THE SUPREME COURT OF THE STATE OF DELAWARE

SALT MEADOWS HOMEOWNERS ASSOCIATION, INC., *et al.*,	)	Case No. 94, 2023
Plaintiffs below, Appellants,	)	Court Below:
v.	)	Delaware Superior Court
ZONKO BUILDERS, INC.,	)	C.A. No. S17C-05-018 RHR
Defendant below, Appellee.	)	

APPELLANTS' REPLY BRIEF

Dated: June 14, 2023

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INTRODUCTION[1]

A. RESOLUTION OF CROSS-APPEAL AND POST-JUDGMENT INTEREST

The cross-appeal of Zonko Builders, Inc. ("Zonko") should be dismissed. Zonko chose **not** to file an opening brief in support of its cross-appeal. Instead, Zonko simply filed Defendant Below, Appellee's Answering Brief, on May 31, 2023 ("AB"). The time for Zonko to file its opening brief in support of its cross-appeal has passed. Del. Sup. Ct. R. 15(a)(ii), (b)(v). Thus, Zonko waived its arguments regarding the trial court, and this appeal is limited to those issues raised by Salt Meadows Homeowners Association, Inc., *et al*. (collectively, "Appellants" or "Homeowners") alone. Del. Sup. Ct. R. 14(b)(vi)(A)(3).

Additionally, the parties agree that the Court should reverse the Appealed Order. In the Answering Brief, Zonko concedes that the trial court committed legal error related to the award of post-judgment interest. *See* AB at 8. Thus, at minimum, the Court should remand the case with the instruction to award the Homeowners post-judgment interest from the date of the final judgment at the applicable legal rate.

[1] Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to them as in Appellants' Opening Brief ("OB").

B. ZONKO'S ANSWERING BRIEF FAILS TO ARTICULATE A BASIS TO UPHOLD THE TRIAL COURT'S ORDER

Rather than defending the Appealed Order on the merits, Zonko (1) focuses on issues not before this Court, (2) fails to address the legal inconsistencies in the trial court's ruling, and (3) makes numerous assertions lacking a basis of support in the evidentiary record. On the issue of pre-judgment interest, the Answering Brief did not demonstrate how 6 *Del. C.* § 2301(d) ("Section 2301(d)") is ambiguous, or in the alternative, explain why the legislative history does not require an award of pre-judgment interest from April 11, 2007. As the statute is unambiguous, or, alternatively, as the legislative intent supports the Homeowners' position, the Court should reverse the Appealed Order and instruct the trial court to award Homeowners pre-judgment interest from April 11, 2007, at the legal rate in effect on that date (11.25%).

With respect to damages, the Answering Brief fails to justify the trial court's erroneous reductions. Among other things, the Answering Brief fails to establish how a jury's reliance upon undisputed and unrefuted evidence could shock the trial court's conscience, constitute a miscarriage of justice or otherwise justify remittitur. To the contrary, the record below and on appeal support a maximum award in excess of the amount of the jury's verdict. Likewise, the Answering Brief fails to establish a basis for setting aside the column damages awarded to the Homeowners by the jury. As the testimony elicited and documents introduced at

trial provided an adequate basis in the record from which the jury could have awarded $1.6 million for column-related damages, the Appealed Order must be reversed.

As a result of the trial court's legal errors and abuse of discretion, this Court should vacate the Appealed Order and remand the case to the trial court with the instruction to enter an order: 1) awarding: a) Homeowners' costs, which are not at issue on this appeal, plus b) post-judgment interest from the date of the final judgment; as well as c) pre-judgment interest from April 11, 2007, through the date of the final judgment, at the then-applicable legal rate; and 2) denying Zonko's post-trial motions because: a) the jury's verdict of $12.9 million is supported by the uncontraverted evidence admitted at trial; and b) Zonko waived its right to challenge such evidence.

ARGUMENT

I. THE PARTIES AGREE THE TRIAL COURT ERRONEOUSLY AWARDED POST-JUDGMENT INTEREST AT RATE IN EFFECT ON MAY 12, 2022, INSTEAD OF THE RATE IN EFFECT ON THE DATE OF THE FINAL JUDGMENT

The parties agree that the trial court committed legal error in its award of post-judgment interest. *See* Op. Br. at 15-17; Ans. Br. at 8 ("Defendant admits that the date of judgment is the proper date to commence the calculation of post-judgment interest.") Thus, the Court should remand the case with the instruction to award Homeowners post-judgment interest, at the legal rate in effect on the date of the final judgment, through the date that the judgment is satisfied in full.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FINDING HOMEOWNERS' "DATE OF INJURY" WAS NOT APRIL 11, 2007.

