142 A.D.3d 200
Supreme Court, Appellate Division, Second Department, New York.

Maryann MAHONEY, appellant,
v.
Harold A. BROCKBANK, respondent.

July 27, 2016.

Synopsis
Background: In personal injury action, the Supreme Court, Suffolk County, Hector D. LaSalle, J., entered judgment on jury verdict on issue of damages and awarded prejudgment interest. Plaintiff appealed.

[Holding:] The Supreme Court, Appellate Division, Balkin, J., held that prejudgment interest ran from date of jury verdict on issue of damages, rather than from date of parties' stipulation as to liability.

Affirmed.

West Headnotes (4)

[1]	**Interest** Prejudgment Interest in General
	Prejudgment interest becomes part of judgment itself. McKinney's CPLR 5001, 5002. Cases that cite this headnote

[2]	**Interest** Interest from date of judgment or decree
	Interest on judgment continues to accrue until judgment is satisfied. McKinney's CPLR 5003. Cases that cite this headnote

[3]	**Interest** Torts; wrongful death

	When determinations of liability and damages are bifurcated in tort action, general rule is that prejudgment interest runs from date of verdict, report, or decision as to liability, rather than from date of verdict, report, or decision as to damages. McKinney's CPLR 5002. Cases that cite this headnote

[4]	**Interest** Torts; wrongful death
	Parties' stipulation as to liability in personal injury action was not "verdict, report or decision," and thus prejudgment interest on award ran from date of jury verdict on issue of damages, rather than from date of stipulation, where parties did not provide for prejudgment interest in stipulation. Cases that cite this headnote

Attorneys and Law Firms

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REINALDO E. RIVERA, J.P., RUTH C. BALKIN, THOMAS A. DICKERSON, and JEFFREY A. COHEN, JJ.

Opinion

BALKIN, J.

***201** The parties in this personal injury action resolved the issue of liability by stipulation. Almost 2 ½ years later, a trial was held on the issue of damages. The issue presented on this appeal is whether, pursuant to CPLR 5002, prejudgment interest on the award should be computed from the date of the jury verdict on the issue of damages, or instead, from the date of the stipulation on the issue of liability. We hold that the Supreme Court correctly computed prejudgment interest from the date of the jury verdict on the issue of damages.

The parties entered into a written stipulation on May 26, 2011. By that stipulation, the defendant conceded liability, the plaintiff withdrew her cause of action seeking punitive damages, and the parties agreed that the action would proceed only with respect to the issue of damages, with recovery to be capped at a certain amount. The stipulation contained no provision with respect to prejudgment interest on an award.

****460** Almost 2 ½ years later, on November 12, 2013, after a trial on the issue of damages, a jury awarded the plaintiff the principal sum of $375,000, which included $250,000 for past pain and suffering, and $125,000 for future pain and suffering over a 20–year period. The parties stipulated in open court to add the principal sum of $14,819.49 to the award, representing medical expenses incurred by the plaintiff. Thus, the total principal sum of the damages award was $389,819.49.

Each party submitted a proposed judgment. The plaintiff's proposed judgment provided for the computation of prejudgment interest from May 26, 2011, the date of the stipulation on ***202** the issue of liability. The defendant's proposed judgment provided for the computation of prejudgment interest from November 12, 2013, the date of the jury verdict on the issue of damages. In its decision dated January 28, 2014, the Supreme Court determined that, pursuant to CPLR 5002, prejudgment interest was to be computed from the date of the jury verdict on the issue of damages, and judgment was entered upon the decision on March 6, 2014. The total sum awarded in the judgment was $401,917.17, which included the jury award, the agreed-upon additur, prejudgment interest from November 12, 2013, to March 6, 2014, and costs and disbursements. On this appeal, the plaintiff contends that prejudgment interest should have been computed from May 26, 2011, the date on which the defendant, by stipulation, conceded liability.

The rationale for awarding interest on damages is not complicated. The plaintiff has suffered injury for which the defendant has been found legally responsible. The award of damages is intended to make the plaintiff whole. Until the defendant pays the award, he or she is said to be holding funds that belong to the plaintiff. Accordingly, the law views interest as "simply the cost of having the use of another person's money for a specified period" (*Love v. State of New York,* 78 N.Y.2d 540, 544, 577 N.Y.S.2d 359, 583 N.E.2d 1296; *see Toledo v. Iglesia Ni Christo,* 18 N.Y.3d 363, 369, 939 N.Y.S.2d 282, 962 N.E.2d 773; *Matter of Aurecchione v. New York State Div. of Human Rights,* 98 N.Y.2d 21, 27, 744 N.Y.S.2d 349, 771 N.E.2d 231).

