

DOCKET NO. HHB CV-146025041S
DOCKET NO. HHB CV-156029300S

SUPERIOR COURT

DIGITAL 60 & 80 MERRITT LLC

JUDICIAL DISTRICT
OF NEW BRITAIN

VS.

AT NEW BRITAIN

BOARD OF ASSESSMENT APPEALS
OF THE TOWN OF TRUMBULL AND
THE TOWN OF TRUMBULL

AUGUST 3, 2021

OFFICE OF THE CLERK
SUPERIOR COURT
2021 AUG 3 PM 3 20
JUDICIAL DISTRICT OF
NEW BRITAIN

Memorandum of Decision on Plaintiff's Motion for Postjudgment Interest

The plaintiff in the above consolidated tax appeals has moved for an award of postjudgment interest pursuant to General Statutes § 37-3a.¹ Having also considered the defendant's objection and the plaintiff's reply thereto, the motion is denied, for two reasons, as set forth below.

The pending motion presents several issues this court has already considered when it denied the plaintiff's pretrial request for postjudgment interest under General Statutes § 12-17a² in the memorandum of decision and when it later denied the plaintiff's postjudgment motion to terminate the automatic stay of execution during appeal. An award of interest under § 37-37a requires a "consideration of the equities."

¹ Section 37-3a, captioned "Rate recoverable as damages," provides in relevant part as follows: "Except as provided in sections 37-3b, 37-3c and 52-192a, interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions ... as damages for the detention of money after it becomes payable."

² General Statutes § 12-117a provides in relevant part, that if an assessment imposed is reduced by the court, "the applicant shall be reimbursed by the town or city for any overpayment of taxes, together with interest and any costs awarded by the court or, at the applicant's option, shall be granted a tax credit for such overpayment, interest and any costs awarded by the court."

*Electronic notice sent to all counsel of record.
Sent to Reporter of Judicial Decisions.
A. Jordanopoulos, et al. 8/12/21*

*(14 case: # 180)
(15 case: # 172)*

DiLieto v. County Obstetrics & Gynecology Group, P.C., 310 Conn. 38, 55, 74 A.3d 1212 (2013). Although much of what the pending motion asserts has previously been considered and rejected by this court, the plaintiff does make two arguments not previously presented to the court in their present form. First, Digital asserts that “[n]ot having the use of the significant tax refund has put additional strain on Digital at a time when the New England data center market has further deteriorated and the leasing activity at Digital’s Trumbull property has not improved.” The court did consider the leasing market for data centers, however, when it found, as a substantive matter, that there was no market in 2011 for unbuilt suite in the expansion space and thus no income or potential income from that pod as of the relevant time under consideration. During trial the court had also heard testimony that the third suite had not yet been leased. Although couched differently than in its present motion, Digital’s trial brief also argued economic impact as one of the reasons for the court to award postjudgment interest under § 12-117a.³ The other argument presented for the first time now is an argument that the town has not acted reasonably in rejecting Digital’s settlement offers; but not settling and seeking a final judicial determination is the town’s right. The factual issues presented had expert opinion supporting both sides regarding “a complex property presenting many issues affecting valuation.” Neither of these reasons nor any

³ Digital’s trial brief thus asserted as follows: “Digital is not a bank. And yet Digital has been making interest free loans to the Town (in the form of tax overpayments) ever since it purchased 60 Merritt Boulevard. Second, the Town’s history of overvaluing Digital’s Trumbull property- both real and personal - is extensive and has culminated in the egregious overvaluation of 60 Merritt Boulevard in 2013 and 2014. The Town has had use of hundreds of thousands of Digital’s dollars and it should be compelled to pay interest to Digital for that use.” Plaintiff’s Trial Brief, p. 36.

of the others advanced by Digital persuades the court that consideration of the equities warrants an award of postjudgment interest under § 37-3a.

The other reason for denying the motion is that the court agrees with the defendant that it lacks authority, more than four months after judgment, to enter the order requested by the plaintiff. There is conflicting legal authority on this question, however. Two recent cases support the defendant's position. In *Cliff's Auto Body, Inc., v. Grenier*, 179 Conn App. 180, 181 A.3d 138 (2018), the court held that the trial court lacked authority, fifteen months after judgment, to set interest rate for prejudgment interest previously awarded or to add postjudgment interest: "The defendant claims that assigning the rate of interest on the debt collection judgment constituted a substantive change in the judgment. We agree; adding an award of postjudgment interest to a damages award is a substantive modification of the judgment. Because the plaintiff did not seek to have the debt collection judgment opened to determine the rate of prejudgment interest within four months of December 30, 2008, when the judgment was rendered, the court lacked the power to determine the rate of prejudgment interest and to add postjudgment interest in April, 2010." Similarly, in *U.S. Equities Corp. v. Ceraldi*, 186 Conn. App. 610, 200 A.3d 747 (2018), the court held that a trial court lacked authority seven years after judgment to set percentage rate for postjudgment interest awarded in the judgment: "On April 30, 2018, the court lacked authority to set the postjudgment interest rate at 10 percent because the original May 31, 2011 judgment did not set forth any interest rate and the plaintiff did not move to open the judgment within the four month postjudgment period as prescribed by § 52-212a." *Id.*, 616.

The plaintiff's reply brief argues that this case should instead be controlled by

Georges v. OB-GYN Services, PC, 335 Conn. 669, 685-86, 240 A.3d 249 (2020). In that case, our Supreme Court held that courts have authority to award postjudgment interest under § 37-3b more than four months after judgment. In this court's view, however, the holding in *Georges* depends on the nature of the remedy offered by § 37-3b,⁴ which "leaves trial courts with no discretion in determining whether to award such interest. . . . A claim for interest under § 37-3b also does not require, or permit, the trial court to reconsider the merits of the case because such interest is not an element of the plaintiff's damages in the underlying action." *Id.*, 685. Interest awarded under that statute is thus quite unlike interest awarded under § 37-37a, which our courts have repeatedly emphasized is discretionary and involves a determination of whether "an award is appropriate to compensate the plaintiff for the loss of the use of his or her money" and hence does permit the court to consider the underlying case. *As the court noted in DiLieto v. County Obstetrics & Gynecology Group, P.C.*, *supra*, 310 Conn. 55 such a decision requires a "consideration of the equities," an analysis in which this court previously engaged when it rejected the plaintiff's request in its trial brief for discretionary postjudgment interest under § 12-117a. The differences between § 37-37a and § 37-37b suggest that the *Georges* analysis does not apply to cases under the former statute.

⁴ General Statutes § 37-3b provides in relevant part as follows: "(a) For a cause of action arising on or after May 27, 1997, interest at the rate of ten per cent a year, and no more, shall be recovered and allowed in any action to recover damages for injury to the person, or to real or personal property, caused by negligence, computed from the date that is twenty days after the date of judgment or the date that is ninety days after the date of verdict, whichever is earlier, upon the amount of the judgment."

BY THE COURT

(Frazzini, JTR)
STEPHEN F. FRAZZINI
JUDGE TRIAL REFEREE
Anastasia Jodanis
Court Officer
8/3/21