

Alphabet Soup Assoc. v Genco Importing, Inc.

2021 NY Slip Op 32643(U)

December 10, 2021

Supreme Court, New York County

Docket Number: Index No. 652617/2019

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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ALPHABET SOUP ASSOCIATES,

Plaintiff

Index No. 652617/2019

-against-

DECISION AND ORDER

GENCO IMPORTING, INC.,
STEVEN VAN ZANDT, and MARK SUALL,

Defendants

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LUCY BILLINGS, J.S.C.:

I. INTEREST ON THE RENT, LATE FEES, AND USE AND OCCUPANCY FEES

The court grants plaintiff landlord's motion to amend the judgment awarded to plaintiff against defendant Van Zandt, as the guarantor of plaintiff's tenant Genco Importing, Inc., in the order dated September 10, 2021, to set forth accurately the period for which the court intended to award interest. C.P.L.R. §§ 2221(d)(2), 5019(a). The court awards \$284,600.16 in rent, late fees, and use and occupancy fees, with interest at 9% per year from the approximate midpoint of the period for which that rent and those fees were due.

The court's order (Kennedy, J.) dated March 11, 2020, granting plaintiff's motion for summary judgment on Van Zandt's liability, did not set a date from which interest was to run, nor expressly incorporate the proceedings on the record on that date. That order did, however, decide plaintiff's motion "in accordance

with the Court's oral decision held on the record of March 11, 2020." NYSCEF No. 26 at 1. In that oral decision the court determined that "interest will run from July 1st, 2018." NYSCEF No. 55 at 12.

Although plaintiff now insists that July 1, 2018, was the midpoint of the period for which rent was due; the record demonstrates that this date was the first default in payment of rent or fees for which plaintiff sought a judgment and that on March 11, 2020, plaintiff asked "for an intermediate date between the first default and the date as of which I [plaintiff] seek judgment." Id. at 10. As the court and Van Zandt pointed out, "In the complaint you [plaintiff] indicate that the default started in July 2018." Id. at 5. See id. at 7. Referring to plaintiff's rent ledger in support of its motion, the court then asked plaintiff "so why is it that you are seeking an amount from 2015 that isn't even addressed . . . ?" Plaintiff responded: "We're not seeking from 2015 we just printed out the whole ledger because that's the business record But 2015, 2016, 2017 . . . the rent was being paid and 2018, up until the date alleged." Id. at 5-6.

Thus, in accordance with the court's decision on the record March 11, 2020, interest runs on the first default from July 1, 2018. See People v. Cummings, 31 N.Y.3d 204, 208 (2018); People v. Evans, 94 N.Y.2d 499, 503-504 (2000); Matter of Part 60 RMBS

Put-Back Litig., 195 A.D.3d 40, 47 (1st Dep't 2021); Aspen Specialty Ins. Co. v. RLI Ins. Co., Inc., 194 A.D.3d 206, 212 (1st Dep't 2021). Yet plaintiff sought, and the court awarded a judgment for rent, late fees, and use and occupancy fees up to plaintiff's recovery of its rental premises August 11, 2021. Interest runs on each monthly default from the date of the default: the date plaintiff incurred the expense. Thus, for example, interest on the final default runs from the date payment was due August 1, 2021, not from July 1, 2018. As plaintiff acknowledges, "Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred shall be computed from the date incurred." C.P.L.R. § 5001(b) (emphasis added). Interest is not computed, as plaintiff now seeks, from a date before the date plaintiff incurred the expense.

Then, "where such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date." Id. See Trumbull Equities LLC v. Mt. Hawley Ins. Co.; 191 A.D.3d 587, 587 (1st Dep't 2021). Thus, when the court selects an intermediate date, the court accounts for interest on the first default from the date that expense was incurred, July 1, 2018, because the court awards interest on the last default from the intermediate date rather than from August

1, 2021.

Accounting for the tenant Genco Importing's payment of rent and other charges during August through October 2018, the approximate midpoint in the period for which rent was owed between July 1, 2018, and August 11, 2021, is March 6, 2020. Therefore the court awards \$284,600.16 in rent, late fees, and use and occupancy fees, with interest at 9% per year from March 6, 2020.

