

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

NICHOLAS FREUND BUILDING, LLC, a
Michigan limited liability company, d/b/a
FREUND & ASSOCIATES,

Plaintiff/Counter-Defendant,

-v-

AUTOMOTIVE MEDIA, LLC, a Michigan
limited liability company, d/b/a iMBRANDED,

Defendant/Counter-Plaintiff.

Case No. 2022-193548-CB

Hon. Victoria Valentine

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**OPINION AND ORDER REGARDING PLAINTIFF/COUNTER-DEFENDANT'S
MOTION FOR RELIEF FROM JUDGMENT**

At a session of said Court, held in the
County of Oakland, State of Michigan
April 3, 2025

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiff/Counter-Defendant's Motion for Relief

from Judgment pursuant to MCR 2.612(C)(1)(f), or alternatively, to amend the judgment to reflect the net arbitration award of \$760,795.25, exclusive of prejudgment interest. The Court has reviewed the parties' submissions and heard oral arguments. For the reasons below, the Court GRANTS Plaintiff's Motion to Amend Judgment to exclude prejudgment interest.

I. FACTUAL OVERVIEW

This case has a lengthy procedural history. The Plaintiff filed its complaint in 2022. After extensive litigation, on February 5, 2024, the parties placed a settlement agreement on the record. Under the terms of the settlement, Plaintiff/Counter-Defendant Nicholas Freund Building, LLC ("Freund") was required to discharge its construction lien by February 12, 2024, and tender \$50,000 to Defendant/Counter-Plaintiff Automotive Media, LLC ("Automotive Media"). In return, the parties agreed to enter into a tolling agreement regarding all pending claims. Additionally, the parties agreed to mediate their claims, which would then be submitted to arbitration under the AAA Construction Industry Arbitration Rules, only if a final and full settlement could not be reached.¹

Shortly thereafter, Freund's principal, Nicholas Freund, dishonored the check and failed to discharge the lien by the February 12, 2024, deadline. As a result, Plaintiff filed an Emergency Motion to Reinstate the Case to Enforce the Settlement Agreement and for an Order to Show Cause Why Nicholas Freund Should Not Be Held in Contempt of Court. The Court granted the motion in part on February 21, 2024.²

Pursuant to their Agreement to Mediate & Arbitrate, the parties proceeded to mediation

¹ 2/5/2024 Transcript, pp 38-45. See also Order dated 2/21/24.

² Order, 2/21/2024.

and arbitration with Kevin Hendrick of Clark Hill as the arbitrator.³ On January 6, 2025, the Arbitrator issued the following Award:⁴

AWARD OF ARBITRATOR

I, Kevin S. Hendrick, the undersigned Arbitrator, being designated in accordance with the Parties' Agreement to Mediate and Arbitrate, executed by the Parties on September 30 and February 2, 2024, and having been sworn, and having heard the proofs and allegations of the Parties, with Automotive Media, LLC ("Automotive Media") being represented by Richard T. Hewlett and Louis F. Ronayne, and Nicholas Freund Building, LLC ("Freund Associates") being represented by Richard M. Delonis, on hearing days conducted on October 14, 15, and 16, and November 21, 2024, and having reviewed all pre-hearing, post-hearing and other briefs and submissions, and having listened to all testimony, and having reviewed all exhibits and other materials submitted, and otherwise being fully advised in the premises, AWARD AS FOLLOWS:

As to the Claims of Automotive Media against Freund Associates, the Arbitrator Awards the Following:

<u>Automotive Media's Claims</u>	<u>Award</u>
Count I – Breach of Contract	
Paint (re Northstar):	\$634,300.00
Paint (re AB):	\$0
Paint (re Sherwin Williams):	\$21,929.83
Plumbing:	\$0
RTUs:	\$34,380.00
Credits Back:	\$128,827.31
Count II – Slander of Title	
Forbearance fees to Alert Alarm:	\$25,000.00
Attorneys' fees to Alert Alarm:	\$50,000.00
Attorneys' fees (to date):	\$0
Total:	\$894,437.14

³ Exhibit E to Defendant's Response to Motion.

