NEW YORK STATE SUPREME COURT
NEW YORK COUNTY: PART 7

USI SYSTEMS AG,

Plaintiff,

-against-

ALEXANDER GLIKLAD,

Defendant.

Index No.: 152870/2016
DECISION/ORDER
Motion Seq. No. 004

Recitation, as required by CPLR 2219 (a), of the papers considered in reviewing plaintiff's motion to reargue under CPLR 2221 (d).

Papers	**NYSCEF Documents Numbered**
Plaintiff's Memorandum of Law, December 16, 2016, on Motion Seq. No 003	24
Plaintiff's Notice of Motion, June 23, 2017	69
Plaintiff's Memorandum of Law in Support, June 23, 2017	70, 71
Defendant's Memorandum of Law in Partial Opposition, July 5, 2017	72
Plaintiff's Memorandum of Law in Further Support, July 13, 2017	82
Affidavit of Oliver Cramer, July 7, 2017	83
Defendant's Letter, July 13, 2017	84
Plaintiff's Letter, July 17, 2017	85

Becker, Glynn, Muffley, Chassin & Hosinski LLP, New York (Jonathan E. Stern of counsel), for plaintiff USI Systems AG.
Winston & Strawn LLP., New York (W. Gordon Dobie of counsel), for defendant Alexander Gliklad.

Gerald Lebovits, J.

Plaintiff moves under CPLR 2221 (d) to reargue this court's order of June 7, 2017. The motion is granted.

This case involves a dispute over the recognition of a Swiss judgment of April 5, 2006. The Swiss judgment awarded plaintiff damages in the amount of U.S. $30,000,000 plus interest and 707,951.85 Swiss Francs in costs and fees. On June 7, 2017, this court awarded plaintiff a money judgment for U.S. $30,000,000, with 10% interest from December 15, 1999, until June 7, 2017, and 9% interest from June 7, 2017, forward, plus costs.

Plaintiff moves to reargue this court's decision and order of June 7, 2017 on the ground on the following two issues: (1) The 10% interest from the awarded U.S. $30,000,000 should begin from October 18, 1999 and not December 15, 1999; and (2) in its order, this court should

add the 707,951.85 Swiss Francs that the Swiss judgment awarded, plus interest at 5% from April 5, 2006. (Plaintiff's Memorandum of Law in Support of its Motion, June 23, 2017, at 4.) Plaintiff argues that this court should award the Swiss Franc portion of the Swiss judgment in Swiss Francs. This amount would be converted to U.S. dollars at the exchange rate prevailing on the date of entry of the judgment according to Judiciary Law § 27.

Defendant does not argue that plaintiff's motion is unjustified or untimely. Defendant agrees that the "Swiss default judgment awarded damages both in dollars (U.S. $30 million, plus interest at 10% per year dating from October 18, 1999), and in Swiss Francs (707,951.85 Swiss Francs)." (Defendant's Memorandum of Law in Partial Opposition, July 5, 2017, at 2.) In his opposition papers, defendant agrees that the June 2017 order is erroneous but argues that this court should have awarded a lower interest rate. Defendant argues that until the entry of the Swiss judgment, the interest rate of 10% should apply. According to defendant, the Swiss statutory post-judgment interest rate of 5% should apply after the entry of the Swiss judgment. Defendant contends that the court failed "to apply the Swiss post-judgment rate of 5% during the Swiss post-judgment period." (Defendant's Memorandum of Law in Partial Opposition, July 5, 2017, at 3.) Defendant does not raise any argument regarding plaintiff's request to secure an award of 707,951.85 Swiss Francs, plus 5% interest from April 5, 2006.

In reply, plaintiff notes that defendant agrees to the requested start date of the interest, October 18, 1999, instead of December 15, 1999. Plaintiff also notes that defendant does not oppose plaintiff's claim for an award in "an amount equal to 707,951.85 Swiss Francs, plus interest at 5% dating from April 5, 2006." (Memorandum of Law in Further Support, July 13, 2017, at 2.) According to plaintiff, defendant waived his right to dispute plaintiff's entitlement to 10% interest. Plaintiff argues that defendant failed to raise any argument regarding the interest rate before the court granted its order and may not do so now.

In reply to defendant's request to reduce the interest rate to 5%, plaintiff submits an affidavit of Oliver Cramer, an attorney-at-law registered with the Geneva bar since 1994. (Affidavit of Oliver Cramer, July 7, 2017, at ¶ 1.) Cramer states in his affidavit that according to the Swiss Code of Obligations, plaintiff is entitled to receive 10% interest during the Swiss post-judgment period. Cramer argues that the Swiss statutory post-judgment interest rate of 5% applies only if the parties did not agree on a higher rate. (Affidavit of Oliver Cramer, July 7, 2017, at ¶ 4.) Here, the loan agreement provided a 10% interest rate, and therefore plaintiff argues that it is entitled to 10% interest. Regarding the 707,951.85 Swiss Francs awarded in the Swiss judgment, plaintiff repeats its argument that this amount should be awarded in Swiss Francs and will be converted under Judiciary Law § 27 "into the currency of the United States at the rate of exchange prevailing on the date of entry of the judgment." (Plaintiff's Memorandum of Law in Further Support, July 13, 2017, at 6.)

