No. 42800

FILED

NOV 16 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CITY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court judgment entered pursuant to a jury verdict and an order denying a motion for a new trial. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

A patron in appellant The Algiers, Inc.'s bar assaulted respondent Rebecca Ventouris. Ventouris sued Algiers for negligent security at the bar. Algiers defended, claiming Ventouris was comparatively negligent.

Following trial the jury received a general verdict form for use if they found for Algiers, and a special verdict form if they found for Ventouris. The jury returned several inconsistent special verdicts. The district court ordered the jury to return to deliberations after explaining how to fill out the special verdict form according to the jury instructions. Eventually the jury rendered a special verdict concluding that Ventouris's total damages were \$35,294.12, with \$6,469.02 allocated for past damages and \$28,825 for future damages. The jury found Algiers was 51% at fault and that Ventouris was thus entitled to recover a net sum of \$18,000.00.

Algiers filed a motion to alter or amend the judgment or for a new trial, arguing that the jury's multiple verdict forms were inconsistent.

The district court denied the motion and entered judgment in Ventouris's favor. The court awarded Ventouris \$18,000.00 in damages, \$3,982.92 in costs, \$21,600.00 in attorney fees and \$15,841.01 in prejudgment interest.

On appeal, Algiers argues the district court abused its discretion in denying its motion for a new trial and incorrectly calculated the prejudgment interest award. We conclude the district court did not abuse its discretion in denying the motion for a new trial but did err in calculating prejudgment interest.

Motion for new trial

Generally, “[t]he decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court and will not be disturbed on appeal absent palpable abuse.”¹ A new trial is appropriate, however, “where verdicts in the same case are inconsistent on their faces, indicating that the jury was either in a state of confusion or abused its power.”² To prevent the necessity of a new trial, the district court should inform the jury why its verdict is inconsistent and send it back for further deliberation.³

Although the jury initially returned several inconsistent verdicts, the jury corrected these inconsistencies after being referred to the jury instructions. The jury's final verdict form was consistent and in

¹Allum v. Valley Bank of Nevada, 114 Nev. 1313, 1316, 970 P.2d 1062, 1064 (1998) (quoting Pappas v. State, Dep't Transp., 104 Nev. 572, 574, 763 P.2d 348, 349 (1988)).

²Hopkins v. Coen, 431 F.2d 1055, 1059 (6th Cir. 1970).

³Carlson v. Locatelli, 109 Nev. 257, 263, 849 P.2d 316-17 (1993).

accordance with Nevada law; therefore, the district court did not abuse its discretion by denying Algiers' motion for a new trial.

Calculation of prejudgment interest

Both Ventouris and Algiers agree that the district court incorrectly calculated prejudgment interest based on Ventouris's total damages (\$35,294.12) instead of only past damages (\$6,469.02). The parties further agree that the prejudgment interest should be based on \$3,299.20, representing the percentage of past damages for which Algiers was held to be responsible ($\$6,469.02 \times 51\% = \$3,299.20$). However, the parties disagree on whether interest should be calculated using a variable or fixed rate.

Under NRS 17.130(2), a judgment draws interest from the time of service of the summons and complaint until the date the judgment is satisfied. In determining what interest rate applies, courts are to use the base prime rate percentage "as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent."⁴ Recently, in Lee v. Ball, we held that this language requires interest be calculated "at the single rate in effect on the date of judgment."⁵

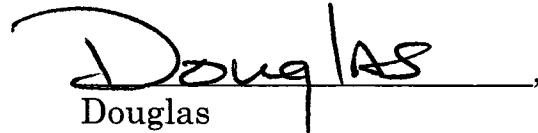
Because the jury rendered its verdict on August 14, 2003, the prejudgment interest rate should have been fixed at 6 percent. This rate is based on the 4% prime rate on July 1, 2003, plus an additional 2

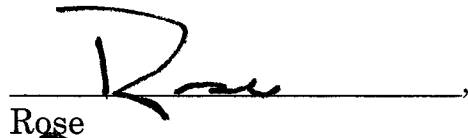
⁴NRS 17.130(2).

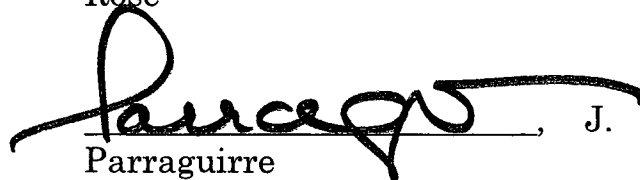
⁵121 Nev. ____, 116 P.3d 64, 67 (2005).

percent.⁶ The matter is remanded for the district court to recalculate the prejudgment interest consistent with this order. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 J.
Douglas

 J.
Rose

 J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Pyatt Silvestri & Hanlon
Thomas F. Pitaro
Potter Law Offices
Clark County Clerk

⁶NRS 17.130(2).