

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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NASSER SAMMAN,

Plaintiff,

- against -

ALROSE GROUP, LLC,

Defendant.

**TRIAL/IAS PART: 11
NASSAU COUNTY**

**Index No: 606597-15
Motion Seq. No. 7
Submission Date: 9/21/18**

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The following papers have been read on this motion:

- Notice of Motion.....X**
- Affirmation in Support and Exhibits.....X**
- Memorandum of Law in Support.....X**

This matter is before the Court for decision on the unopposed motion filed by Plaintiff Nasser Samman (“Samman” or “Plaintiff”) on September 5, 2018 and submitted on September 21, 2018. For the reasons set forth below, the Court grants the motion and awards Plaintiff statutory pre-judgment interest as follows: 1) from September 30, 2015 with respect to the cause of action alleging a breach of the Bankruptcy Clause in the parties’ agreement; and 2) from November 15, 2015 with respect to the cause of action alleging a breach of the Termination Clause in the parties’ agreement. The Court directs Plaintiff to submit judgment on five (5) days notice.

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order fixing the dates upon which Plaintiff may collect statutory pre-judgment interest from Defendant’s breach of contract and directing the Clerk of the Court to calculate said statutory interest to be recovered upon the sum awarded to Plaintiff by the jury verdict dated July 12, 2018, from the respective dates giving rise to the breach of contract.

Defendant has not submitted any response to the motion.

B. The Parties' History

The parties' history is set forth in detail in prior decisions of the Court and the Court incorporates the prior decisions by reference as if set forth in full herein. This matter proceeded to a jury trial before the Court, which resulted in a verdict on July 12, 2018 in favor of Plaintiff on both causes of action in the complaint, each of which sounded in breach of contract. The jury awarded Plaintiff as follows: \$250,000.00 with respect to the breach of contract claim relating to the Termination Clause in the parties' agreement ("Agreement"), and \$250,000.00 with respect to the breach of contract claim relating to the Bankruptcy Clause in the Agreement.

In support of the motion now before the Court, counsel for Plaintiff ("Plaintiff's Counsel") affirms that the jury did not fix a date from which to compute interest. He affirms, further, that following the jury verdict, counsel for Defendant advised Plaintiff's Counsel that Defendant would make no further motion in this action or otherwise attempt to set aside the verdict. In support of the motion, Plaintiff's Counsel provides copies of the following (Exs. 1-5 to Zabell Aff. in Supp.): the Extract of the Clerk's Minutes, dated July 12, 2018 (Ex. 1); Plaintiff's Employment Agreement, dated July 3, 2014 (Ex. 2); Alrose Allegria LLC's Notice of Bankruptcy (Ex. 3); Alrose Allegria LLC d/b/a Allegria Hotel's August 18, 2015 Termination Letter to Plaintiff (Ex. 4); and an email sent from counsel for Defendant to Plaintiff's Counsel, dated July 26, 2018 (Ex. 5).

C. The Parties' Positions

Plaintiff submits that, for the purposes of determining the appropriate date from which interest should accrue pursuant to CPLR § 5001, the earliest ascertainable dates on which Plaintiff had cognizable causes of action were: September 30, 2015 as to the Bankruptcy Clause; and November 15, 2015 as to the Termination Clause. Plaintiff asserts that these dates are taken from the timetable established by the Agreement, which set the dates on which Plaintiff was to receive contractual payments at ninety (90) days from the date that Defendant filed for bankruptcy, and three (3) months from the date of Plaintiff's wrongful termination.

RULING OF THE COURT

A. Recovery of Interest

CPLR § 5001 provides as follows:

(a) Actions in which recoverable. Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property, except that in an action of an equitable nature, interest and the rate and date from which it shall be computed shall be in the court's discretion.

(b) Date from which computed. Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred. 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.

(c) Specifying date; computing interest. The date from which interest is to be computed shall be specified in the verdict, report or decision. If a jury is discharged without specifying the date, the court upon motion shall fix the date, except that where the date is certain and not in dispute, the date may be fixed by the clerk of the court upon affidavit. The amount of interest shall be computed by the clerk of the court, to the date the verdict was rendered or the report or decision was made, and included in the total sum awarded.

CPLR § 5001(b) requires that prejudgment interest be computed from the earliest ascertainable date on which the prevailing party's cause of action existed. *Ogletree, Deakins, Nash, Smoak & Stewart, P.C. v. Albany Steel*, 243 A.D.2d 877, 880 (3d Dept. 1997). If that date cannot be ascertained with precision, the computation shall be from the earliest time at which it may be said the cause of action accrued. *Ogletree, Deakins, Nash, Smoak & Stewart, P.C. v. Albany Steel*, 243 A.D.2d at 880, quoting *Govern & McDowell v. McDowell & Walker*, 75 A.D.2d 979, 980 (3d Dept. 1980). Where damages are incurred at various times after the cause of action accrues, Section 5001 grants courts wide discretion in determining a reasonable date from which to award pre-judgment interest. *Conway v. Icahn & Co., Inc.*, 16 F.3d 504, 512 (2d Cir. 1994) citing *Cotazino v. Basil Dev. Corp.*, 167 A.D.3d 632 (3d Dept. 1990); *Ginett v. Computer Task Group, Inc.*, 862 F.2d 1085 (2d Cir. 1992).

B. Application of these Principles to the Instant Action

The Court grants the motion and awards Plaintiff statutory pre-judgment interest as follows: 1) from September 30, 2015 with respect to the cause of action alleging a breach of the

Bankruptcy Clause in the parties' agreement; and 2) from November 15, 2015 with respect to the cause of action alleging a breach of the Termination Clause in the parties' agreement. The Court is persuaded that, for the reasons outlined in Plaintiff's Memorandum of Law in Support, these are the earliest ascertainable dates on which Plaintiff's causes of action existed.

All matters not decided herein are hereby denied.

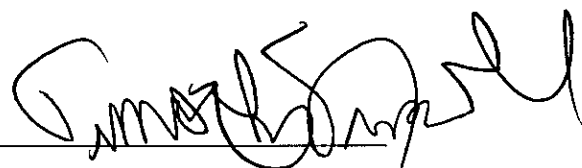
This constitutes the decision and order of the Court.

The Court directs Plaintiff to submit judgment on five (5) days notice.

ENTER

DATED: Mineola, NY

October 5, 2018



HON. TIMOTHY S. DRISCOLL
J.S.C.

ENTERED

OCT 10 2018

NASSAU COUNTY
COUNTY CLERK'S OFFICE