EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARGARET A. CHAN** **PART** **33**

Justice

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GLOBE INSTITUTE OF TECHNOLOGY, INC, OLEG RABINOVICH, and LUBA RABINOVICH

Plaintiffs,

- v -

878 EDUCATION LLC,

Defendant.

INDEX NO. 603917/2007

MOTION DATE _____

MOTION SEQ. NO. 004

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 122, 123, 124, 125, 126, 127, 138, 139, 140, 141, 142, 143

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT.

In this breach of contract action, plaintiffs, post-trial, move pursuant to CPLR 5001, to affix the date of accrual for interest calculations on their verdict award. Plaintiffs contend that this court should select two dates from which interest should run because the verdict recognized that defendants failed to make two payments of $675,000.00, each due one year apart pursuant to a written agreement. In opposition, defendant objects to the accrual dates as proposed by plaintiffs. The decision and order is as follows:

A jury trial commenced on March 6, 2018, and a verdict was rendered on March 8, 2018, which awarded plaintiffs the total amount of $1,350,000.00. The verdict represented two unpaid amounts of $675,000.00 from a written agreement between the parties. The defaulting dates for the payments were not specified on the verdict questionnaire. Plaintiffs argue that since there was no dispute as to when the payments were due in the agreement – October 29, 2008 and October 29, 2009 – interest should accrue from those dates. Defendant claims the verdict should be set aside and have made a separate motion to that end, which has not yet been submitted to this court.[1] In the alternative, defendant claims that the date of accrual for interest purposes should be, at the earliest, August 12, 2010, the date that the Amended Complaint was deemed served.

[1] As the motion to set aside the verdict is not yet before this court, this decision does not address any issues from that motion.

A computation for interest on damages runs from the date the damages were incurred (*see* CPLR 5001[b]). Where such damages were incurred at various times, the interest can be computed upon all the damages "from a single reasonable intermediate date" (*id*; *Delulio v 320-57 Corp.*, 99 AD2d 253, 255 [1st Dept 1984]). Without a single reasonable intermediate date for the accrual of damages rendered, the date of commencement of the action is the appropriate time from which preverdict interest is to accrue (*see 23/23 Communications Corp. v Gen. Motors Corp.*, 257 AD2d 367, 368 [1st Dept 1999]; *Hanover Data Services, Inc. v Arcata Nat. Corp.*, 115 AD2d 403 [1st Dept 1985]).

There is no single reasonable intermediate date here. Even though calculation from some date related to the defaults in the written agreement might be reasonably plausible, the jury was not questioned about the date from which the default(s) occurred. For this court to fix a date would be speculative (*see Hunt v Bankers and Shippers Ins. Co. of New York*, 50 NY2d 938, 940 [1980]). As this action was commenced on January 25, 2010, preverdict interest shall run from that date.

Accordingly, it is hereby ORDERED, that plaintiffs are entitled to statutory interest of nine percent (9%) per annum on the total award, running from the date of the commencement of the action –January 25, 2010. The Clerk of the Court is directed to enter judgment as written.

This constitutes the decision and order of the court.

5/10/2018
DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		DO NOT POST				FIDUCIARY APPOINTMENT		REFERENCE