The trial court committed legal error in its interpretation and application of Section 2301(d). More than twenty years of Delaware precedent establishes that Section 2301(d) is unambiguous. Zonko's observation that there are "no prior decisions attempting to interpret the date of the injury in tort cases" provides further support for this point. Presumably, courts have not needed to "interpret" the date of injury because the statute is unambiguous. Accordingly, Homeowners simply ask that this Court apply the plain language meaning of Section 2301(d) to award pre-judgment interest from the date of their injury, April 11, 2007.

There is no dispute that Homeowners met all statutory prerequisites to being awarded pre-judgment interest under Section 2301(d). A2591; Op. Br. at 17-18, Ex. A. Furthermore, there is no dispute that the Homeowners' Association received common areas with construction defects at the conclusion of construction, April 11, 2007. A3185:14-19; A4186:18-A4187:4; A4277:9-15. The only controversy concerns the determination of the "date of injury" i.e. the date from which pre-judgment interest shall be awarded.

Under Delaware law, on top of the compensatory damages awarded at trial, Homeowners are entitled to pre-judgment interest from the date on which Zonko caused such damages, the "date of injury". 6 *Del. C.* § 2301(d); E*nrique v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 2636845, at *1 (Del. Super. June 30, 2010)

aff'd 16 A.3d 938 (Del. 2011) (Table) (affirming award of interest from date of motor vehicle accident); *Rapposelli v. State Farm Mutual Auto. Ins. Co.*, 998 A.2d 425, 426, 429 (Del. 2010) (remanding to trial court to award pre-judgment interest for injuries arising from a motor vehicle collision). Failure to award pre-judgment interest from the date on which Zonko violated Homeowners' rights is an error of law, pursuant to the plain language of the statute or, alternatively, because it disregards the legislative intent of Section 2301(d).

The Answering Brief makes several concessions concerning the legal viability of Homeowners' argument in favor of awarding pre-judgment interest from April 11, 2007. First, Zonko conceded that "where a violation of a legal right is concerned the word 'tort' may be synonymous with the word 'injury.'" Ans. Br. at 11. While this concession is bookended by assertions that Section 2301(d) is subject to multiple interpretations (Ans. Br. at 10-14), i.e. that it is ambiguous, Zonko failed to support its conclusory allegation. Because, as Zonko admits, the words tort and injury may be considered synonymous when a legal right has been violated, such as when a tort occurs, they may be used interchangeably without a change in meaning. Such distinction without a difference does not render the statute ambiguous. *See Noranda Aluminum Holding Corp. v. XL Ins. Am., Inc.*, 269 A.3d 974, 978 (Del. 2021) ("If the plain statutory text admits only one reading, we

apply it…[T]he fact that the parties disagree about the meaning of a statute does not create ambiguity.") (internal citations and quotations omitted).

Second, Zonko refers to various dictionaries' definitions of the word 'injury' as: a) physical harm or damage to someone's body caused by an accident or attack; b) hurt; damage or loss sustained; and c) the harm or damage is done or sustained to, escape without injury; a particular form of harm. Ans. Br. at 12. None of these definitions precludes this Court from finding that April 11, 2007 was the "date of injury" under Section 2301(d), because the damages arose from the construction defects in the common areas at Salt Meadows which the Association sustained no later than April 11, 2007. Accordingly, this Court must reverse the Appealed Order and remand the matter with the instruction that the Homeowners be awarded pre-judgment interest from the date of their injury, April 11, 2007.

Alternatively, to the extent that Section 2301(d) is considered ambiguous, which it is not, the intent of the General Assembly controls. *Rapposelli*, 998 A.2d at 427 ("Legislative intent takes precedence over the literal interpretation of a statute when the two would lead to contrary results."). Zonko was incorrect when it claimed that Section 2301(d) has "no available legislative history." A2594. *See also* A4844:21-A4846:4; A4848:16-A4849:11; A4855:1-16; A4862:1-A4863:1; A4871:12-16; A4875:12-A4876:3; A4878:16-A4879:14. As the Appealed Order was based, in part, on this false statement, it must be reversed and the case must be

remanded so that an order can be entered consistent with the General Assembly's intent.

