

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT,  
IN AND FOR ORANGE COUNTY,  
FLORIDA

EQUITY AUTO FINANCE, INC.,

Appellant,

v.

ALAUNDER LAMAR MILLER,

Appellee.

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CASE NO.: 2013-CV-000058-A-O

Lower Case No.: 2013-CC-002954-O

Appeal from the County Court,  
for Orange County, Florida,  
Faye L. Allen, County Judge.

Ronald R. Torres, Esquire, for Appellant.

No Appearance for Appellee.

Before J. RODRIGUEZ, SHEA, and LATIMORE, J.J.

PER CURIAM.

**FINAL ORDER REVERSING IN PART TRIAL COURT**

Appellant, Equity Auto Finance, Inc., (“Equity Auto”), timely appeals the Trial Court’s “Default Final Judgment in Favor of Plaintiff” entered on June 25, 2013, as to the portion of the Judgment omitting an award of prejudgment interest. This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

### *Summary of Facts and Procedural History*

This action arose from a breach of a retail installment contract pertaining to the purchase of a motor vehicle. The Defendant/Appellee, Alaunder Lamar Miller (“Miller”) defaulted by failing to make installment payments when due. Equity Auto then repossessed Miller’s vehicle. On August 31, 2008, Equity Auto sold Miller’s vehicle and applied the proceeds of the sale, less expenses incurred, to Miller’s outstanding indebtedness resulting in a deficiency balance due and owing from Miller in the amount of \$8,969.18. Also on August 31, 2008, Equity Auto issued a Notice of Disposition of Vehicle that stated the deficiency amount owed and the accruing interest per the contract. Pursuant to the terms of the contract, interest after maturity was to accrue at a rate of 18% per annum simple interest on the unpaid balance due. Miller still did not pay the amount owed.

Thereafter, Equity Auto filed a Complaint against Miller on February 22, 2013 to collect the deficiency amount owed. Miller did not file an Answer and did not appear in the proceedings or otherwise contest the lawsuit. Subsequent to the entry of a clerk’s default and in anticipation of the entry of the Default Final Judgment, Equity Auto, on March 5, 2013, filed various supporting affidavits, including an Affidavit of Interest wherein it disclosed the mathematical basis for arriving at a prejudgment interest figure of \$7,265.03. On May 23, 2013, Equity Auto filed a Motion for Default. On June 3, 2013, the Clerk of Court entered the Default. On June 25, 2013 the Trial Court entered the Default Final Judgment. However, notwithstanding the terms of the contract and the Affidavit of Interest filed in support of an award of prejudgment interest, the Trial Court unilaterally crossed out the \$7,265.03 prejudgment interest award from the proposed Default Final Judgment and wrote in a zero amount.

### *Argument on Appeal*

On appeal, Equity Auto argues that the Trial Court erred by declining to award prejudgment interest in the Default Final Judgment. Equity Auto claims that it is entitled to 18% interest as authorized under the terms of the retail installment contract attached to the Complaint. Further, Equity Auto argues that it properly filed an Affidavit of Interest in support of the award of prejudgment interest. Lastly, Equity Auto argues that prejudgment interest is another element of pecuniary damages to which it is entitled to as a matter of law.

### *Standard of Review*

As this appeal involves a pure question of law, the standard of review is de novo. *Bosem, M.D. v. Musa Holdings, Inc.*, 46 So. 3d 42, 44 (Fla. 2010).

### *Analysis*

Upon review of the record, specifically the provisions in the subject retail installment contract and the Affidavit of Interest, and from review of the controlling case law, this Court concurs with Equity Auto that as a matter of law, an award of prejudgment interest is warranted in this case. *Bosem, M.D.* 46 So. 3d at 43 (citing *Argonaut Insurance Co. v. May Plumbing Co.*, 474 So. 2d 212 (Fla. 1985) and holding that prejudgment interest is a matter of right under the prevailing “loss theory” of recovery for pecuniary damages, i.e. damages for economic or tangible losses that forecloses discretion as to awarding such interest; also explaining that prejudgment interest is allowed from the date of loss or the accrual of the cause of action); *Summerton v. Mamele*, 711 So. 2d 131, 133 (Fla. 5th DCA 1998) (also citing *Argonaut* in holding that the trial court has no discretion with regard to awarding prejudgment interest and the contractor was entitled to the award of the interest on the amount calculated from the date the construction was completed until the date the final judgment was entered); *Lumbermens Mutual*

*Casualty Co. v. Percefull*, 653 So. 2d 389, 390 (Fla. 1995) (holding that under the contract provisions, the respondent was entitled to prejudgment interest); *see Safeco Insurance Co. of Illinois v. Adrian Fridman*, 117 So. 3d 16, 20 (Fla. 5th DCA 2013) (acknowledging the award of prejudgment interest). Accordingly, this Court finds that Equity Auto is entitled to an award of prejudgment interest at the contracted rate of 18% per annum simple interest on the unpaid balance due as calculated from the date of August 31, 2008 (the date of the repossession sale and when Equity Auto issued a Notice of Disposition of Vehicle stating the deficiency amount owed and the accruing interest per the contract) until June 25, 2013 (the date when the Default Final Judgment was entered).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Trial Court's "Default Final Judgment in Favor of Plaintiff" entered on June 25, 2013 is **REVERSED** as to the portion of the Judgment omitting an award of prejudgment interest and **REMANDED** for further proceedings consistent with this opinion.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida, on this 29th day of May, 2014.

/S/  
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**JOSE R. RODRIGUEZ**  
**Presiding Circuit Judge**

SHEA and LATIMORE, J.J., concur.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Ronald R. Torres, Esquire**, Torres Law Offices, 15327 N.W. 60th Avenue, Suite 215, Miami Lakes, Florida 33014 and **Alaunder Lamar Miller**, 1140 Ansley Circle, Apt. 108, Apopka, Florida 32703, on the 29th day of May, 2014.

/S/  
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Judicial Assistant