

**IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2017-TS-00836**

**ON APPEAL FROM**

**THE CIRCUIT COURT OF STONE  
COUNTY, MISSISSIPPI**

**KESLER FEDERAL CREDIT UNION,  
PLAINTIFF/APPELLANT VS. BILLY W.  
SAUCIER, DEFENDANT**

**NO. A6601-2017-0004**

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**BRIEF OF APPELLANT**

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**CERTIFICATE OF INTERESTED PERSONS**

**NO. 2017-TS-00836**

**KEESLER FEDERAL CREDIT UNION V. BILLY W. SAUCIER**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Appellant, Keesler Federal Credit Union, a Mississippi banking entity;
2. Defendant, Mr. Billy W. Saucier, a resident of Stone County, Mississippi;
3. Honorable Lisa P. Dodson, Circuit Court Judge of Stone County, Mississippi; and
4. Nicholas Van Wiser, Esq., Byrd & Wiser, 145 Main Street, Biloxi, Mississippi, counsel for Appellant.

SO CERTIFIED, this the 25<sup>th</sup> day of September, 2017.

*/s/Nicholas Van Wiser*

**NICHOLAS VAN WISER, MSB # 7339  
Counsel for Appellant,  
Keesler Federal Credit Union**

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## **II. TABLE OF AUTHORITIES**

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### **III. STATEMENT OF THE ISSUES**

1. Whether the Circuit Court below erred in failing to allow post-judgment interest to accrue on the full amount of the Judgment (including late fees and attorney's fees awarded) rather than only on the principal sum due under the contract?
2. Whether the Trial Court erred in failing to award Plaintiff attorney's fees under Count II of the Complaint in spite of the clear, unambiguous language of the unsecured Loan Agreement providing for same?

#### **IV. STATEMENT OF ASSIGNMENT**

The Appellant does not see a need for this case to be retained by the Mississippi Supreme Court and recommends assignment to the Mississippi Court of Appeals.

#### **V. STATEMENT OF THE CASE**

##### **A. COURSE OF PROCEEDINGS IN THE COURT BELOW**

The present case is an appeal from a Default Judgment rendered by the Circuit Court of Stone County, Mississippi, Honorable Lisa P. Dodson presiding. The Complaint [R.4-14] was filed as a two-count complaint by Keesler Federal Credit Union (“Keesler”) against Billy W. Saucier. Count I asserted a claim for a deficiency following the repossession and sale of a 2014 Dodge Challenger under the terms of a retail installment sale contract. Count II sought recovery under a signature loan executed by Mr. Saucier.

Mr. Saucier was served with a Summons and a copy of the Complaint. Upon his failure to answer, plead or otherwise defend, the Clerk entered his default on the record. [R. 23].

Keesler submitted a proposed Default Judgment, seeking the principal balance plus late charge, pre-judgment interest and attorney fees. The Circuit Judge declined to enter the proposed judgment and substituted her own. [R. 29].

The Circuit Court below, in granting the default judgment, entered its judgment for the principal sums of \$5,207.75 (Count I) and \$3,274.62 (Count II), together with interest at the contract rate on the principal sum due under the retail installment sale contract, but refused to allow post-judgment interest on the award of attorney’s fees or late fees (Count I).

On Count II, the Circuit Court refused to allow an award of attorney’s fees, stating that neither the contract nor the statute provided for attorney’s fees on the signature loan.

Your Appellant has prosecuted this appeal from the Circuit Court's Default Judgment, assigning as error the refusal of the Court below to allow interest to accrue post-judgment on the full amount of the Judgment balance (including late fees and attorney's fees) and as to Count II on the failure to award attorney's fees, in spite of the clear language in the signature loan documents providing for attorney's fees.

## **B. STATEMENT OF FACTS**

This is a breach of contract action concerning two loan agreements entered into by and between the Defendant, Billy W. Saucier ("Saucier") and the Plaintiff/Appellant, Keesler Federal Credit Union ("Keesler"). Under Count I of the Complaint, Keesler sought a deficiency judgment against Saucier after the repossession and sale of a vehicle which served as the collateral under a Retail Installment Sales Contract entered into between the parties. Under Count II, Keesler sought a judgment for the unpaid balance of an unsecured loan provided to Saucier, plus interest, attorney's fees and costs after default for non-payment. Saucier failed to respond to the Complaint within thirty (30) days of being served, and Keesler petitioned the court below for a default judgment. The trial court granted the default judgment, but drafted its own rather than signing the Judgment submitted by Keesler. The Court-drafted Default Judgment allowed post-judgment interest only on the principal balance of each Count. The Court refused to grant Keesler its reasonable costs and attorney's fees under Count II, even though the plain language of the Loan Agreement provided for recovery of same. Keesler timely filed its Notice of Appeal seeking review of the trial court's decision to allow interest to run on only one portion of the Judgment as well as its declination to award attorney's fees and costs under Count II of the Complaint.

On September 12, 2015, Billy W. Saucier financed the purchase of a used 2014 Dodge Challenger through use of a Retail Installment Sales Contract, obtaining credit in the amount of \$31,680.00.