[1] [2] In New York, interest on a damages award is purely statutory (*see Manufacturer's & Traders Trust Co. v. Reliance Ins. Co.,* 8 N.Y.3d 583, 588, 838 N.Y.S.2d 806, 870 N.E.2d 124; *Matter of Bello v. Roswell Park Cancer Inst.,* 5 N.Y.3d 170, 172, 800 N.Y.S.2d 109, 833 N.E.2d 252). Under CPLR 5001, prejudgment interest upon damage awards in specified categories of actions at law, such as breach of contract actions, is to be computed, generally, from "the earliest ascertainable date the cause of action existed" (CPLR 5001[a], [b]). CPLR 5001 also vests courts with discretion as to the award of prejudgment interest in actions of an equitable nature. CPLR 5002 governs recovery of prejudgment interest in actions not covered under CPLR 5001. CPLR 5002, which is applicable to this personal injury action, states:

> "Interest shall be recovered upon the total sum awarded, including interest to verdict, report or decision, in any action, from the date the verdict was rendered or the report or decision was made to the date of entry of final judgment. The amount of ***203** interest shall be computed by the clerk of the court and included in the judgment."

Whether added to an award under CPLR 5001 or 5002, prejudgment interest becomes part of the judgment itself. CPLR 5003 provides that interest accrues on the judgment from the date judgment is entered: "[e]very money judgment shall bear ****461** interest from the date of its entry" (CPLR 5003; *see Coffey v. CRP/Extell Parcel I, L.P.,* 122 A.D.3d 504, 504–505, 997 N.Y.S.2d 376). Interest on the judgment continues to accrue until the judgment is satisfied (*see Zavelin v. Greenberg,* 117 A.D.3d 726, 726–727, 985 N.Y.S.2d 628; *Matter of Matra Bldg. Corp. v. Kucker,* 19 A.D.3d 496, 496, 796 N.Y.S.2d 709). The current statutory rate is nine percentum per annum (*see* CPLR 5004).

[3] When the determinations of liability and damages are made together, the computation of prejudgment interest under CPLR 5002 is straightforward (*see Love v. State of New York,* 78 N.Y.2d at 542, 577 N.Y.S.2d 359, 583 N.E.2d 1296). When, however, the determinations of liability and damages are bifurcated, the general rule is that prejudgment interest under CPLR 5002 runs from the date of the "verdict, report or decision" as to liability, rather than from the date of the "verdict, report or decision" as to damages (*see Rohring v. City of Niagara Falls,* 84 N.Y.2d 60, 68, 614 N.Y.S.2d 714, 638 N.E.2d 62; *Love v. State of New York,* 78 N.Y.2d at 542–544, 577 N.Y.S.2d 359, 583 N.E.2d 1296; *Gunnarson v. State of New York,* 70 N.Y.2d 923, 924–925, 524 N.Y.S.2d 396, 519 N.E.2d 307; *Grobman v. Chernoff,* 63 A.D.3d 786, 789, 881 N.Y.S.2d 458, *affd.* 15 N.Y.3d 525, 528–529, 914 N.Y.S.2d 731, 940 N.E.2d 557; *Van Nostrand v. Froehlich,* 44 A.D.3d 54, 57, 844 N.Y.S.2d 293). The rationale for this rule is that the plaintiff's right to recover damages became fixed in law on the date that liability was determined. From that date forward, the defendant is considered to be in possession of the plaintiff's property, namely, the amount that the plaintiff is entitled to recover (*see Love v. State of New York,* 78 N.Y.2d at 544, 577 N.Y.S.2d 359, 583 N.E.2d 1296). The Court of Appeals has acknowledged that this approach employs the "legal fiction that damages were known and became a fixed obligation at the moment liability was determined" (*Rohring v. City of Niagara Falls,* 84 N.Y.2d at 68, 614 N.Y.S.2d 714, 638 N.E.2d 62).

This approach often results in judgments that contain a significant amount of prejudgment interest, depending on the size of the award and the time that has elapsed between the liability determination and the damages determination. In this case, for example, the 2 ½–year difference between the determinations of liability and damages would amount to a difference in prejudgment interest of approximately $90,000, ***204** given the award of slightly less than $390,000, and the statutory interest rate of 9% per annum (*see* CPLR 5004). The effect of the difference is compounded because postjudgment interest under CPLR 5003 is computed on the total amount of the judgment, which includes the prejudgment interest (*see generally* David D. Siegel, Practice Commentaries, McKinney's Cons Laws of N.Y., Book 7B, CPLR 5003).

