

United States District Court
For the Northern District of California

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E-FILED on 9/14/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BEIJING TONG REN TANG (USA), CORP.,
a California corporation,

Plaintiff,

v.

TRT USA CORPORATION, a California
corporation, GUANGMING SUN aka
GEORGE SUN, an individual, MEI XU, an
individual, PENGTAO ZHANG aka JOHN
ZHANG, an individual,

Defendants.

TRT USA CORPORATION, a California
corporation, GUANGMING SUN, an
individual, MEI XU, an individual, PENGTAO
ZHANG, an individual,

Counter-Claimants,

v.

BEIJING TONG REN TANG (USA), CORP.,
a California corporation, CHUANLI ZHOU, an
individual,

Counter-Defendants.

No. C-09-00882 RMW

ORDER DENYING MOTION FOR AWARD
OF PREJUDGMENT INTEREST

[Re Docket No. 271]

1 Counter-Claimants TRT USA Corp., Guangming Sun, Mei Xu, and Pengtao Zhang
2 (collectively "Counter-Claimants") move for prejudgment interest on the damages awarded for their
3 claims of fraud, breach of fiduciary duty, misappropriation of trade secret, and defamation. The
4 parties agree that California law governs the recovery of prejudgment interest. However, they
5 dispute whether the court may award prejudgment interest under California law.

6 California Civil Code § 3288 provides that "[i]n an action for the breach of an obligation not
7 arising from contract . . . interest may be given, *in the discretion of the jury*" (emphasis added).
8 Thus, whether prejudgment interest should be awarded on non-contract claims is a determination for
9 the jury, not for the court. *See Barry v. Raskov*, 232 Cal. App. 3d 447, 457 (1991) (finding that trial
10 court "had no authority to usurp the discretion conferred on the jury" to determine whether
11 prejudgment interest should be awarded). Counter-Claimants have not pointed to any statutes or
12 caselaw suggesting that the court may award prejudgment interest when there has been a jury trial,
13 and the jury was not asked to determine whether prejudgment interest should be awarded. In this
14 case, Counter-Claimants did not seek to have the jury determine whether they should recover
15 prejudgment interest on their claims. The court is thus precluded from usurping the discretion
16 conferred on the jury to make this determination. Moreover, even if the court had the discretionary
17 power to award prejudgment interest, the court would not find such an award to be appropriate in
18 this case. The court therefore denies Counter-Claimants' motion for an award of prejudgment
19 interest.

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DATED: 9/14/10



RONALD M. WHYTE
United States District Judge