Three days later, on September 15, 2015, again with Keesler as the lender and Saucier as the borrower, Saucier borrowed an additional \$3,408.48 on a signature loan in a document titled, Loan and Security Agreements and Disclosure Statement (the “Note”). [R. 10-13.] Saucier subsequently defaulted on both Notes. Keesler repossessed the vehicle and filed a Complaint in the Circuit Court of Stone County, Mississippi, seeking a deficiency in Count I in the amount of a principal balance of \$5,207.75, plus late fees in the amount of \$20.00, and accrued pre-petition interest in the amount of \$556.15. Count II of the Complaint was a claim by Keesler on a signature loan for an outstanding balance of \$3,274.67, together with accrued, pre-petition interest in the amount of \$29.25 and attorney fees.

The Note contains an attorney fee provision which specifically states, “You agree to pay all costs of collecting the amount you owe under this Agreement, including court costs and reasonable attorney’s fees.” [R. 11.]

Saucier was served with the Summons and Complaint by secondary service on his wife which service was deemed completed on February 2, 2017. [R. 17.] Thereafter, Saucier had thirty (30) days, or until March 6, 2017, to answer the Complaint.

Saucier failed to answer the Complaint within the time prescribed by the Rules of Civil Procedure. Keesler then filed its Request for Entry of Default, Attorney Fee Affidavit, Rule 55(a) Affidavit, and Motion for Default Judgment on April 3, 2017. [R. 19-22] Keesler also sent a Clerk’s Docket of Entry of Default which was signed by the Circuit Clerk and entered on April 3, 2017. [R.

23].

Following the filing of the Clerk's Docket of Entry of Default, Keesler submitted its proposed default judgment to the trial court for consideration. The trial court judge, Honorable Lisa P. Dodson, did not sign Keesler's proposed judgment and instead, drafted her own Judgment for entry into the record. The Court-drafted Default Judgment provided that post-judgment interest was to accrue only on the principal balance but not on the late charges or attorney's fee components. As to Count II in the Default Judgment, the trial court granted judgment in Keesler's favor for the unpaid principal balance of \$3,274.67 plus interest but failed to award Keesler its reasonable attorney's fees. [R. 24.]

## **VI. SUMMARY OF THE ARGUMENT**

1. As to Count I, your Appellant would respectfully show that post-judgment interest accrue upon the full amount of the Judgment awarded by the Court below in accordance with the provisions of Miss. Code Ann. §75-17-7, which provides in mandatory language that:

All judgments or decrees founded on any sale or contract ***shall*** bear interest at the contract evidencing the debt on which the judgment or decree was rendered. (Emphasis added.)

Miss. Code Ann. §75-17-7.

2. The Appellant would show unto this Court that the Circuit Court below erred in failing to grant an award of attorney's fees to the Plaintiff, Keesler Federal Credit Union, on Count II on a signature loan, in spite of the clear, unambiguous language entitling Keesler Federal Credit Union to recover all costs and expenses, including but not limited to attorney's fees and costs.

## **VII. ARGUMENT**

### **1. FAILURE TO AWARD INTEREST**

For reasons that are not explained in the Default Judgment drafted by the Circuit Court, the Circuit Judge below provided that interest would accrue only upon the principal balance due and owing under the terms of the loan agreement. [R.24].

Miss. Code Ann. §75-17-7 specifically provides as follows:

All judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered.

Miss. Code Ann. §75-17-7.

Clearly, the Complaint below was brought and founded upon a contract under which Keesler agreed to loan and Saucier agreed to borrow \$3,408.48. The interest rate is specified.

The attorney's fees awarded by the Court are clearly part of the compensable damages suffered by Keesler. The attorney's fees are not an award to the attorney, whose fees are determined by the contractual arrangement the attorney has with his client.

As the action in the Court below (specifically with reference to Count I) was founded upon a contract carrying a contractual rate of interest, all of the damages, not just those attributable to the principal balance, but the entire quantum of damages suffered by Keesler, as contemplated by the parties at the time of the contract (as evidenced by the attorney's fee provisions contained therein) are part of the judgment award. Miss. Code Ann. §75-17-7 clearly requires the interest rate contained within the contract to be imposed upon the entire judgment.

This Court has addressed the issue of a party's statutory entitlement to interest post-judgment. In its decision in *The Mississippi Department of Human Services v. McNeel*, 10 So.3d 444 (Miss.

2009), this Court observed:

This Court has stated that “post-judgment interest is a statutory right”....[citations omitted] therefore, “[d]ue to the mandatory nature of §75-17-7 and because public policy heavily favors post-judgment interest [citations omitted], this Court concludes that McNeel is entitled to post-judgment interest.”

*Id.* at 460.

Neither decisions of this Court nor the Mississippi Code Section §75-17-1 give the trial court the authority to “bifurcate” a judgment to determine which portions of the award to the Plaintiff will carry interest and which ones do not. The statute says, “all judgments”.

