

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

COLOR LEASING 3, L.P.

v.

CA 94-0488ML

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
Old Stone Bank.

MEMORANDUM AND ORDER

This matter is before the court on defendant's Motion to Reconsider or to Amend Judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. After finding defendant liable for conversion, the court ruled that plaintiff Color Leasing 3, L.P. was entitled to damages in the principal amount of \$235,000, plus costs and prejudgment interest. Defendant now requests that the court reconsider its ruling and withdraw the award of prejudgment interest. For the following reasons, defendant's Motion to Reconsider or Amend Judgment is denied.

I. DISCUSSION

Defendant argues that sovereign immunity protects the Federal Depository Insurance Corporation (FDIC) from an award of prejudgment interest. The cases upon which defendant relies explicitly limit their holdings to those instances when the FDIC is acting in its corporate capacity. In the alternative, plaintiff argues that the FDIC has been found liable in its receiver capacity, thereby subjecting the agency to an award of prejudgment interest. Upon review, the court will explore the dichotomous nature of the FDIC, identify its role in the matter at hand, and

address its scope of liability.

The FDIC is authorized to act in two distinct capacities, as corporation and receiver. See Commonwealth of Massachusetts v. FDIC, 102 F.3d 615, 617 (1st Cir. 1996). When the FDIC is acting in its corporate capacity as regulator of financial institutions, federal law governs. See FDIC v. World Univ. Inc., 978 F.2d 10, 13 (1st Cir. 1992). As such, the FDIC may be shielded from prejudgment interest under the doctrine of sovereign immunity. See Philadelphia Gear Corp. v. FDIC, 751 F.2d 1131, 1138 (10th Cir. 1984), rev'd on other grounds, 476 U.S. 426 (1986) (holding that prejudgment interest should not have been awarded against the FDIC in corporate capacity); Spawn v. Western Bank--Westenheimer, 989 F.2d 830, 838 (5th Cir. 1993), cert. denied, 510 U.S. 1109 (1994) (holding the FDIC in corporate capacity immune from prejudgment interest awards).

However, when acting in its receivership capacity for a failed financial institution, the FDIC, “by operation of law, succeed[s] to” all rights, titles, powers, and privileges of the insured depository institution. 12 U.S.C. § 1821 (d)(2)(A)(i). Thus, standing “in the shoes” of the failed bank, the FDIC shoulders the rights and liabilities of the insured depository institution that existed prior to receivership. See O'Melveny & Myers v. FDIC, 512 U.S. 79, 86 (1994).

Seeking damages for the tortious conduct of Old Stone Bank, plaintiff sued the FDIC as receiver. See FDIC v. Air Atlantic, Inc., 452 N.E.2d 1143, 1146 (Mass. App. Ct. 1983). As receiver, the FDIC “obtained the rights and liabilities” of the insolvent institution. Cf. O'Melveny, 512 U.S. at 86. Pursuant to Massachusetts law, the “long settled” rule of damages in conversion cases states that “damages are measured by the value of the converted goods at the time of the conversion, with interest from that time.” Welch v. Kosaky, 509 N.E.2d 919, 921

(Mass. App. Ct. 1987); see also In re 604 Columbus Ave. Realty Trust v. Capitol Bank & Trust Co., 119 B.R. 350, 370 (Bankr. D. Mass. 1990), aff'd, 968 F.2d 1332 (1st Cir. 1992). Upon review of defendant's motion, plaintiff's opposition, and relevant law, defendant's motion is denied.

SO ORDERED:

Mary M. Lisi
United States District Judge

January 13, 1998

I. BACKGROUND

In 1988, plaintiff, Color Leasing 3, L.P. (Color Leasing), sold a printing press to Consolidated Graphics Corporation (Con-graph). Shortly thereafter, plaintiff perfected its interest in the printing press. In 1991, Old Stone Bank, a competing creditor, seized the printing press. Plaintiff subsequently filed suit against defendant Resolution Trust Corporation¹ for conversion and intentional interference with contractual relations. Per the parties' request, the court bifurcated the issues of liability and damages in this case.

On June 30, 1997, the court granted plaintiff's motion for partial summary judgment on its claim for conversion. After a trial on the remaining issue of damages, the court ruled that plaintiff was entitled to the principal amount of \$235,000, plus costs and prejudgment interest.

The doctrine of sovereign immunity . . .

FN157. Congress, indeed, partially codified the holding of D'Oench in the provision that now appears at > 12 U.S.C. S 1823(e) (1994). In one additional respect the arguments for employing federal law are, if anything, more compelling after FIRREA. The FDI Act now expressly provides that an action to which the FDIC is a party arises under federal law without regard to the capacity in which the FDIC is acting. Id. S> 1819(b)(2)(A). The provision therefore contemplates action by the FDIC in its capacity as receiver of a failed state bank or thrift. Id.

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The FDIC acts in three different capacities: as a corporation, as a conservator, and as a receiver. Each role has its own individual duties and liabilities. Here, FDIC is acting as receiver, a capacity which does not enjoy such immunity. Northern Bank v. FDIC, 496 N.W. 2d 459, 466-67 (Neb. 1993). That is, the doctrine of sovereign immunity does not protect the FDIC from awards of prejudgment interest when the FDIC is sued its capacity as the receiver of a failed bank.

objections, FDIC reiterated its position first raised in its motion to reconsider the district court's December 14, 1990 order, that the > D'Oench doctrine and > 12 U.S.C. S 1823(e) barred the assessment of liability and damages against FDIC for wrongful dishonor, fraudulent inducement or misrepresentation, where the claims were based on oral or written side agreements.

In addressing a Rule 59 motion, a trial court may set aside a verdict and grant a new trial only if "the verdict is so seriously mistaken, so clearly against the law or the evidence, as to constitute

¹ When the Resolution Trust Corporation statutorily terminated, Federal Deposit Insurance Corporation became receiver of Old Stone Bank.