Despite now recognizing the existence of a legislative history, the Answering Brief fails to demonstrate *how* the legislative history supports Zonko's interpretation. Ans. Br. at 9-14. Contrary to Zonko's conclusion, the legislative history evidences a clear intent to award pre-judgment interest from the date on which liability arose. *See* Del. S.B. 310, Senate Amendment 2, 140th Gen. Assemb. (2000), available at https://legis.delaware.gov/BillDetail?legislationId=10987 (noting that, under the language of the bill, "the plaintiff would receive pre-trial interest without consideration of all the factors causing delay or the reason for the rejection of a plaintiff's settlement demand."). Notably, the General Assembly actually struck an amendment which would have granted judicial officers discretion to award pre-judgment interest from "the date of injury **or any lessor period**…" i.e. a date later than the date on which liability arose. *See* Del. S.B. 310, Senate Amendment 2, 140th Gen. Assemb. (2000), available at https://legis.delaware.gov/BillDetail?legislationId=10987 (emphasis added).

Prior to the enactment of Section 2301(d), the courts awarded pre-judgment interest only in "cases involving contract disputes or liquidated amounts." Del. S.B. 310, 140th Gen. Assemb. (2000), available at https://legis.delaware.gov/BillDetail/9256. The General Assembly enacted Section

2301(d) to incentivize tortious "wrongdoers to make prompt, good faith offers of settlement to plaintiffs." *Id*. Cases such as this, in which the trial court held a two week trial solely on the issue of damages because the parties could not reach a reasonable settlement in advance, are precisely why the General Assembly passed Section 2301(d).

Thus, even if the plain language of the statute allows for multiple interpretations, which it does not, the legislative history requires the trial court to interpret Section 2301(d) as awarding pre-judgment interest from April 11, 2007, the date on which the Homeowners' legal rights were violated through, *inter alia*, delivery of defective common areas to the Association. Del. S.B. 310, 140th Gen. Assemb. (2000), available at https://legis. delaware.gov/BillDetail/9256.

In line with this intent, the *Rapposelli* case awarded prejudgment interest *without* making any distinction between the date of the tort and the date of the injury. *See Rapposelli v. State Farm Mut. Auto. Ins. Co.*, 988 A.2d 425. Zonko's analysis of the *Rapposelli* decision focuses entirely on one factual recitation noting that the plaintiff "suffered injuries arising from a motor vehicle collision on [the "Accident Date"]." *Id*. at 426. From this, Zonko concludes that the *Rapposelli* Court was "clearly" "distinguishing between the negligent act that was the tort and the consequence of the negligent act which was the injury." AB at 12.

Zonko's conclusion defies logic. The Accident Date is the only date referenced in the entire *Rapposelli* decision. *Id.* at 426-429. Moreover, in applying its analysis to the facts, the court noted that the sole issue at trial involved the defendant contesting the "compensatory damages arising from the *accident* …" *Id*. at 429 (emphasis added). If the Court meant to distinguish the injury from the act, it would have instructed the Superior Court to make a factual finding on remand regarding how long after the accident the tort victim's damages arose. Instead, the court refers only to the accident or, alternatively, the "tort action" without ever mentioning, implying, or otherwise leaving the door open for the existence of a different date of injury. There is simply no basis to think that the *Rapposelli* Court intended for pre-judgment interest to be awarded from some other unspecified date when it instructed the trial court to enter "a modified judgment that includes prejudgment interest pursuant to 6 *Del. C.* § 2301(d)." *Id.* at 429.

Like the Court, members of the Delaware General Assembly knew that the "date of injury" and the "date of tort" are one in the same when they passed Section 2301(d). *See* Del. S.B. 310, Senate Amendment 2, 140th Gen. Assemb. (2000), available at https://legis.delaware.gov/BillDetail?legislationId=10987 (stricken amendment which would have granted the judicial officer discretion to award pre-judgment interest from a later date). Adopting Zonko's position would require the Court to rewrite the statute to indicate that pre-judgment interest shall

be awarded from the "date on which a party discovers its injuries," which ignores the intent of the General Assembly. *Rapposelli* does not support such a position.