In his letter of July 13, 2017, defendant argues that the question of the amount of the post-judgment interest rate is a choice-of-law issue. Defendant contends that the 9% post-judgment interest rate of New York, the forum, and not that of Switzerland applies. Defendant does not address the 707,951.85 Swiss Francs that plaintiff requested. Defendant does not oppose plaintiff's argument on the Judiciary Law § 27 issue.

CPLR 2221 governs motions affecting prior orders. In a motion to reargue, a party must present matters of fact or law that the court allegedly overlooked or misapprehended in determining the prior motion, but shall not include any matter of fact not offered on the prior motion. Reargument is not designed to afford an unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. (*William P Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 25 [1st Dept 1992].)

Here, plaintiff alleges that the court overlooked matters of fact. According to plaintiff, it asked the court to recognize the Swiss judgment. This judgment awarded two different categories of damages: (1) U.S. $30,000,000 plus 10% interest since October 18, 1999, and (2) 707,951.82 Swiss Francs for costs and fees. In its Memorandum of Law in Support of the Plaintiff's Motion for Summary Judgment of December 16, 2016, plaintiff asked this court to "award summary judgment to USI on its claim for recognition of the Judgment pursuant to Article 53, in the amounts of (a) U.S. $30,000,000, plus interest that has been running at 10% since October 18, 1999 and (b) 707,951.85 Swiss Francs, plus interest." (Plaintiff's Memorandum of Law, December 16, 2016, at 26.) Regarding the Swiss Francs, plaintiff argued that the court should render the Swiss franc portion of the Swiss judgment in Swiss Francs and not in U.S. dollars. Plaintiff urges that under Judiciary Law § 27, this amount will be converted into U.S. dollars at the rate of exchange prevailing on the date of entry of the judgment. (Plaintiff's Memorandum of Law, December 16, 2016, at 26.) On June 7, 2017, this court granted plaintiff's motion for summary judgment but awarded solely U.S. $30,000,000 with interest of 10% from December 15, 1999 until June 7, 2017, with costs and 9% interest from June 7, 2017. On June 23, 2017 plaintiff filed its motion to reargue under CPLR 2221 (d). In its motion, plaintiff asks the court to amend its June 2017 order to direct the clerk of the court to enter judgment to it in the amounts of (a) U.S. $30,000,000, plus interest at 10% dating from October 18, 1999 and (b) 707,951.85 Swiss Francs, plus interest at 5% dating form April 5, 2006.

Plaintiff's CPLR 2221 (d) motion to reargue is granted. Plaintiff's timely motion shows that the court overlooked a matter of fact. Defendant does not raise any argument regarding plaintiff's reargument motion. Plaintiff shows that it asked this court to recognize the Swiss judgment containing damages in U.S. dollars plus interest from October 18, 1999, and in Swiss Francs for costs and fees. In its June 2017 order, the court recognized the Swiss judgment and awarded the U.S. dollar portion of the Swiss judgment but awarded interest from December 15, 1999. The order does not award the Swiss Franc portion of the Swiss judgment. Both the beginning of the interest rate and the awarded 707.951.85 Swiss francs are part of the Swiss judgment recognized in this court's order.

Plaintiff asks the court to amend its order regarding (1) the beginning of the interest rate; and (2) the 707,951.85 Swiss Francs plus interest.

I. Plaintiff's Request to Amend the Date When the Interest Rate Begins and Defendant's Request to Change the Amount of the Interest Rate

Both parties agree that the interest from the awarded U.S. $30,000,000 should begin on October 18, 1999 and not on December 15, 1999. The parties disagree on the amount of the

interest rate from the time the Swiss judgment was entered until the day this court issued its order.

Based on its motion papers and the oral argument on plaintiff's summary-judgment motion and in its motion to reargue, plaintiff claims that the interest rate for this post-judgment period is 10% as awarded in the June 2017 order. Plaintiff alleges that the parties agreed to a 10% interest rate in the loan agreement and therefore that the 10% interest rate accrues from October 18, 1999 through the date of this court's June 2017 order. Defendant did not oppose plaintiff's claim regarding the interest rate in his motion papers. Before this court entered its order, defendant stated only that the Swiss judgment is not enforceable at all. In his papers, defendant alleges that the court should "apply the Swiss post-judgment rate of 5% to the time period between USI's Swiss judgment and recognition of that judgment in New York." (Defendant's Memorandum of Law in Partial Opposition, July 5, 2017, at 3.) One week later, in his letter of July 13, 2017, defendant alleged that the post-judgment interest rate is a procedural matter governed by the law of the forum — that New York's post-judgment interest rules apply. (Defendant's letter, July 13, 2017, at 2.) Neither in his Memorandum of Law in Partial Opposition nor in his letter does defendant allege that he ever before argued this subject, the amount of the interest rate.

