

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SUNRISE ORCHARDS, INC.,  
Plaintiff,

v.

PETS CALVERT CO. and MICHAEL F.  
O'NEILL,  
Defendants.

Case No. 08-cv-6684

Judge Robert M. Dow, Jr.

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BORZYNSKI BROS. DISTRIBUTING,  
INC.,  
Intervening Plaintiff,

v.

PETS CALVERT CO. and MICHAEL F.  
O'NEILL,  
Defendants.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court upon Plaintiff's Motion for Rule to Show Cause Why Judgment Should Not Be Entered against Defendants Pets Calvert Co. and Michael F. O'Neill, jointly and severally, ("Defendants") [99]. The Motion was properly filed, served, and noticed for hearing, which took place on June 15, 2010 with counsel for Plaintiff, counsel for Intervenor, and Defendant O'Neill present in open court. The Court has considered the Motion, the comments and arguments made during the hearing, and is otherwise informed as to the factual and legal premises of the motion.

By way of background, this case has been pending for nearly two years. Because of financial difficulties involving both the individual Defendant (Mr. O'Neill) and the corporate

Defendant (Pets Calvert), the case has been delayed on several occasions to enable Defendants to obtain counsel and to present arguments on the merits of the dispute. In prior orders, the Court has resolved some of those merits arguments. However, certain claims by Plaintiff Sunrise Orchards against both Defendants remain pending.

In an effort to bring those claims to resolution, the Court entered an order again directing the corporate Defendant to retain counsel and the individual Defendant to appear in Court on or before certain dates in May. After those dates came and went without compliance, the Court set the matter for status and Plaintiff filed a motion for rule to show cause why judgment should not be entered in its favor as to all Defendants.

At the status and hearing on the motion, Mr. O'Neill appeared in open court. As he previously had done on the record, Mr. O'Neill again acknowledged the debt owed to Plaintiff. In addition, in response to the Court's inquiries, Mr. O'Neill acknowledged the absence of any argument concerning the calculation by Plaintiff of the sums owed, set forth in Plaintiff's motion. In view of those acknowledgments and the Court's prior understanding of the claims in this case, the Court grants Plaintiff's motion [99].

The Court finds that Plaintiff is the prevailing party on all counts in the complaint, and therefore renders final judgment in favor of Plaintiff Sunrise Orchards, Inc. and against Defendants Pets Calvert Co. and Michael F. O'Neill, jointly and severally, in the principal amount of \$33,001.00. In addition, the Court finds that Plaintiff has made a successful claim for pre-judgment interest, and therefore interest at the contractual rate of 18% per annum, calculated at \$20,718.79 shall be and is hereby added and taxed to this Judgment. Further, the Court finds that because Plaintiff asserted causes of action for dissipation / misappropriation of trust assets and breach of fiduciary duty under the Perishable Agricultural Commodities Act ("PACA"), 7

U.S.C. §499 *et seq.*, wherein Plaintiff is a qualified and perfected PACA trust beneficiary, this Judgment is non-dischargeable in any of Defendants' subsequent bankruptcy proceeding pursuant to 11 U.S.C. §523(a). The Court also awards post-judgment interest pursuant to 28 U.S.C. §1961 at the current federal rate of 0.35% per annum from the entry date of this Judgment until paid in full and the costs of this action.

In addition, Defendants, their agents, servants and employees are ordered to turn over to Plaintiff's counsel for distribution to Plaintiff all proceeds of produce sales of Defendants, all accounts receivable generated by produce sales of Defendants, and all assets into which these proceeds have been commingled to the extent that Plaintiff is paid in full as required by 7 U.S.C. §499(e)(c)2. Should Defendants wish to satisfy this Judgment, they should contact Plaintiff's counsel at: Martyn and Associates, 820 Superior Avenue, N.W., Tenth Floor, Cleveland, Ohio 44113, phone number (216) 861-4700, facsimile (216) 861-4703; e-mail [mamendola@martynlawfirm.com](mailto:mamendola@martynlawfirm.com).

Pursuant to this disposition as well as the Court's ruling on March 23, 2010 [DE 91], in which the Court entered judgment in favor of Intervenor Plaintiff Borzynski and against Defendants Pets Calvert in the amount of \$19,563.00 plus prejudgment interest at a rate of 5% per annum, the Court will enter final judgment, by separate docket entry, incorporating all of the Court's ruling disposing of all claims as to all parties in this litigation as provided by Rule 58 of the Federal Rules of Civil Procedure.



Dated: June 16, 2010

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Robert M. Dow, Jr.  
United States District Judge