⁴ Exhibit A to Defendant's Response to Motion.

As to the Claims of Freund Associates against Automotive Media, the Arbitrator Awards the Following:

<u>Freund & Associates' Claim</u>	<u>Award</u>
Advance:	\$50,000.00
Modular Showroom Fee:	\$0
F&A Time:	\$46,561.67
2%:	\$727.06
F&A Paid Expenses:	\$36,353.16
Owed to Contractors:	<u>\$0</u>
Total:	<u>\$133,641.89</u>

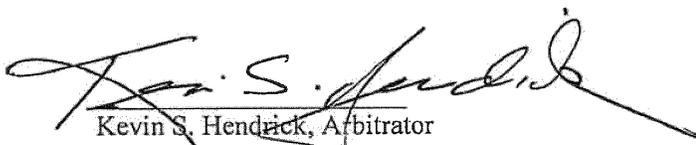
Accordingly, the Arbitrator Finds, and Awards, the Total Net Award, from Nicholas Freund Building, LLC, to Automotive Media LLC, in the amount of: \$760,795.25

The Arbitrator finds that, in his discretion, neither Party is entitled to attorney fees under the Michigan Construction Lien Act.

This Award includes all claims made at the Arbitration by the Parties (including interest, attorney fees, arbitrator fees, and other statutory costs and costs under the Agreement between the Parties, and per the claim for Slander of Title, and under MCL §570.1101 et seq.). The Arbitrator finds that all other costs of the arbitration, and the compensation of the Arbitrator, shall be borne one-half by Automotive Media and one-half by Freund Associates. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. Any claims not expressly granted herein are hereby denied.

Dated:

1-6-2025


Kevin S. Hendrick, Arbitrator

Thereafter, the Court granted Defendant's Motion to Reopen Case to Confirm Arbitration Award and Award Costs & Attorney Fees Under MCR 2.405.⁵ The Order specified that "[t]he clerk shall enter a corresponding judgment upon submission in accordance with MCL 691.1705(1)." The Court file reflects that on February 7, 2025, Defendant's counsel filed and

⁵ Order dated 2/5/2025.

served a Proposed Judgment.⁶ However, this filing did not comply with MCR 2.602(B): it was not submitted on February 5, 2025-the date the Court granted the relief, as required by MCR 2.602(B)(1); it was not approved by all the parties, as required by MCR 2.602(B)(2); nor was it filed under the 7-day rule, as per MCR 2.602(B)(3). On February 10, 2025, Plaintiff filed objections but failed to file a notice of hearing along with a proposed judgment, as required under MCR 2.602(B)(3)(c). The Judgment entered on February 12, 2025, which included prejudgment interest. Plaintiff then filed its Motion for Relief from Judgment, arguing that the Judgment was entered in violation of MCR 2.602 and that the Judgment improperly included prejudgment interest. The Court heard oral argument and took the matter under advisement.

II. ANALYSIS

A. MCR 2.602(B)

MCR 2.602(B) outlines the procedures for the entry of judgments and orders, which may be done through one of the following methods:

- (1) The court may sign the judgment or order at the time it grants the relief provided by the judgment or order.
- (2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.
- (3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the notice and proof of service along with the proposed judgment or order.
 - (a) If no written objections are filed within 7 days of the date of service of the notice, the judge shall sign the judgment or order if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall

⁶ See Proof of Electronic Service dated 2/7/25.

direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.

(c) The party filing the objections must serve them on all parties as required by MCR 2.107, together with a notice of hearing and an alternative proposed judgment or order.

(d) The court must schedule the hearing upon filing of the first objection, and the party filing the objection must serve the notice of hearing under subrule (B)(3)(c). Other parties to the action may file objections with the court through the end of the 7-day period. The court must schedule a hearing for all objections within 14 days after the first objection is filed or as soon as is practical afterward.

