EXHIBIT 16

Not Reported in F.Supp.2d, 2004 WL 5564188 (S.D.Fla.)
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Only the Westlaw citation is currently available.

United States District Court,
S.D. Florida,
West Palm Beach.
SEB S.A., Plaintiff,
v.
SUNBEAM CORP., Sunbeam Products, Inc., Wing Shing Int'l Ltd. (BVI) and Pentalpha Enters, Ltd., Defendants.
Sunbeam Corp., Sunbeam Products, Inc., Third-Party Plaintiffs/Counterdefendants,
v.
Wing Shing Int'l Ltd. (BVI) and Global-Tech Appliances, Inc., Third-Party Defendants,
v.
Pentalpha Enters, Ltd., Third-Party Defendant/Counterclaimant.
No. 02-80527-CIV.

March 22, 2004.

Bradley I. Schecter, Clark C. Johnson, Robert L. Byman, Jenner & Block, Chicago, IL, Claire C. Cecchi, Carpenter Bennett & Morrissey, Newark, NJ, Lorie M. Gleim, Mark Frederick Bideau, Padmavathi Ghanta Hinrichs, Greenberg Traurig, West Palm Beach, FL, Elliot H. Scherker, Julissa Rodriguez, Greenberg Traurig, Miami, FL, John Douglas Boykin, Boose Casey Ciklin Lubitz Martens Mcbane & O'Connell, West Palm Beach, FL, William Dunnegan, Perkins & Dunnegan New York, NY, for Defendants.

ORDER DENYING PENTALPHA'S MOTION FOR ADDITIONAL FINDINGS OF FACT AND FOR REARGUMENT OF DECISION OF PREJUDGMENT INTEREST

KENNETH L. RYSKAMP, District Judge.

***1** THIS CAUSE comes upon Pentalpha's Motion for Additional Findings of Fact and for Reargument **[DE 169]** of the this Court's decision **[DE 166]** regarding prejudgment interest. This motion was filed on February 25, 2004. Sunbeam filed its Response **[DE 174]** on March 9, 2004, and Pentalpha replied **[DE 177]** on March 16, 2004. This matter is now ripe for adjudication.

I. Background

On February 11, 2004, this Court entered its Final Judgment **[DE 166]** based upon the January 16, 2004 jury verdict [FN1] **[DE 155]** in this matter. After setting forth the applicable standard of law in awarding prejudgment interest, this Court concluded that the parties were "entitled to. prejudgment interest from a date prior to the verdict only if the verdict fixes damages as of the prior date or if the date is easily ascertainable by the Court." *See* February 11, 2004 Order, at 3 (citation omitted). Thus, the standard set forth was that the parties were entitled to receive prejudgment interest beginning at a date prior to the verdict only if the exact date was explicit in the verdict or if the date was easily ascertainable by the Court. Because the jury's verdict did not determine a fixed date when damages arose in this matter, it was left to the Court to ascertain the appropriate date.

FN1. The jury found that Sunbeam was entitled to $2,450,948.91 in damages, which included $450,948.91 in reasonable expenses for defending itself in the SEB action. *See* Verdict Form. Sunbeam also proved that Pentalpha and Global-Tech are alter egos. *Id.* However, the jury concluded that Pentalpha proved that Sunbeam failed to perform is material obligations under the terms of the Product Supply Agreement. *Id.* Sunbeam's failure was not excused, and Sunbeam did not prove that the parties abandoned the agreement. *Id.* In addition, the jury found that Pentalpha's July

> 16, 1998 fax did not constitute a clear expression that it was terminating the agreement and accepting the return of the $1 million rebate in full satisfaction of any claims. *Id.* Finally, the jury concluded that the award which would fairly and adequately compensate Pentalpha for its damages proximately caused by Sunbeam's failure to perform its obligations under the agreement totaled $6.6 million. Thus, the jury awarded approximately *half* of the $14, 744, 613 claimed by Pentalpha. The jury verdict form did not instruct the jury to explain its reasoning or elaborate on the date(s) when Pentalpha's damages arose, and the jury did not include such an explanation.