It is respectfully submitted that the Circuit Court below committed error in determining that only a portion of the Keesler Judgment would carry interest, whereas another element of damages to be recovered (specifically, “attorney’s fees”) was excepted from the application of Mississippi Code Annotated §75-17-7. It is respectfully submitted that this Court reverse the decision of the Circuit Court below as to both Counts and provide that the entire Judgment carry interest at the contract rate as provided by the above-cited statutes.

## **2. FAILURE TO AWARD ATTORNEY’S FEES**

It is respectfully submitted that when a party to a breach of contract claim is entitled to recover attorney’s fees, whether by statute or by provision of the contract, it is contemplated by the parties that the party that is required to retain counsel in order to enforce its rights under the terms of a contract is entitled to recover those costs and expenses as a part of its contractual damages.

The award of attorney’s fees is not an award to the attorney whose fees are incurred as a result of his contractual relationship with the client, but rather are an award to the client for reimbursement of expenses incurred as the proximate result of the defaulting party’s breach of the

contractual arrangement.

It is clear when a contract provides for the recovery of such attorney's fees, it was within the contemplation of the parties at the time of the execution of the agreement that costs of obtaining the services of an attorney to enforce the contract will constitute an element of compensable damages.

Under long-established precedent by this Court, it is clear that an award of attorney's fees in a breach of contract case is not something to which a party is entitled merely because he prevails on his claim.

In order to recover attorney's fees as a component of the damages one suffers from breach of contract, this Court has consistently held:

[A]ttorney's fees are generally not available in breach-of-contract cases. But we have recognized exceptions to this rule, either where attorney's fees are provided in the contract, or in the case of "conduct so outrageous as to support an award of punitive damages".

*Blue Water Logistics, LLC, v. Wiliford*, 55 So.3d 148 (Miss. 2011). *See also*, this Court's ruling in *Garner v. Hickman*, 733 So.2d 191 (Miss. 1999):

[I]n breach of contract cases, attorney's fees are not awarded as the provisions for such in the contract or finding conduct so outrageous as to support an award of punitive damages. [citations omitted] In cases involving insurance contracts, we have found that extra contractual damages, such as attorney's fees may be awarded, even where the facts are not such as to support a punitive damage claim.

*Id.* at 198.

Attorneys fees are also permitted in contractual cases where specifically authorized by a statutory provision. *See, T. Jackson Lyons & Assoc., P.A., v. Precious T. Martin, Sr., and Assoc., PLLC*, in which this Court held:

Attorney's fees can be awarded where statutory authority or contractual provision provides for an award of attorney's fees or

where punitive damages are also awarded.

*Id.* at 452.

Referring to the Complaint, Count II was predicated upon a signature loan attached to the Complaint as Exhibit C. It is unclear as to the basis for the Circuit Court's conclusion that there was "neither a contract provision...concerning attorney's fees in Count II." Your Appellant would direct the Court's attention to the second page of Exhibit C, approximately halfway down, under the Loan Agreement provision entitled, "Collection Costs", which plainly states as follows:

You agree to pay all costs of collecting the amount you owe under this Agreement, including Court costs and reasonable attorney's fees.

[R.11].

Clearly, there is a contractual provision providing for the Plaintiff, Keesler Federal Credit Union, to recover attorney's fees as a part of its contractual damages.

The Circuit Court erred in refusing to recognize the clear, plain and simple provisions of Exhibit C to the Complaint.

Your Appellant would respectfully pray that this Court reverse the Circuit Judge's denial of attorney's fees and remand for proceedings for determination of an appropriate amount of attorney's fees in this matter.

### **VIII. CONCLUSION**

In conclusion, your Appellant, Keesler Federal Credit Union, would respectfully pray that this Court reverse the trial court's Default Judgment and remand for the following relief:

1. That the Court determine the quantum of attorney's fees appropriate to be awarded in Count II of the Complaint below; and
2. That the entire Judgment carry interest at the contract rate of 6.24% per annum.

Respectfully submitted, this the 25<sup>th</sup> day of September, 2017.

**BY: KEESLER FEDERAL CREDIT UNION  
PLAINTIFF/APPELLANT**

**BY: BYRD & WISER**

**BY: /s/Nicholas Van Wiser  
NICHOLAS VAN WISER, MSB No. 7339**

**IX. CERTIFICATE OF SERVICE**

I, Nicholas Van Wiser, counsel for Plaintiff/Appellant Keesler Federal Credit Union, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing to the following at their usual mailing address as follows, to wit:

Billy W. Saucier  
*Pro Se* Defendant  
517 Potter Rd.  
Wiggins, MS 39577

Hon. Lisa P. Dodson  
Stone County Circuit Court Judge  
Post Office Box 1461  
Gulfport, MS 39502-6101

Jeffrey O'Neal, Stone County Circuit Clerk  
Post Office Drawer 7  
Wiggins MS 39577

So Certified, this the 25<sup>th</sup> day of September, 2017.

**BY: /s/Nicholas Van Wiser  
NICHOLAS VAN WISER, ESQ.**

**PREPARED BY:  
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