In response to defendant's letter of June 13, 2017, plaintiff points out that defendant changed his position on the amount of the interest rate several times and that the court should disregard these inconsistent positions. (Plaintiff's letter, July 17, 2017, at 1.)

A motion to reargue is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted. (*William P Pahl Equip. Corp.*, 182 AD2d at 25.) Before the court decided its June 2017 order, defendant had the opportunity to argue the issue of the amount of the interest rate, but he did not do so. He does not get another bite of the apple now.

Defendant and plaintiff agree that the beginning of the interest rate is October 18, 1999, instead of December 15, 1999. The start date of the interest is a matter plaintiff raised before. (Plaintiff's Memorandum of Law, December 16, 2016, at 26.) The amount of the interest rate defendant challenged is not a matter of law or fact the court overlooked.

Plaintiff's request to amend the start date of the interest is granted. Defendant's request to lower the amount of the interest rate, to 5% (as requested in Defendant's Memorandum of Law in Partial Opposition, July 5, 2017, at 3) or 9% (as requested in Defendant's letter, July 13, 2017, at 2), is denied.

This court amends its June 7, 2017, decision and order to reflect that the start date of the interest must begin from October 18, 1999. Therefore, that aspect of this court's decision and order is amended to the following extent: Plaintiff is awarded a money judgment for U.S. $30,000,000, with 10% interest from October 18, 1999, until June 7, 2017, and statutory interest of 9% from June 7, 2017, forward, plus costs.

II. Plaintiff's Request to Add Damages Awarded in Swiss Francs

Plaintiff asks this court to amend its June 2017 order because the court allegedly forgot to award plaintiff 707.951,85 Swiss Francs. Plaintiff alleges that the Swiss judgment awarded plaintiff 707.951,85 Swiss Francs in costs and fees. According to plaintiff, this court overlooked this fact in its order, even though plaintiff requested the court to do so. (Plaintiff's Memorandum of Law, December 16, 2016, at 26.) Plaintiff further asks this court to render the Swiss Franc portion of the foreign judgment in Swiss Francs and, according to Judiciary Law § 27, that the amount be converted into U.S. dollars. Defendant does not raise any argument in opposition.

According to Judiciary Law § 27 (a), judgments and accounts must be computed in dollars and cents. In addition to this general rule, Judiciary Law § 27 (b) provides that when "the cause of action is based upon an obligation denominated in a currency other than currency of the United States, a court shall render or enter a judgment or decree in the foreign currency of the underlying obligation." Any award in a foreign currency must be converted into United States currency at the rate of exchange prevailing on the date of entry of the judgment or decree. (*Korea Life Ins. Co. v Morgan Guar. Trust Co.*, 2004 US Dist LEXIS 16436, at *41, 2004 WL 1858314, at *14 [SD NY 2004].)

In *Dynamic Cassette Intl. v Mike Lopez & Assoc.*, plaintiff, Dynamic Cassette International Limited, moved to enforce an English judgment awarding damages in British Pounds. (923 F Supp 8, 9 [ED NY 1996].) The District Court found that

> "[a]lthough it might be argued that the 'judgment or decree' referred to in Section 27(b) is the English judgment, such a reading of the statute is belied by its mandate that an American court 'render or enter a judgment or decree in the foreign currency of the underlying obligation.' Moreover, a brief review of the cases decided before Section 27(b) was enacted confirms that the 'judgment or decree' referred to is the judgment entered in the enforcing jurisdiction, which in this case is the United States." (*Id.* at 12.)

Plaintiff's motion to amend its June 2017 order regarding the damages awarded in Swiss Francs is granted. The amount of 707,951.85 Swiss Francs plus interest must be converted at the rate of exchange on the date of entry of this court's order, June 7, 2017. (*See Rienzi & Sons, Inc. v N. Puglisi & F. Industria Paste Alimentari S.p.A.*, 638 F App'x 87, 92 [2d Cir 2016] [calculating damages under New York law by reference to the conversion rate in effect on the date of the district court's summary-judgment decision, rather than the rate in effect on the date judgment was entered].)

Therefore, that portion of the court's decision and order from June 7, 2017 is amended to the following extent: Plaintiff is awarded a money judgment for 707, 951.85 Swiss Francs, converted into U.S. dollars at the exchange rate on June 7, 2017, with interest at 5% from April 5, 2006 until June 7, 2017, and thereafter the interest will be at the statutory rate of 9%;

Accordingly, it is hereby

ORDERED that plaintiff's motion to reargue is granted and the decision and order of June 7, 2017, is amended as follows: Plaintiff is awarded a money judgment for (a) U.S. $30,000,000, with interest of 10% from October 18, 1999, until June 7, 2017 and thereafter the interest will be at the statutory rate of 9% plus costs and (b) 707, 951.85 Swiss Francs, converted into U.S. dollars at the exchange rate on June 7, 2017, with interest at 5% from April 5, 2006 until June 7, 2017, and thereafter the interest will be at the statutory rate of 9%; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order on defendant and on the County Clerk's Office, which is directed to enter judgment accordingly.

Dated: September 21, 2017

J.S.C.

HON. GERALD LEBOVITS
J.S.C.