There is extensive precedent on what constitutes a "verdict, report or decision" under CPLR 5002. The statute encompasses decisions on motions for summary judgment, motions for leave to enter a default judgment, and motions to strike a defendant's answer (*see Ruffino v. Green,* 72 A.D.3d 785, 786, 898 N.Y.S.2d 484; *Van Nostrand v. Froehlich,* 44 A.D.3d at 57–58, 844 N.Y.S.2d 293). Decisions on unopposed applications for a directed verdict on the issue of liability also are included (*see Romain v. Grant,* 60 A.D.3d 838, 839, 874 N.Y.S.2d 380), as are binding arbitrators' awards (*see Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v. Niagara–Wheatfield Teachers Assn.,* 46 N.Y.2d 553, 558, 415 N.Y.S.2d 790, 389 N.E.2d 104; *Matter of McEntee [Motor Vehicle Acc.* ****462** *Indem. Corp.],* 29 A.D.2d 68, 70–71, 285 N.Y.S.2d 983, *affd* 28 N.Y.2d 939, 323 N.Y.S.2d 431, 271 N.E.2d 915; *Matter of Shimon v. Silberman,* 92 A.D.3d 789, 790, 940 N.Y.S.2d 277). When a court has ordered a referee to "hear and report with recommendations," CPLR 5002 interest is computed not from the date of the referee's report, but from the date on which a court has confirmed it and thus made it binding (*Board of Mgrs. of the 25th Charles St. Condominium v. Seligson,* 126 A.D.3d 547, 548–549, 4 N.Y.S.3d 40). An appellate court's order reversing the denial of a plaintiff's motion for summary judgment on the issue of liability is a "decision" under CPLR 5002; interest under CPLR 5002 will run from the date of the appellate court's determination (*see Lifshits v. Variety Poly Bags,* 18 A.D.3d 622, 624, 795 N.Y.S.2d 657). The common thread in these cases is the determination of liability by an adjudicative body, such as a jury, a court, or an arbitrator.

Stipulations are different. They are not adjudications made by a third party, but voluntary agreements, or contracts, by which the opposing parties themselves chart their own course in a way that makes sense for them (*see McCoy v. Feinman,* 99 N.Y.2d 295, 302, 755 N.Y.S.2d 693, 785 N.E.2d 714; *Pile v. Grant,* 41 A.D.3d 810, 811, 839 N.Y.S.2d 778; Black's Law Dictionary [10th ed 2014, stipulation]). Here, for example, the stipulation addressed not only the issue of liability, but also the cause of action seeking punitive damages, and it provided for a cap on the plaintiff's recovery. Whatever ***205** reasons the parties may have had for entering into the stipulation, they resolved those issues in a manner conceptually different from the methods that result in verdicts, reports, or decisions.

Clearly, the Legislature did not expressly include stipulations in CPLR 5002. Had the Legislature wished to include stipulations, it easily could have done so, as it has in other statutes (*see Matter of Ricci v. Chassin,* 220 A.D.2d 828, 829, 632 N.Y.S.2d 303, quoting Education Law § 6530 [9][c] [findings of professional misconduct include certain "(findings of) guilt[ ] ... of violating a ... statute or regulation, pursuant to a final decision or determination ... *or after resolution of the proceeding by stipulation or agreement* "] [emphasis added]; McKinney's Cons Laws of N.Y., Book 1, Statutes § 230). And, since, as discussed above, stipulations are conceptually different from verdicts, reports, and decisions, the Legislature's omission of stipulations from CPLR 5002 should be regarded as significant *(see generally Matter of Board of Educ. of Syracuse City School Dist. v. State Div. of Human Rights,* 38 A.D.2d 245, 248, 328 N.Y.S.2d 732, *affd.* 33 N.Y.2d 946, 353 N.Y.S.2d 730, 309 N.E.2d 130).

While the plaintiff recognizes that a stipulation is not a "verdict, report or decision" under CPLR 5002, she contends that it was the "equivalent," because the principle underlying the statute still applies, namely, that, inherent in the stipulation's binding determination of liability was the acknowledgment that the defendant was in possession of property in the amount needed to make the plaintiff whole. The plaintiff also contends, correctly, that the law favors stipulations (*see McCoy v. Feinman,* 99 N.Y.2d at 302, 755 N.Y.S.2d 693, 785 N.E.2d 714).

[4] The plaintiff's argument is well-founded, but ultimately unavailing because we must apply CPLR 5002, not amend it. As the Court of Appeals said with respect to prejudgment interest in a different context, we "may not rewrite the statute to achieve more 'fairness' than the Legislature chose to enact" (*Matter of Bello v. Roswell Park Cancer Inst.,* 5 N.Y.3d at 173, 800 N.Y.S.2d 109, 833 N.E.2d 252; *see* ****463** *Tipaldo v. Lynn,* 26 N.Y.3d 204, 214–215, 21 N.Y.S.3d 173, 42 N.E.3d 670).

In short, we conclude that a stipulation as to liability does not trigger the accrual of prejudgment interest under CPLR 5002. Moreover, because the parties did not provide for prejudgment interest in their stipulation, the Supreme Court properly determined that prejudgment interest was to be computed from the date of the jury verdict on the issue of damages.

Accordingly, the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v. J.A. Green Constr.* ***206** *Corp.,* 100 A.D.2d 509, 509–510, 472 N.Y.S.2d 718), and the judgment is affirmed insofar as appealed from.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v. J.A. Green Constr. Corp.,* 100 A.D.2d 509, 509–510, 472 N.Y.S.2d 718); and it is further,

ORDERED that the judgment is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

RIVERA, J.P., DICKERSON and COHEN, JJ., concur.

All Citations