

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 7, 2012

Elisabeth A. Shumaker
Clerk of Court

ROBERT G. WING, as Receiver for
Vescor Capital Corp., a Nevada
corporation,

Plaintiff - Appellee,

v.

BERNARD C. BUCHANAN;
BERNARDO'S, a Nevada corporation;
BUCHANAN FAMILY TRUST; B&I
BUCHANAN FAMILY LIMITED
PARTNERSHIP, a Nevada limited
partnership; BUCHANAN FAMILY
LIMITED PARTNERSHIP, a Nevada
limited partnership; BUCK
INVESTMENTS, LLC; BAKI, LLC,

Defendants - Appellants.

No. 12-4055
(D.C. No. 2:08-CV-00803-DB)

ORDER

Before **HARTZ, GORSUCH, and HOLMES**, Circuit Judges.

Defendants have appealed from the district court's judgment, entered on March 9, 2012 "in favor of the plaintiff and against the defendants in the amount of \$4,581,047 plus prejudgment interest."

The district court has not yet determined the amount of pre-judgment

interest. Pre-judgment interest is considered part of the plaintiff's damages, *see Osterneck v. Ernst & Whinney*, 489 U.S. 169, 175 (1989) and *Utah Women's Clinic, Inc., v. Leavitt*, 75 F. 3d 564, 568 (10th Cir. 1995), and an order that leaves the amount of damages undetermined is generally not considered final and appealable. *See Albright v. UNUM Life Ins. Co.*, 59 F. 3d 1089, 1093 (10th Cir. 1995). In their responses to this court's order of May 16, 2012, the parties concede that issues regarding pre-judgment interest remain unresolved and that final judgment has not yet been entered.

Therefore, this appeal is dismissed for lack of jurisdiction. Appellants' request for remand and for an indication that no collection may take place is denied.

When the district court enters a final, appealable judgment, appellants may file a new appeal, in accordance with the court rules, if they wish.

APPEAL DISMISSED.

Entered for the Court
ELISABETH SHUMAKER, Clerk



by:

Christine Van Coney
Counsel to the Clerk