Also keeping in line with the legislative intent, the *Enrique* Court affirmed an order awarding prejudgment interest under Section 2301(d) from date of the tort. E*nrique v. State Farm Mut. Auto. Ins. Co*., 2010 WL 2636845, *1, n.2, *3, n.24 (Del. Super. June 30, 2010), *aff'd* 16 A.3d 938, 2011 WL 1004604, *2 (Del. 2011). The *Enrique* Court found that a proper application of Section 2301(d) required an award of the full amount of interest calculated from the date of the tort because, *inter alia*, "[a] contradictory holding capping State Farm's liability on prejudgment interest to the policy limit would strip section 2301 of its purpose—encouraging settlement—when the insurer is faced with a demand below or at what ultimately may be determined to be at or in excess of the policy limit." 2011 WL 1004604, *2.

In light of the foregoing, Homeowners advocate for a plain language interpretation of Section 2301(d) consistent with well-settled Delaware law that gives meaning to each and every word and, therefore, requires an award of pre-judgment interest calculated from April 11, 2007. Moreover, even if this Court finds the statute to be ambiguous, the result must be the same. The legislative history compels the conclusion that the trial court erred as a matter of law by awarding pre-judgment interest beginning later than the date on which Zonko

violated the Homeowners' rights. Accordingly, this Court should reverse the Appealed Decision and remand the case with the instruction to award pre-judgment interest at the legal rate from April 11, 2007.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY REDUCING HOMEOWNERS' NON-COLUMN DAMAGES BELOW THE MAXIMUM AWARD SUPPORTED BY THE EVIDENCE

A. ZONKO'S ANSWERING BRIEF FAILS TO PROVIDE A LEGAL BASIS FOR THE TRIAL COURT'S REEVALUATION OF EVIDENCE ADMITTED WITHOUT OBJECTION, WITHOUT A MOTION TO STRIKE AND WITHOUT A REQUEST FOR A CURATIVE INSTRUCTION TO THE JURY.

When considering a motion for remittitur, it is well-settled that a trial court abuses its discretion when it substitutes its own interpretation of the evidence for "the collective judgment of the twelve persons on the jury." *Dolinger v. Scott & Fetzer Co.*, 405 A.2d 690, 692 (Del. 1979). Nowhere in the 12.5 pages dedicated to this argument in the Answer Brief does Zonko explain how the trial court did not abuse its discretion by reducing the jury's verdict for non-column damages from $11.3 million to $8.3 million, even though the undisputed and unrefuted evidence in the trial record supports a maximum award in excess of $11.3 million. Ans. Br. at 15-27.

The Opening Brief asserts that the trial court exceeded the bounds of reason by: 1) substituting its opinion for the jury's findings of fact; 2) disregarding undisputed evidence; 3) drawing inferences in favor of the moving party; and 4) otherwise ignoring recognized rules of law and practice in a manner which produces injustice. OB, at 30-36. Rather than addressing the trial court's errors, the Answering Brief further misrepresents the record and inexplicably shines additional light on the errors committed by Zonko at trial. *See, e.g.*, Ans. Br. at 17

("It is not sensible to conclude that [Kathy Lambrow,] the owner of one unit could possibly offer such testimony **and nor did she**.") (emphasis added) *contra* A3152:7-A3169:4, A3172:21-A3178:13, A3186:1-A3190:7, A3192:21-A3199:14, A3201:2-A3205:23, A3207:11-A3215:2, A3217:16-A3218:11, A3220:3-3221:11, A3231:14-A3232:19 (Trial testimony from Ms. Lambrow regarding: a) her role at Salt Meadows; b) her personal knowledge of the damages at Salt Meadows; and c) similarities throughout the homes at Salt Meadows); A3290:2-A3316:22 (Trial testimony of Ms. Lambrow identifying the Homeowners' damages, including the amount paid by the Association as of the date of trial, anticipated additional amounts necessary to repair the damages at Salt Meadows and funding sources, such as a loan to the Association and contributions by homeowners through annual and special assessments); and A3457:1-3458:20 (Cross-examination of Ms. Lambrow eliciting additional damages).