As previously noted, Defendant failed to comply with the procedures for entry of judgment under MCR 2.602(B): the proposed judgment was not submitted on February 5, 2025-the date the Court granted the relief, as required by MCR 2.602(B)(1); it was not approved by all the parties, as required by MCR 2.602(B)(2); nor was it filed under the 7-day rule, as required by MCR 2.602(B)(3).

B. Prejudgment Interest

The parties agreed to be bound by the Construction Industry Arbitration Rules and Mediation Procedures. Rule 49, which addresses the Scope of the Award, provides as follows:

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, equitable relief and specific performance of a contract.

(b) In addition to the final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) In the final award, the arbitrator shall assess fees, expenses, and compensation as provided in Rules R-56, R-57, and R-58. The arbitrator may

apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(d) The award of the arbitrator may include: i. interest at such rate and from such date as the arbitrator may deem appropriate; and ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement. (Emphasis added)

Additionally, the parties' Agreement to Mediate & Arbitrate provides:

The parties further agree to the following:

E. Each party agrees that the arbitrator's award may be entered as a final judgment in any court of competent jurisdiction.

In *Holloway Const. Co. v. Oakland Cnty. Rd. Comm'rs.*, 450 Mich. 608, 618 (1996), the Michigan Supreme Court considered whether prejudgment interest on an arbitration award was statutorily required when the parties had agreed to resolve their dispute through binding arbitration, granting the arbitrator the authority to award any remedy deemed just, and where the arbitrator did not award interest. In *Holloway*, the arbitration agreement provided that the arbitrators, within their discretion, could grant any remedy or relief that they deemed just and equitable and within the scope of the agreement of the parties, including arbitration fees and expenses against either party. It, however, did not explicitly address interest. Our Michigan Supreme Court held:

The decision whether to award preaward, prejudgment interest as an element of damages is reserved as a matter of the arbitrator's discretion. Because preaward damage claims including interest are deemed, in the absence of a contrary agreement, to have been submitted to arbitration, and the arbitrators here did not award interest, we will not step in and mandate interest for the preaward period. However ... postaward, prejudgment interest and postjudgment interest under § 6013 are statutorily required.

Here, while the parties' agreement to arbitrate is silent on the issue of interest, they agreed to be bound the AAA Construction Industry Arbitration Rules, which, as in *Holloway* specifically allow the arbitrator to grant any remedy or relief the arbitrator deems just and equitable, and within the scope of the parties' agreement. of the parties, This includes, but is not limited to, equitable relief and specific performance of a contract. The Rule further provides that the "award of the

arbitrator *may include interest* at such rate and from such date as the arbitrator may deem appropriate... .”⁷ Accordingly, the award of interest was within the scope of powers conferred on the arbitrator. Significantly, the arbitrator’s award explicitly did not award interest. In fact, it specifically states that the award “includes all claims made at the Arbitration by the Parties (*including interest*, attorney fees, arbitrator fees and other statutory costs and costs under the Agreement between the Parties, and per the claim for Slander of Title, and under MCL §570.1101 et seq.)” (Emphasis added). Therefore, because the Arbitrator apparently considered, but chose not to award pre-award interest, it would be improper for this Court to impose interest for the prejudgment period.

CONCLUSION

Based on the above, the Judgment entered on February 12, 2025, is set aside pursuant MCR 2.612(C)(1).⁸ A new Judgment shall be submitted to the Court within 5 days from the date of this opinion, in accordance with the applicable court rules, and shall exclude prejudgment interest.

IT IS SO ORDERED.

This Order resolves the last pending matter and closes the case except for attorney fees under the offer of judgment rule and interest there on.

⁷ Construction Industry Arbitration Rules and Mediation Procedures. Rule 49. (Emphasis added).

⁸ MCR 2.612(C) provides for the following grounds for Relief From Judgment:

1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.



~~/s/Victoria A. Valentine~~

Date: 4/3/25