

At an IAS Part 39 of the Supreme Court of the State of New York, held in and for the County of New York, at the courthouse, 60 Centre Street, New York, New York, on the ~~29~~ day of ~~June~~ ^{MAY}, 2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SUNLIGHT GENERAL CAPITAL LLC,

Plaintiff,

- against -

CJS INVESTMENTS INC., CLEAN JERSEY SOLAR LLC, EFFISOLAR ENERGY CORPORATION,

Defendants.

ORDER TO SHOW CAUSE

Index No. 157935/2012

MOTION SEQUENCE #

PLEASE TAKE NOTICE that, upon the Affirmation of Daniel J. Hurteau, Esq., sworn to May 23, 2018, and all other pleadings and proceedings heretofore had herein, and sufficient cause being alleged therefor, it is hereby:

ORDERED that Defendant Effisolar Energy Corporation ("Effisolar") show cause before the Hon. Saliann Scarpulla at the New York County Courthouse, 60 Centre Street, New York, New York 10007, on the ~~6~~ day of June, 2018, at ~~10:30 a.m.~~ ^{12 pm}, or as soon thereafter as counsel can be heard, why an Order should not be granted, pursuant to CPLR 5001 and 5004, awarding Plaintiff pre-verdict statutory interest on damages of Nine Hundred Sixty-Eight Thousand Dollars (\$968,000.00) computed from April 23, 2010 to the date the verdict awarding said damages was rendered, February 15, 2018, amounting to Six-Hundred Eighty-Two Thousand Four Hundred Forty Dollars (\$682,440.00); and it is further

ORDERED that service of a copy of this Order to Show Cause and supporting papers shall be made upon Effisolar ^{via NYSCEF} ~~by electronic mail or hand delivery~~, no later than May 30, 2018, and the same shall be deemed good and sufficient service thereof; and it is further

ORDERED that papers in opposition to this application, if any, shall be delivered to the Court and served on counsel for Plaintiff, Daniel J. Hurteau, Esq., ^{via NYSCEF} ~~by electronic mail or hand delivery~~, so as to be received no later than 5:00 p.m. on June 1, 2018; and it is further

~~ORDERED that reply papers, if any, shall be delivered to the Court and served on Effisolar by electronic mail or hand delivery, so as to be received no later than 5:00 p.m. on June 1, 2018~~

ENTERED:



Hon. Saliann Scarpulla

**ORAL ARGUMENT
DIRECTED
HON. SALIANN SCARPULLA, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SUNLIGHT GENERAL CAPITAL LLC,

Plaintiff,

- against -

CJS INVESTMENTS INC., CLEAN JERSEY SOLAR
LLC, EFFISOLAR ENERGY CORPORATION,

Defendants.

**AFFIRMATION OF
DANIEL J. HURTEAU**

Index No. 157935/2012

DANIEL J. HURTEAU, an attorney duly admitted to practice law before the Courts of the State of New York, affirms under penalty of perjury:

1. I am a partner at the law firm Nixon Peabody LLP, counsel to SunLight General Capital LLC (“Sunlight”). As such, I am fully familiar with the facts and circumstances relevant to this matter.

2. I respectfully submit this Affirmation in support of Sunlight’s motion for an order, pursuant to CPLR 5001 and 5004, awarding Sunlight pre-verdict statutory interest on damages of Nine Hundred Sixty-Eight Thousand Dollars (\$968,000.00) computed from April 23, 2010 to the date the verdict awarding said damages was rendered, February 15, 2018, amounting to Six-Hundred Eighty-Two Thousand Four Hundred Forty Dollars (\$682,440.00).

3. Under CPLR 5001, pre-verdict interest must be awarded as of right “upon a sum awarded because of a breach of performance of a contract . . .”

4. On February 15, 2018, the jury returned a verdict against Effisolar Energy Corporation (“Effisolar”) on Sunlight’s breach of contract claim.

5. In New York, the rate of pre-verdict interest is codified at 9% per annum by statute. CPLR 5004.
6. Pre-verdict interest begins to run from the period that a claim accrues.
7. Under the statute, pre-verdict 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.” CPLR 5001(b).
8. The Court, upon motion, must specify the date from which pre-verdict interest will be computed, where the jury does not fix the date. CPLR 5001(c).
9. Here, based on voluminous documents and testimony presented at trial, Sunlight’s breach of contract cause of action against Effisolar accrued on April 23, 2010.
10. This is the date the Sunlight representative Ed Klehe testified he was asked to leave a meeting between Effisolar and the owner of the property at issue (CJS) where those two parties entered an agreement to develop the properties, and left Sunlight out of the arrangement.
11. It was the entry of that agreement between Effisolar and CJS on April 23, 2010 that Sunlight claimed was the breach of the non-contravention clause of the Effisolar/Sunlight Non-Disclosure Agreement.
12. The verdict having been rendered on February 15, 2018, Sunlight has calculated the amount of pre-verdict interest as Six-Hundred Eighty-Two Thousand Four Hundred Forty Dollars (\$682,440.00) from April 23, 2010.
13. Pursuant to CPLR 2217(b), the relief requested herein has to date not previously been requested in this matter.
14. Courtesy copies of this Affirmation and plaintiff’s proposed Order to Show Cause have been provided to defendant via e-mail.

WHEREFORE, for the reasons set forth above, SunLight respectfully requests that the Court grant an order, pursuant to CPLR 5001 and 5004, awarding Sunlight pre-verdict statutory interest on damages of Nine Hundred Sixty-Eight Thousand Dollars (\$968,000.00) computed from April 23, 2010 to the date the verdict awarding said damages was rendered, February 15, 2018, amounting to Six-Hundred Eighty-Two Thousand Four Hundred Forty Dollars (\$682,440.00).

Dated: May 24, 2018
Albany, New York

/s/ Daniel J. Hurteau
Daniel J. Hurteau