Among other things, Zonko's uncited assertions in the Answering Brief failed to demonstrate how the uncontraverted facts identified on pages 10-13 of the Opening Brief support a maximum award less than the jury's verdict. At trial, Zonko failed to object, did not move to strike and did not request a curative instruction be provided to the jury for any of these facts. Thus, Zonko waived its right to challenge these facts on appeal. *See Medical Ctr. of Del. v. Lougheed,* 661 A.2d 1055 (Del. 1995) ("The failure to object generally constitutes a waiver of the

right subsequently to raise the issue [on appeal]."); *Waldorf v. Shuta*, 142 F.3d 601, 629 (3d Cir. 1998) ("[A] party who fails to object to errors at trial waives the right to complain about them following trial.").

Given the state of the evidentiary record, it was the trial court's decision to grant remittitur that went against the weight of the evidence and constituted a miscarriage of justice, thereby warranting reversal. *See, e.g.*, *Dolinger v. Scott & Fetzer Co.*, 405 A.2d 690, 692 (Del. 1979) (finding the trial court abused its discretion by reducing a jury's verdict even though the amount awarded did not "exceed what the record justifies as an absolute maximum.") The undisputed and unrefuted facts in the record, including the following, provide more than sufficient support for the jury's verdict.

$2.4 million paid by the Association (A3638:11-14; A5143-5793) to repair the documented damages (A5136, A5837-A6316);

\+ **$6.2 million** for repairs identified in the 2019 Estimate that had yet to be performed (A3313:11-21; A3457:7-10; A3577:5-A3624:13; A5812-22);

\+ **$500,000** for repairs performed by the Additional Workers, which are not included in the 2019 Estimate (A3273:20-77:13; A3457:11-13);

\+ **up to $3 million**, as construction costs increased up to 48% from 2020 to 2022 (A3457:13-20; A3973:2-23);

up to $12.1 million, which is more than $11.3 million.

As the trial court abused its discretion by granting Zonko's motion for remittitur regarding non-column damages, the Appealed Order must be reversed.

B. ZONKO'S REMAINING OBJECTIONS ARE PROCEDURALLY IMPROPER AND MERITLESS.

Zonko's remaining, procedurally improper, arguments are meritless. Ans. Br. at 17-27. As a preliminary matter, Zonko is prohibited from requesting that this Court reconsider the trial court's treatment of its Motion for Sanctions because: (1) it did not identify that order in its notice of cross-appeal and (2) it did not file an opening brief in support of its cross-appeal. Del. Sup. Ct. R. 14(b)(vi)(A)(3) and 15(a)(ii), (b)(v). Similarly, the trial court was not required to act on Zonko's behalf absent an objection, a motion to strike or request for a curative instruction during the trial. *See Medical Ctr. of Del. v. Lougheed*, 661 A.2d 1055 (Del. 1995) ("The failure to object generally constitutes a waiver of the right subsequently to raise the issue [on appeal]."); *Waldorf v. Shuta*, 142 F.3d 601, 629 (3d Cir. 1998) ("[A] party who fails to object to errors at trial waives the right to complain about them following trial."). Furthermore, Zonko does not, and cannot, argue that the jury should be prohibited from relying upon testimony Zonko elicited through cross-examination. *Itek Corp. v. Chi. Aerial Indus., Inc.*, 274 A.2d 141, 144 (Del. 1971) ("[A] party may not be heard to complain of a responsive answer to a question which he himself asked in cross-examination."). Ms. Lambrow's testimony on cross-examination alone supports damages in excess of the amount awarded by the trial court. *Compare* Op. Br. at Ex. A (reducing Homeowners' damages to $8.3 million) *with* Op. Br. at 10-13; A2558-A2564

(identifying the evidence necessary to conclude that Zonko's position, not the jury verdict, was against the great weight of the evidence).

Nevertheless, even assuming, *arguendo*, Zonko could establish that the trial court somehow erred by failing to grant the relief it did not request, the undisputed and unrefuted facts established at trial support a maximum recovery in excess of the jury's verdict. Op. Br. at 10-13. Even relying solely on the documentary evidence and the testimony of Kathy Lambrow, the record supports a verdict higher than the amount awarded on remittitur. Op. Br. at 28-36; A2558-A2564. For example, Zonko does not, and cannot, argue that the cost of repairs paid for by the Association did not increase from 2019 to 2020 and again 2020 to 2021. Op. Br. at 10-11; A5143-5793.

As the evidence introduced at trial provides an adequate basis of support for the jury's award, the trial court abused its discretion by granting remittitur.

