

FILED

JUN 24 1987

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

**LEE COMER d/b/a COMER
CONSTRUCTION,**

Plaintiff-Appellant,

vs.

**GENERAL TELEPHONE COMPANY OF
THE MIDWEST,**

Defendant-Appellee.

Filed June 24, 1987

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7-191
86-1754

Appeal from the Iowa District Court for Harrison County (74175), James
M. Richardson, Judge.

Plaintiff appeals from a posttrial order amending the judgment decree
entered in an action for breach of contract, asserting that the award of interest
for a period prior to commencement of the action was not improper. **AFFIRMED.**

Verd R. Bailey of Davidson & Bailey, Clarinda, for plaintiff-appellant.

Curtis Hewett of Smith, Peterson, Beckman & Willson, Council Bluffs,
for defendant-appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

PER CURIAM

On September 11, 1981, plaintiff, Lee Comer d/b/a Lee Comer Construction Company, and defendant, General Telephone Company of Midwest, executed two written contracts for the removal of telephone poles and aerials from the Woodbine, Iowa, area. Plaintiff complied with the terms of the contracts and was paid the full contractual amount by defendant. The contracts were completed by July 2, 1982.

On July 5, 1985, plaintiff filed a petition in Harrison County alleging breach of contract. Plaintiff argued the breach was caused by the defective condition of the telephone poles collected pursuant to the 1981 contract. This matter was tried to the jury on September 10, 1986, and on September 11, 1986, the jury returned a verdict in favor of the plaintiff for \$19,397.68. The jury made no decision regarding interest in this award. On October 15, 1986, the trial court entered judgment on the jury verdict with ten percent per annum interest from July 2, 1982.

Defendant filed a Rule 179(b) motion to reconsider on October 15, 1986, contending interest should have run only from the date of commencement of the action, or July 5, 1985. On November 5, 1986, the trial court amended its decree to provide interest from July 5, 1985. The court stated that the earlier interest award was the result of typographical error. From this decision plaintiff appeals.

Plaintiff contends the court erred in amending its judgment entry to commence interest from July 5, 1986. Plaintiff argues that 5% interest should be allowed from July 2, 1986, pursuant to Iowa Code section 535.2(1)(b) (1985). We disagree and affirm.

We note that our review of the trial court is limited to errors of law. Iowa R. App. P. 4. Therefore, this case is reviewed as tried in the court below.

Mosebach v. Blythe, 282 N.W.2d 755, 758 (Iowa 1979). If supported by substantial evidence and justified as a matter of law, the judgment will not be disturbed on appeal. Atlantic Veneer Corp. v. Sears, 232 N.W.2d 499, 502 (Iowa 1975); Iowa R. App. P. 14(f)(1). But the reviewing court is not bound by the trial court's determination of law. Mosebach, 282 N.W.2d at 759.

Generally interest runs from the time the money becomes due and payable, and in the case of unliquidated claims, including those founded on contract, this is the date they become liquidated, ordinarily the date of judgment. Midwest Management Corp. v. Stephens, 353 N.W.2d 76, 83 (Iowa 1984); Lemrick v. Grinnell Mutual Reinsurance Co., 263 N.W.2d 714, 720 (Iowa 1978). One exception to this rule is in cases in which the entire damages for which recovery is demanded is complete at a definite time before the action was begun. Midwest Management Corp., 353 N.W.2d at 83; Vorthman v. Keith E. Myers Enterprises, 296 N.W.2d 772, 778 (Iowa 1985).

The court originally erred in awarding 10% interest from July 2, 1982. As pointed out by plaintiff pursuant to Iowa Code chapter 535 the court could have awarded 5% interest from July 2, 1982, to July 5, 1986. The court amended its original decision to provide for 10% interest from July 5, 1986. This was not reversible error. In order for plaintiff to have been granted the 5% interest from July 2, 1982, to July 5, 1986, plaintiff had to prove the damages were liquidated or unliquidated but complete at a specific time, here July 2, 1982. The damages related to the defective condition of the telephone poles and they were unliquidated prior to the filing of the petition. The trial court concluded the date the petition was filed was the correct date to begin interest. We find the entire damages were complete at this time and therefore affirm.

AFFIRMED.