II. INTEREST ON ATTORNEYS' FEES AND EXPENSES

The court also grants plaintiff's motion to amend the judgment awarded to plaintiff against Van Zandt in the order dated September 10, 2021, to award prejudgment interest on the \$160,370.26 in attorneys' fees and expenses awarded, C.P.L.R. §§ 2221(d)(2), 5019(a), because these fees and expenses were part of plaintiff's damages for its breach of contract claim. C.P.L.R. § 5001(a). Although the court's order (Kennedy, J.) distinguished between the amounts due to plaintiff from Van Zandt "with respect to the written guaranty" and "with respect to plaintiff's claim of reasonable attorneys' fees" and did not award prejudgment interest on the attorneys' fees, the court did grant plaintiff summary judgment "as to liability . . . on plaintiff's second cause of action." NYSCEF No. 26 at 1. That cause of action for breach of Van Zandt's guaranty encompassed plaintiff's claim for attorneys' fees.

The court left the determination of "reasonable attorneys' fees" until after a further hearing. Ordinarily, when the court does not rule on the amount of attorneys' fees to be awarded, interest does not run until the court awards a judgment for the reasonable amount, as the court did here in its order dated September 10, 2021. 546-552 W. 146th St. LLC v. Arfa, 99 A.D.3d 117, 123 (1st Dep't 2012); Ficus Invs., Inc. v. Private Capital Mgt., 71 A.D.3d 591, 592 (1st Dep't 2010). Nevertheless, C.P.L.R. § 5001 mandates an award of prejudgment interest to the prevailing party in actions for breach of a contract. J. D'Addario & Co., Inc. v. Embassy Indus., Inc., 20 N.Y.3d 113, 117 (2012); Feuer v. Feuer, 178 A.D.3d 423, 415 (1st Dep't 2019); Mark Family Realty v. Sanko, 176 A.D.3d 481, 482 (1st Dep't 2019); Hugh O'Kane Elec. Co., LLC v. MasTec N. Am., Inc., 45 A.D.3d 413, 414 (1st Dep't 2007). Where the attorneys' fees are recoverable based on breach of a contract, the date when interest begins to accrue is when the court finally determines the party seeking the fees to be the prevailing party. Quadracci v. Freeman, 195 A.D.3d 560, 560-61 (1st Dep't 2021); 1199 Hous. Corp. v. Jimco Restoration Corp., 77 A.D.3d 502, 502-503 (1st Dep't 2010). While often the date when the court finally determines a party's entitlement to fees is toward the end of when the party has incurred them, here the court determined plaintiff to be the prevailing party on its breach of contract

claim March 11, 2020, but, as plaintiff acknowledges, it incurred more fees after that date than before.

Thus, again, not all interest on all the attorneys' fees and expenses awarded runs from that date; "only . . . the 'calculation' should begin from that date." Solow Mgt. Corp. v. Tanger, 43 A.D.3d 691, 691 (1st Dep't 2007). Since plaintiff incurred the fees and expenses at various times, through August 18, 2021, interest runs from March 11, 2020, only on the attorneys' fees and expenses incurred through March 11, 2020: \$53,451.77. Plaintiff sought, and the court awarded a judgment for attorneys' fees through August 20, 2021. Interest runs on each increment of fees and expenses from the date plaintiff incurred the fees or expenses. Thus, for example, interest on the attorneys' fees incurred August 20, 2021, runs from that date, not March 11, 2020. C.P.L.R. § 5001(b). Interest is not computed, as plaintiff seeks, from a date before the date plaintiff incurred the fees or expenses.

Consequently, the court also may select a reasonable intermediate date from which interest is to run on the balance of the attorneys' fees and expenses, \$106,918.49, incurred between March 11, 2020, and August 20, 2021. Solow Mgt. Corp. v. Tanger, 43 A.D.3d at 691. Since most of the attorneys' fees and expenses incurred after March 11, 2020, were between May 2 and August 20, 2021, a reasonable intermediate date is June 1, 2021. Therefore

the court awards \$160,370.26 in attorneys' fees and expenses, with interest at 9% per year on \$53,451.77 from March 11, 2020, and on \$106,918.49 from June 1, 2021.

III. CONCLUSION

In sum, the court grants plaintiff's motion to amend the order dated September 10, 2021, granting a judgment to plaintiff against defendant Van Zandt, to award a judgment for:

- (1) \$284,600.16 in rent, late fees, and use and occupancy fees, with interest at 9% per year from March 6, 2020, the approximate midpoint in the period for which rent was owed, and
- (2) \$160,370.26 in attorneys' fees and expenses, with interest at 9% per year on \$53,451.77 from March 11, 2020, and on \$106,918.49 from June 1, 2021, the approximate midpoint in the period after March 11, 2020, when the fees and expenses were incurred.

C.P.L.R. §§ 2221(d)(2), 5019(a). The court denies plaintiff's motion to the extent that plaintiff seeks interest from an earlier date.

DATED: December 10, 2021



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.