The Court concluded that an appropriate date as to Pentalpha's damages could not be ascertained. Pentalpha presented the Court with four "alternatives" from which it could potentially derive the "fixed date" of damages. This presentation of alternatives led the Court to believe that a fixed date was not ascertainable, as Pentalpha itself could not present an accurate date without speculatively approximating. The one alternative that Pentalpha held superior to all others was its suggestion to allocate the award year by year in proportion to the damages Pentalpha claimed at trial for each year of the Supply Agreement. However, as the Court pointed out, such amortization is inappropriate. The Court concluded that there were no facts which accurately instructed it as to when Pentalpha's damages arose. Thus, the Court awarded prejudgment interest from the date of the verdict.

The Court then concluded appropriate dates regarding Sunbeam's damages were ascertainable on two separate awards of damages. Sunbeam claimed that the date of loss for the $2,000,000 owed by Pentalpha was July 15, 1999, the date Sunbeam paid that sum to SEB. In its motion, Pentalpha itself conclusively stated that "Sunbeam Corporation should receive interest at the Florida statutory rates" for this award from the date of July 15, 1999. Sunbeam also claimed that the award of $268,948.91 for attorneys' fees and the date from which that sum arose was conceded by Pentalpha in a memo as being February 5, 1998. Pentalpha did not dispute that the memo set forth this date. It also stated in its motion that it would "give Sunbeam the benefit of the interest on the $268,949.91 from the February 5, 1998 memo of James Nugent." Thus, Pentalpha conceded to this date both by its silence and by its stated suggestion in its motion. Accordingly, this Court awarded Sunbeam prejudgment interest on both awards from those respective dates.

***2** Pentalpha now brings this motion requesting that the Court amend its Final Judgment by reevaluating its award of prejudgment interest and by adding facts which were not found in the jury's verdict. As is discussed below, both requests must be denied.

II. Discussion

Pentalpha brings this motion under Fed.R.Civ.P. 52(b), which states in pertinent part, "[o]n a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings-or make additional findings-and may amend the judgment accordingly." Fed.R.Civ.P. 52(b). Pentalpha first argues that the Court should make additional findings of fact concerning prejudgment interest. In reality, Pentalpha is requesting that the Court alter its Final Judgment **[DE 166]** order.

Pentalpha maintains that the jury awarded Pentalpha $6.6 million in damages for losses that occurred before the end of the Product Supply Agreement. It also states, "*[i]f* the jury awarded Pentalpha the damages that Pentalpha asked the jury to award for the models of garment steamers, hand mixers, rice cookers, and ultrasonic humidifiers ... Pentalpha would be entitled to $2,518,749.19 in prejudgment interest." *See* Pentalpha's Motion, at 4 (emphasis added). However, the jury did not indicate when the damages arose or to what models the damages pertained. The verdict form was approved

by the parties prior to its submission to the jury; had Pentalpha desired that the jury determine the date(s) and models upon which the damages arose, it should have done so at that time. Thus, Pentalpha is asking that the Court speculate as to the jury's reasoning when it awarded damages. Not only is such second-guessing of the jury inappropriate, but it is also the kind of speculative guesswork that is prohibited in awarding prejudgment interest from a date certain.

Pentalpha's second argument is that the Court did not apply the same standard when evaluating prejudgment interest for Sunbeam. It argues that neither July 15, 1999 nor February 5, 1998 are “exact” dates of loss. However, this Court clearly set forth the standard that the parties were entitled to receive prejudgment interest beginning at a date prior to the verdict only if the exact date were explicit in the verdict or if the date was easily ascertainable by the Court. It did not require an “exact” date for Pentalpha's damages, while allowing only a “reasonable” date for Sunbeam's damages. Rather, while a date was not ascertainable by the Court for Pentalpha's damages, dates were ascertainable for Sunbeam's damages. The Court did not use two different standards; rather, it applied the same standard to reach two different conclusions. Furthermore, Pentalpha conceded to those dates explicitly and by its silence.

For the aforementioned reasons, this Court would be in error to amend its Final Judgment by adding the findings now proposed by Pentalpha.

III. Conclusion

THIS COURT, having considered the motion and the pertinent portions of the record, and being otherwise fully advised in the premises, does hereby

***3** ORDER AND ADJUDGE that Pentalpha's Motion for Additional Findings of Fact and for Reargument **[DE 169]** is DENIED.

DONE AND ORDERED.

S.D.Fla.,2004.
SEB S.A. v. Sunbeam Corp.
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