

SUPREME COURT OF LOUISIANA

No. 07-C-2441 c/w 07-C-2443

JOSEPH SHER

v.

LAFAYETTE INSURANCE COMPANY, ET AL.¹

*On Writ of Certiorari to the Court of Appeal, Fourth Circuit,
Parish of Orleans*

PER CURIAM:

We granted a rehearing in this matter for the sole purpose of reconsidering plaintiff's claim to entitlement of an award of court costs pursuant to LSA-C.C.P. art. 970.² Plaintiff's offer of judgment to Lafayette Insurance Company on February 9, 2006, for \$225,000 was "inclusive of costs, interest, attorney fees and any other amount which may be awarded Plaintiff against Lafayette in this matter." **Sher v.**

¹ Retired Judge Lemmie O. Hightower, sitting ad hoc for Calogero, C.J., recused

² LSA-C.C.P. art. 970 provides, in pertinent part:

A. ... [A]ny party may serve upon an adverse party an offer of judgment for the purpose of settling all of the claims between them. The offer of judgment shall be in writing and state that it is made under this Article; specify the total amount of money of the settlement offer; and specify whether that amount is inclusive or exclusive of costs, interest, attorney fees, and any other amount which may be awarded pursuant to statute or rule. ...

....

C. ... [I]f the final judgment obtained against the defendant-offeree is at least twenty-five percent greater than the amount of the offer of judgment made by the plaintiff-offeror, the offeree must pay the offeror's costs, exclusive of attorney fees, incurred after the offer was made, as fixed by the court.

Lafayette Insurance Company, 07-0757, p. 34 (La.App. 4 Cir. 11/19/07), 973 So.2d 39, 65. In this court's original opinion, it was noted that Lafayette would only be required to pay plaintiff's costs pursuant Article 970 if plaintiff's final award was at least \$281,250. This court stated the amended judgment was \$230,812.50. However, this amount did not include interest on damages from date of judicial demand, the amount of court costs pursuant to LSA-C.C.P. art. 1920, and interest on those court costs from the date of judgment assessing those court costs (May 2, 2007).³ When those three amounts are combined with the interest calculations provided by Lafayette in its opposition to plaintiff's application for rehearing the amended judgment exceeds \$281,250 by \$956.14.

Thus, we reinstate the lower courts' award to plaintiff of \$42,020.24 in costs awarded pursuant to LSA-C.C.P. art 970(C).

The rehearing is otherwise denied.

³ See **Aucoin v. Southern Quality Homes, LLC**, 2008 WL 498668 at *10, 07-1014 (La. 2/26/08), ___ So.2d ___, *citing* **Cajun Electric Power Co-operative, Inc. v. Owens-Corning Fiberglass Corporation**, 616 So.2d 645 (La. 1993) (interest on court costs accrues from date of judgment).