

KNOWLES LUMBER, INC.

v.

T & M MORTGAGE SOLUTIONS, INC., et al.

Submitted on Briefs June 1, 2011

Decided June 16, 2011

Panel: SAUFLEY, C.J., and LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

T & M Mortgage Solutions, Inc. (T & M) appeals, and Knowles Lumber, Inc. (Knowles) cross-appeals, from a judgment of the District Court (Lewiston, *Bradford, J.*) holding T & M liable for breach of contract. Contrary to T & M's contentions, the court did not err in finding that a contract existed between the parties and that the contract was breached by T & M's failure to pay the money that it had promised. *See Sullivan v. Porter*, 2004 ME 134, ¶ 13, 861 A.2d 625, 631. T & M's argument that the contract violates the statute of frauds was waived because it was not properly raised as an affirmative defense below, as required by M.R. Civ. P. 8(c) and 12(b). *See R.C. Moore, Inc. v. Les-Care Kitchens, Inc.*, 2007 ME 138, ¶ 24, 931 A.2d 1081, 1086.

Contrary to Knowles's contentions, the court did not err in rejecting the additional counts in its complaint. *See Paffhausen v. Balano*, 1998 ME 47, ¶ 5, 708 A.2d 269, 270-71 (“[W]e defer to the trial court on its findings of fact, but review de novo the application of the law to those facts.”). The court did, however, err in failing to award pre-judgment and post-judgment interest pursuant to statute, or expressly waive interest for good cause. *See* 14 M.R.S. §§ 1602-B, 1602-C (2010); *Brown v. Habrle*, 2010 ME 72, ¶ 12, 1 A.3d 401, 404 (“The

prejudgment interest statute entitles the prevailing party to interest as a matter of right.” (quotation marks omitted)); *Walsh v. Cusack*, 2008 ME 74, ¶¶ 5-6, 946 A.2d 414, 416-17 (“[A] party is entitled to post-judgment interest absent an express full or partial waiver of interest, for good cause, by the court.”). For this reason, we remand for a determination regarding interest. *See Walsh*, 2008 ME 74, ¶ 11, 946 A.2d at 418 (remanding for an interest determination “[b]ecause the judgment in this case neither states the applicable post-judgment interest rate nor orders that post-judgment interest be fully or partially waived”).

The entry is:

Remanded for a determination regarding pre-judgment and post-judgment interest pursuant to 14 M.R.S. §§ 1602-B, 1602-C (2010). Judgment affirmed in all other respects.

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