

# OBTAINING INTEREST ON AN OREGON CONSTRUCTION CONTRACTORS BOARD FINAL ORDER: AN EXPERIENCE IN INCONGRUITY AND UNNECESSARY ANALYSIS

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## I. INTRODUCTION

Some might argue that the Oregon Construction Contractors Board (CCB) is mostly in the business of resolving, or at least administrating, disputes. After all, the CCB receives an average of 400 complaints per month made by building/home owners, employees, suppliers, and contractors, and has as many as 2,500 claims in process at any given time.<sup>1</sup> During an average year, the CCB's Enforcement Section helps consumers recover over \$400,000 in restitution, and it imposes over \$500,000 in civil penalties and suspends over one hundred registrations.<sup>2</sup>

With so much money at stake, it becomes important to think in terms of interest: can it be obtained on money owed pursuant to a CCB final order? The answer to this question is unclear.

Oregon's general interest statute, Oregon Revised Statutes (ORS) section 82.010, provides that an interest rate of nine percent per annum is payable on certain transactions.<sup>3</sup>

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R. REV. STAT. § 82.010 (2001). The entire text of ORS 82.010 is set forth below:

- (1) The rate of interest for the following transactions, if the parties have not otherwise agreed to a rate of interest, is nine percent per annum and is payable on:
  - (a) All moneys after they become due; but open accounts bear interest from the date of the last item thereof.
  - (b) Money received to the use of another and retained beyond a reasonable time without the owner's express or implied consent.
  - (c) Money due or to become due where there is a contract to pay interest and no rate specified.
- (2) Except as provided in this subsection, the rate of interest on judgments for the payment of money is nine percent per annum. The following apply as described:
  - (a) Interest on a judgment under this subsection accrues from the date of the entry of the judgment unless the judgment specifies another date.
  - (b) Interest on a judgment under this subsection is simple interest, unless otherwise provided by contract.
  - (c) Interest accruing from the date of the entry of a judgment shall also accrue on interest that accrued before the date of entry of a judgment.
  - (d) Interest under this subsection shall also accrue on attorney fees and costs entered as part of the judgment.
  - (e) A judgment on a contract bearing more than nine percent interest shall bear interest at the same rate provided in the contract as of the date of entry of the judgment.
- (3) Except as provided in ORS 82.025, no person shall:
  - (a) Make a business or agricultural loan of \$50,000 or less at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate, including any surcharge on the discount rate, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made; or
  - (b) Make a loan of \$50,000 or less, except a loan made under paragraph (a) of this subsection, at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the person making the loan is located, on the date the loan or the initial advance of funds under the loan is made.

The two possibilities ORS 82.010 holds out for obtaining interest on money payable under a CCB final order are: as a judgment,<sup>4</sup> or as “money due.”<sup>5</sup> This Note analyzes both of these possibilities. Unfortunately, both are less than perfect.

This Note has two main points. First, while the Oregon Legislature has provided a means whereby a CCB final order may take on the “attributes and effect” of a judgment,<sup>6</sup> it has left practitioners puzzled as to how to harmonize such a CCB order-turned-judgment with other applicable statutory requirements that delineate the proper form and collection of money judgments.<sup>7</sup> Second, the test formulated by the Oregon Supreme Court,<sup>8</sup> and applied by the Oregon Court of Appeals,<sup>9</sup> for determining when Oregon’s general interest statute applies to certain moneys due unnecessarily complicates what should be a straightforward analysis and is, arguably, contrary to actual legislative intent. In the end, practitioners are left with two possible legal roadmaps for obtaining interest on money payable pursuant to a CCB final order (either as a judgment<sup>10</sup> or as “money due”<sup>11</sup>) and uncertainty as to which, if either, applies. One of these roadways is marked by incongruity, the other by unpredictability.

The organization of this Note is as follows. Part II concerns obtaining interest on money payable under a CCB final order as a judgment. It lays the background for “converting” a CCB final order into a judgment, assesses whether interest can be obtained on such a judgment, and highlights the confusion that exists along the way. Part III concerns obtaining interest on money payable under a CCB final order as “money due.” It addresses the test for determining when interest may be obtained on money owed under a comprehensive statutory scheme, reveals the difficult-to-predict standard that has emerged, and analyzes whether the current standard would allow for the obtaining of interest on money owed under a CCB final order as “money due.” Part IV concludes by summarizing the concerns connected with obtaining interest on money payable under a CCB final order and recapping possible solutions.

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(4) Any person who violates subsection (3) of this section shall forfeit the right to collect or receive any interest upon any loan for which a greater rate of interest or consideration than is permitted by subsection (3) of this section has been charged, contracted for or received. The borrower upon such loan shall be required to repay only the principal amount borrowed.

<sup>4</sup> *Id.* § 82.010(2).

<sup>5</sup> *Id.* § 82.010(1)(a).

<sup>6</sup> *Id.* § 205.125(2).

<sup>7</sup> *See* OR. R. CIV. P. 70.

<sup>8</sup> *See* *Thomas v. State of Oregon*, 878 P.2d 1081, 1083 (Or. 1994).

<sup>9</sup> *See* *Newport Church of the Nazarene v. Hensley*, 983 P.2d 1072, 1083 (Or. Ct. App. 1999), *rev'd on other grounds*, 56 P.3d 386 (Or. 2002).

<sup>10</sup> OR. REV. STAT. § 82.010(2) (2001).

<sup>11</sup> *Id.* § 82.010(1)(a).