IV. THE EVIDENTIARY RECORD PROVIDED A SUFFICIENT BASIS FOR THE JURY TO AWARD $1.6 MILLION IN DAMAGES RELATED TO THE COLUMNS.

A. ZONKO WAIVED ARGUMENTS ON APPEAL.

Zonko bases its argument regarding Homeowners' column-related damages on matters not before this Court. *See* Ans. Br. at pp. 32-35. While Zonko filed a Cross-Notice of Appeal, it elected not to file an Opening Brief on Cross-Appeal, and thus, Zonko's arguments concerning the trial court's failure to regulate discovery and/or grant its motion *in limine* are waived. *See* Del. Sup. Ct. R. 14(b)(vi)(A)(3) and 15(a)(ii), (b)(v). Moreover, documents exchanged during discovery, deposition testimony, and the parties' characterization thereof are wholly irrelevant to whether the trial court erred as a matter of law in granting Zonko's Motion for Judgment as a Matter of Law at trial. *Young v. Frase*, 702 A.2d 1234, 1237-38 (Del. 1997) ("[A] court's assessment of whether a jury's award of damages is within a range supported by the evidence must necessarily be based on the evidence presented to the jury and not on facts outside of the jury's purview.")

B. THE EVIDENTIARY RECORD SUPPORTS AN AWARD OF COLUMN-RELATED DAMAGES.

The Answering Brief incorrectly states that Homeowners failed to put forth evidence of damage to each of the columns at Salt Meadows. The Opening Brief cited numerous sources of evidence to support an award of column-related

damages, most notably, the testimony of the President of the Homeowners' Association, Kathy Lambrow. *See* Op. Br. at 38-40. Ms. Lambrow testified about the similarities between the columns on every deck at Salt Meadows. A3159-A3160. Ms. Lambrow further testified that "the cost of the columns … are estimated to be $1.4 million, which … was discovered after [the March 15, 2019 estimate] had been done. A3457. The final point was elicited, by Zonko's counsel ***on cross-examination***. Homeowners also introduced evidence of payments for repairs to the columns at one unit, which served as a basis for the estimate. *See* Op. Br. at 39. In light of the 47-48% increase in the cost of construction materials in recent years, *see* Op. Br. at 40, there was ample evidence in the record to support a finding of damage to the columns ($74,622.01) to every unit at Salt Meadows (20 units) equivalent to the $1.6 million column award ($74,622.01 x 20 = $1,492,440.20, plus increase in the cost of materials). Accordingly, there was more than a sufficient basis in the evidentiary record to support the jury's award.

C. THE TRIAL JUDGE USURPED THE ROLE OF THE JURY

Despite the existence of ample evidence in the record to support an award of $1.6 million in column-related damages, the trial court usurped the role of the jury by granting Zonko's motion for judgment as a matter of law. In circumventing the jury's finding, the trial court impermissibly drew inferences from the evidence in favor of Zonko, i.e. the *moving* party. *See LCT Cap., LLC v. NGL Energy Partners*

LP, 249 A.3d 77, 89 (Del. 2021) ("When considering a motion for judgment as a matter of law, the Court must view the evidence and draw all reasonable inferences in a light most favorable to the non-moving party."). Further, said inferences contradict the evidence elicited at trial. This constitutes legal error. As demonstrated by the Opening Brief, which Zonko failed to refute beyond a laundry list of conclusory arguments, the jury possessed – and in fact, relied on – an evidentiary record capable of supporting a $1.6 million award for column damages. Accordingly, this Court should reverse the trial court's order and remand the matter to the trial court with the instruction to restore the jury's award of $1.6 million in column-related damages.

CONCLUSION

This Court should vacate the Appealed Order and remand the case to the trial court with the instruction to enter an order: 1) awarding: a) the costs that are not at issue on this appeal plus b) post-judgment interest from the date of the final judgment; as well as c) pre-judgment interest from April 11, 2007, at the legal rate in effect on those dates; and 2) denying Zonko's post-trial motions because: a) the jury's verdict of $12.9 million is supported by the uncontraverted evidence admitted at trial; and b) Zonko waived its right to challenge such evidence.

Dated: June 14, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2023, a true and correct copy of the **Appellants' Reply Brief** was served via File & ServeXpress on the following counsel of record:

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