



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

BRUCE D. WHITE, CHIEF JUDGE  
RANDY I. BELLOWS  
ROBERT J. SMITH  
BRETT A. KASSABIAN  
MICHAEL F. DEVINE  
JOHN M. TRAN  
GRACE BURKE CARROLL  
DANIEL E. ORTIZ  
PENNEY S. AZCARATE  
STEPHEN C. SHANNON  
THOMAS P. MANN  
RICHARD E. GARDINER  
DAVID BERNHARD  
DAVID A. OBLON  
DONTAË L. BUGG

JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

THOMAS A. FORTKORT  
J. HOWE BROWN  
F. BRUCE BACH  
M. LANGHORNE KEITH  
ARTHUR B. VIEREGG  
KATHLEEN H. MACKAY  
ROBERT W. WOOLDRIDGE, JR.  
MICHAEL P. McWEENY  
GAYLORD L. FINCH, JR.  
STANLEY P. KLEIN  
LESLIE M. ALDEN  
MARCUS D. WILLIAMS  
JONATHAN C. THACHER  
CHARLES J. MAXFIELD  
DENNIS J. SMITH  
LORRAINE NORDLUND  
DAVID S. SCHELL  
JAN L. BRODIE

RETIRED JUDGES

April 28, 2021

Mr. Thomas W. Repczynski  
Offit Kurman, P.C.  
8000 Towers Crescent Drive, Suite 1400  
Tysons Corner, Virginia 22182

Mr. Yama A. Shansab  
Ferguson Walton & Shansab, PLLC.  
12007 Sunrise Valley Drive, Suite 140  
Reston, Virginia 20191

*Re: Martin v. Wood, CL-2018-1306*

Dear Counsel:

This matter comes before the Court on the Plaintiff's "Post-Appeal Motion for Award of Damages Pursuant to Section 8.01-682 and Release of Original Letter of Credit. For the reasons that follow, the motion for the Award of Damages is granted and the Motion for Release of the Original Letter of Credit is denied.

### *FACTS*

This matter first came before this Court in 2018. Plaintiff Tracey Martin sought a declaratory judgment granting her fifty percent of her late ex-husband's life insurance policy. Plaintiff was formerly married to John Wood. During their divorce proceedings, Mr. Wood agreed to maintain a preexisting life insurance policy for the partial benefit of Ms. Martin. Their agreement was incorporated into the divorce decree and entered by the Circuit Court. For a period, Mr. Wood refused to issue payments for his life insurance policy and was found in contempt in of Court in 2014 and 2017. As of June 2017, Mr. Wood finally listed Ms. Martin as a beneficiary of the life insurance policy.

**OPINION LETTER**

Three months after naming Ms. Martin as a beneficiary, Mr. Wood removed Ms. Martin as a beneficiary and designated his new wife, his brothers, and a friend as beneficiaries. Two days later, Mr. Wood took his own life. When Ms. Martin attempted to submit a claim against the policy, she discovered Mr. Wood had removed as a beneficiary.

In 2018, Ms. Martin filed a Complaint with the Court seeking injunctive relief, declaratory judgment, and damages for breach of contract. By February 2019, the only issue left to be adjudicated was whether Ms. Martin was entitled to \$750,000 plus accrued interest from the life insurance policy. Both plaintiff and defendants moved for summary judgment. Judge Gardiner heard the arguments and entered an Order in March 2019 granting summary judgment in her favor and awarding her the full amount of life insurance with accrued interest in the amount of \$761,709.53.

Defendants, the beneficiaries of the life insurance policy and Mr. Wood's estate, appealed Judge Gardiner's ruling and posted a Letter of Credit (Ailoc) with the Clerk's office as security in accordance with § 8.01-682. The Supreme Court affirmed the ruling and ordered that Defendants "shall pay to the appellee damages according to law." *Wood v. Martin*, 299 Va. 238 (2020). In the current matter, Ms. Martin seeks to recover post-appeal damages and release of the Ailoc.

## *ANALYSIS*

### **I. Interest**

Plaintiff asserts she is entitled to the interest that accrued on the judgment during appeal as an award of damages. To support her position, Plaintiff relies on Virginia Code § 8.01-682 which states:

When the judgment is for the payment of money, the damages shall be the interest to which the party is legally entitled, as provided in § 6.2-302<sup>1</sup> or any other provision of law, from the date of filing the notice of appeal until the date the appellate court issues its mandate. Such interest shall be computed upon the whole amount of the recovery, including interest and costs, and such damages shall be in satisfaction of all interest during such period of time.

Va. Code Ann. § 8.01-682.

Here, interest accrued from the time the Notice of Appeal was filed on March 22, 2019 until the Supreme Court entered the Mandate on November 12, 2020. Thus, Plaintiff reasons she is entitled to the interest that accrued during this period of time.

---

<sup>1</sup> Code §6.2-302 is the Judgment Rate of Interest.



The Defendants disagree with this analysis. According to the Defendants, the judgment that awarded Plaintiff a share of the life insurance proceeds was an *in rem* judgment and was not for the payment of money contemplated by Code § 8.01-682. Rather, they claim, the judgment was a declaratory judgment that did nothing more than declare that the Plaintiff had a greater interest in a portion of the life insurance proceeds.

The Defendants' argument that the judgment was only *in rem* does enjoy a certain attractiveness. It is correct that the judgment was an *in rem* judgment—the Supreme Court of Virginia noted this in the opinion more than once. But the argument too narrowly construes Judge Gardiner's decision.

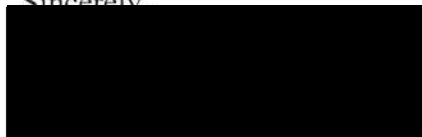
While it is true that Judge Gardiner's judgment was an *in rem* judgment, that judgment, in the context of this case, was, in fact, a judgment that resulted in the distribution—or payment—if you will—of money. In other words, Judge Gardiner's judgment declared that the Plaintiff had the greater right to the interpleaded funds AND, in order to comply with that judgment, the Clerk of the Court must distribute those interpleaded funds to the Plaintiff. To say that the judgment was *only* an *in rem* judgment and not for the payment of money, puts form over substance.

The argument also overlooks a salient fact—the money in question is the Plaintiff's money. As the money sat there awaiting judicial decision, Plaintiff was denied the use and benefit of that money. It would be patently unfair to say now that twenty-four months after prevailing on her motion for summary judgment the Plaintiff should be deprived of her interest because of the delay attendant to an appeal. This is exactly the result that § 8.01-682 is designed to prevent. Therefore, the Motion for Award of Damages Pursuant to Section 8.01-682 is granted.

## II. Letter of Credit

The Plaintiff asserts that this Court should order the transfer to her of the Letter of Credit. I find nothing in Code § 8.01-676.1<sup>2</sup> or precedent that provides for release of the Letter of Credit to the prevailing party on appeal. Although the Letter of Credit states conditions upon which it could be transferred to Plaintiff, none of these requirements were met. Plaintiff cites no law or facts in support of this proposition. Therefore, the Motion for Release of Original Letter of Credit is denied. Mr. Repczynski is to prepare an order in accordance with this letter.

Sincerely,



Robert J. Smith  
Judge, Fairfax County Circuit Court

---

<sup>2</sup> Security for Appeal