

## A High Price To Pay For Judgments In Litigation

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*H1 Lincoln, Inc. v. South Washington Street, LLC, et al.*, 104 Mass. App. Ct. 256 (2024)

The decision arises from a “bitter and protracted” litigation between H1 Lincoln (“H1”) and its landlord South Washington Street, LLC. H1 executed a commercial lease with defendants to rent two adjacent parcels in North Attleborough, MA for purposes of developing and operating a car dealership. The defendants then engaged in a prolonged “scheme of commercial extortion” that led to H1 filing suit asserting claims of breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of c. 93A. Following a trial, the trial court entered judgment in favor of H1, awarding it delay damages, attorney’s fees and costs, and punitive damages under Chapter 93A. The judgment also included an award of statutory prejudgment interest including on sums representing H1’s delay damages.

Defendants appealed. The Supreme Judicial Court (“SJC”) affirmed the judgments, concluding that the defendants violated Chapter 93A, and awarded H1 appellate fees and costs. The defendants did not raise a challenge to the addition of prejudgment interest in that appeal and the judgment entered after rescript from the SJC. The defendants then filed a second appeal, challenging four postjudgment orders of the trial court. First, defendants appealed from the trial court’s denial of their renewed motion to amend or for relief from judgment as a result of prejudgment interest being awarded on delay damages. Second, defendants challenged the application of prejudgment interest on the award of appellate fees and costs by the SJC. Third, defendant claimed that the trial court improperly applied postjudgment interest on a portion of their payment of the monetary judgment to H1 that was subject to, and therefore encumbered by, the appeal. Finally, defendants challenged an award of “attorneys’ fees and costs arising out of the post-rescript litigation.”

In this second appeal the Appeals Court held that defendants waived their challenge to the award of prejudgment interest on delay damages and attorney’s costs because they failed to raise those issues in their first appeal. The application of prejudgment interest to delay damages and attorney’s fees and costs was apparent on the face of the judgments from which defendants had initially

appealed. They, therefore, could have raised those issues when challenging the merits of the trial court's judgment. Their failure to do so constituted a waiver.

The Appeals Court also held that H1 was entitled to prejudgment interest on appellate fees and costs under Chapter 93A. Although prejudgment interest under Chapter 93A, Section 11 applies only to actual damages, the Appeals Court found that the attorney's fees and costs incurred by H1 were part of its actual and compensatory damages under the specific circumstances of the litigation including the provisions of the lease.

As it concerns accrual of post-judgment interest, defendants argued that as they had paid the judgment in full under a reservation of rights, postjudgment interest should have stopped accruing pending their appeal. Under well settled law, however, the accrual of postjudgment interest is not stopped by a conditional offer to pay the judgment. The Appeals Court held that trial judges have discretion to consider the circumstances of each case, including the encumbered nature of any tendered payment, when deciding whether and how to halt the accrual of postjudgment interest. Given that the defendants were launching their second round of appeals after almost six years of litigation, the Appeals Court reasoned that the trial court appropriately considered the history of the litigation and the situation of the parties when ordering postjudgment interest to continue to accrue only on the portion of the award that was subject to the appeal.

Finally, the Appeals Court rejected defendants' challenge to the award of attorney's fees and costs for H1's efforts to enforce and collect the judgment. The Appeals Court broadly construed the fee-shifting provision in the lease, which allowed H1 to collect attorney's fees and costs in the event of the landlord's default, to include fees and costs incurred in the course of enforcement and collection proceedings. And even if the lease had not provided for such an award, the Appeals Court held that an award of reasonable attorney's fees and costs for post-rescript proceedings independently was proper under c. 93A.

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National Law Review, Volume XIV, Number 291

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