

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001705-MR

LYONS LUMBER COMPANY, INC.

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT, DIVISION II  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 00-CI-00217

PAUL ASHCRAFT; JAMES BRADLEY SHIFFLETT;  
CATHERINE FAYE SHIFFLETT; AND REPUBLIC BANK  
AND TRUST COMPANY

APPELLEES

### OPINION AFFIRMING

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BEFORE: THOMPSON AND WINE, JUDGES; HENRY,<sup>1</sup> SENIOR JUDGE.

HENRY, SENIOR JUDGE: Lyons Lumber Company seeks review of a circuit court determination denying recovery of prejudgment interest on sums awarded pursuant to a mechanics' and materialman's lien. After a careful review of the record we find no abuse of discretion or misapplication of the law, and affirm the decision of the circuit court.

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<sup>1</sup>Senior Judge Michael L. Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On February 14, 2000, Ashcraft filed a complaint against the Shiffletts and Republic Bank and Trust Company, seeking to enforce a lien stemming from the construction of the Shiffletts' new home. Lyons Lumber Company was not named as a party to the initial litigation. On July 17, 2000, Lyons Lumber filed a motion to intervene and requested leave to file a third party complaint in order to enforce its own lien. After numerous scheduled trial dates, Ashcraft filed a motion to dismiss on January 24, 2005. The following day, Lyons Lumber filed a motion for summary judgment against the Shiffletts, seeking a determination as to the validity, enforceability and amount of its lien.

The circuit court ultimately entered a final order finding the Lyons Lumber lien enforceable against the Shiffletts in the amount of \$12,534.92. The court awarded interest at the statutory judgment rate, but denied Lyons Lumber's motion for an equitable award of prejudgment interest, after finding that the claim had become liquidated upon entry of the earlier order establishing the amount of the lien. Lyons Lumber appealed, alleging that it was error for the trial court to deny prejudgment interest.

KRS 360.040 provides for interest at the rate of twelve percent, compounded annually from the date of a judgment. The statute also allows a trial court discretion to order a lesser percentage of interest when it becomes satisfied, after a hearing, that the lesser sum is appropriate for unliquidated damages. A liquidated claim is one where the amount is capable of being determined by mere computation, can be established with reasonable certainty, can be fixed according to the rules of evidence and known standards of value, or can be determined by reference to well established market

values. *3D Enterprises Contracting Corporation v. Louisville and Jefferson County Metropolitan Sewer District*, 174 S.W.3d 440, 450 (Ky. 2005) (internal citation and quotation marks omitted). “The longstanding rule in this state is that prejudgment interest is awarded as a matter of right on a liquidated demand, and is a matter within the discretion of the trial court or jury on unliquidated demands.” *Id.* (Internal citation omitted). A judgment cannot be deemed liquidated unless there is “some certainty” as to the amounts. Thus, when the contested amounts are fixed and certain from the onset of litigation, and there is never any dispute as to those sums, the judgment is liquidated. *Faulkner Drilling v. Gross*, 943 S.W.2d 634, 638 (Ky.App. 1997).

The trial court determined that the Lyons Lumber claim was not liquidated until the entry of judgment. Our own review of the record reveals that essentially, Ashcraft was already indebted to Lyons Lumber for other construction projects. The Shiffletts made multiple payments to Ashcraft, and Ashcraft in turn made payments to Lyons Lumber. Lyons Lumber applied those payments to other bills owed by Ashcraft, but not to the Shifflett construction project. There is no doubt that the actual amount owed to Lyons Lumber was not determined until after such time as the master commissioner heard the evidence. Those findings were presented to the circuit court, which, in turn, issued an order making the determination that the value of the Lyons Lumber lien was \$12,534.92. It was not until the entry of that order that the value of the lien could be determined. The circuit court was correct in determining that it was from the time of the entry of that order that the claim became liquidated.

Having made the determination that the Lyons Lumber claim was not liquidated until the entry of the order, it was within the trial court's discretion to determine whether prejudgment interest should be awarded. *Murray v. McCoy*, 949 S.W.2d 613, 615 (Ky.App. 1996). “Where the trial court acted as fact-finder, its findings will not be reversed unless they are clearly erroneous. If supported by substantial evidence, the trial court's findings of fact are not clearly erroneous.” *Faulkner Drilling* at 638 (internal citations omitted). The Shiffletts had already paid Ashcraft. They were then required to pay Lyons Lumber to satisfy the lien. The circuit court's denial of prejudgment interest on that amount was indeed equitable. We can find nothing in the record to lead us to the conclusion that the trial court abused its discretion. The decision of the Franklin Circuit Court is affirmed in all respects.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jack W. Flynn  
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BRIEF FOR APPELLEE:

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