

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

PRESENT: HON. SALIANN SCARPULLA PART IAS MOTION 39EFM

Justice

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SUNLIGHT GENERAL CAPITAL LLC,
Plaintiff,
- v -
CJS INVESTMENTS INC., CLEAN JERSEY SOLAR
LLC, EFFISOLAR ENERGY CORPORATION
Defendant.

INDEX NO. 157935/2012
MOTION DATE 07/11/2018
MOTION SEQ. NO. 003

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 102, 103, 104, 105, 106
were read on this motion to/for POST JUDGMENT OTHER.

Upon the foregoing documents, it is

Plaintiff Sunlight General Capital LLC (“Sunlight”) moves, pursuant to CPLR 5001 and 5004, for a post-judgment order awarding it pre-verdict statutory interest on damages against defendant Effisolar Energy Corporation (“Effisolar”).

Sunlight and Effisolar entered into a Confidentiality and Nondisclosure Agreement on March 26, 2010 (the “NDA”). Subsequently, Sunlight presented Effisolar with investment opportunities pertaining to the development and financing of solar projects on certain real estate properties. Sunlight alleged that Effisolar breached the NDA by entering into a purchase agreement with CJS Investments Inc. (“CJS”), on April 23, 2010, wherein Effisolar and CJS agreed to develop the properties without Sunlight.¹

¹ Sunlight’s complaint in this action also named CJS and Clean Jersey Solar LLC (“Clean Jersey”) as defendants. On June 25, 2013, this Court (Judge Kapnick) granted CJS’s and Clean Jersey’s motion to dismiss on jurisdictional grounds. Sunlight then initiated a

Sunlight commenced this action to, among other things, recover damages for Effisolar's alleged breach of the NDA.

The case proceeded to trial and at its conclusion, on February 15, 2018, the jury found in favor of Sunlight on its claim for breach of the NDA and determined that Sunlight's damages from the breach were \$968,000.

Sunlight now moves for an award of pre-verdict statutory interest on the damages of \$968,000 from April 23, 2010 to the date of the verdict, February 15, 2018.

Discussion

Effect of the CJS Settlement

In its opposition to this motion, Effisolar submits an attorney affirmation, in which counsel asks the Court to: 1) enter a judgment awarding no damages to Sunlight; or, in the alternative, 2) reduce the jury's verdict amount of \$968,000 by the \$275,000 Sunlight received under the CJS Settlement (resulting in a revised damages amount of \$693,000). Effisolar asserts that Sunlight's sole basis for damages regarding the properties was the Memorandum of Understanding that Sunlight entered into with CJS on April 15, 2018 (the "MOU") and that Sunlight "compromise[d]" its claims relating to the properties by entering into the CJS Settlement and thereby waived its claims against Effisolar relating to the properties.

lawsuit against CJS and Clean Jersey in New Jersey entitled Sunlight General Capital, LLC v. CJS Investments Inc., Clean Jersey Solar LLC, Superior Court of New Jersey, Law Division, Monmouth County, Docket 4 MON-L-583-14 (the "New Jersey Action"). On April 2, 2015, Sunlight entered into a settlement agreement with defendants CJS and Clean Jersey (the "CJS Settlement") and terminated the New Jersey Action.

First, the CJS Settlement was between Sunlight, CJS, and Clean Jersey, and Sunlight did not compromise or waive the claims asserted against Effisolar in this action.² Second, the jury's damages award was for breach of contract. Therefore, General Obligations Law §15-108, which provides for setoff based on a settlement with a different defendant-tortfeasor, is inapplicable. *See Bauman v. Garfinkle*, 235 A.D.2d 245, 245 (1st Dept. 1997). Moreover, even though the wrongful conduct of Effisolar and CJS relate to the same properties, for Effisolar to be entitled to credit for the CJS Settlement amount, Effisolar and CJS must be able to be held jointly and severally liable for the same damages. *See Carrols Equities Corp. v. Villnave*, 76 Misc.2d 205, (Sup.Ct. Onondaga Cty.1973), *aff'd*, 49 A.D.2d 672, 373 N.Y.S.2d 1012 (4th Dept.1975). CJS cannot be held jointly and severally liable for breach of the NDA, which was between Sunlight and Effisolar. For these reasons I decline to reduce the jury's damages award.

Pre-Verdict Interest

Sunlight argues that it is entitled to pre-verdict interest from the time that its claim accrued until the date of the verdict at the statutory rate of 9% per annum. Using this formula, Sunlight asserts that pre-verdict interest should be awarded for the period of

² The Settlement Agreement states that "CJS and/or Clean Jersey shall pay Sunlight the sum of Two Hundred and Seventy-Five Thousand Dollars (U.S. \$275,000.00) (the "Settlement Sum") in full and final satisfaction of any and all claims that Sunlight may have against CJS and/or Clean Jersey that includes, but are not limited to, the claims at issue or the Solar Farms Development Memorandums of Understanding, dated February 2010 and April 15, 2010 between the parties and is the subject of litigation known as [the New Jersey Action]."

April 23, 2010 to February 15, 2018, and that the total amount of such interest is \$682,440.

Effisolar counters that Sunlight is not entitled to any pre-verdict interest on the damages award and states that if the Court finds otherwise, the pre-verdict interest should only be awarded on damages of \$693,000.

CPLR § 5001(a) provides, in relevant part, that “[i]nterest shall be recovered upon a sum awarded because of a breach of performance of a contract.” And, pursuant to CPLR § 5004, “[i]nterest shall be at the rate of nine per centum per annum, except where otherwise provided by statute.”

Thus, under the relevant statutes, Sunlight is entitled to pre-verdict interest on its breach of contract damages award at a rate of 9% per year.

“Preverdict interest ‘shall be computed from the earliest ascertainable date the cause of action existed’” and “a claim for breach of contract exists on the date of the breach.” *Village of Ilion v. County of Herkimer*, 23 N.Y.3d 812, 821 (2014) (citation omitted). Here, the cause of action existed on April 23, 2010 when Effisolar breached the NDA by entering into a purchase agreement with CJS. Hence, interest should be computed from April 23, 2010 until February 15, 2018, the date on which the jury rendered its verdict. However, I leave to the Clerk of the Court to calculate the total amount of pre-judgment interest to be awarded.

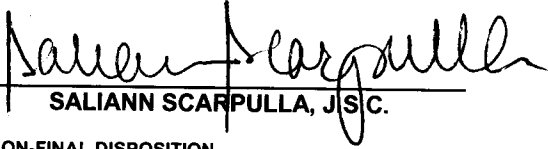
In accordance with the foregoing, it is

ORDERED that plaintiff Sunlight General Capital LLC's motion for a post-judgment order awarding pre-verdict statutory interest against defendant Effisolar Energy Corporation is granted; and it is further

ORDERED that, pursuant to the jury's verdict, the Clerk of the Court is directed to enter judgment in favor of plaintiff Sunlight General Capital LLC and against defendant Effisolar Energy Corporation in the amount of \$968,000, together with interest at the statutory rate of 9% from April 23, 2010 until the date of verdict, February 15, 2018, together with the costs and disbursements of the action.

This constitutes the decision and order of the Court.

9/18/2018
DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE