

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MIRRA COMPANY, INC.,)
)
 Plaintiff)
)
 v.) **Docket No. 01-165-P-DMC**
)
 MAINE SCHOOL ADMINISTRATIVE)
 DISTRICT NO. 35,)
)
 Defendant)

**MEMORANDUM DECISION ON DEFENDANT’S MOTION FOR JUDGMENT AS A
MATTER OF LAW OR FOR NEW TRIAL AND PLAINTIFF’S MOTION TO CORRECT
JUDGMENT¹**

I. The Defendant’s Motion

The defendant, Maine School Administrative District No. 35, moves for judgment as a matter of law on one of several claims for damages presented to the jury at trial in this case or in the alternative for a new trial. MSAD 35’s Motion for Judgment as a Matter of Law or For New Trial, etc. (Docket No. 40). Specifically, it contends that the testimony of the plaintiff’s expert witness, Wayne Sheridan, on the plaintiff’s claim for damages resulting from alleged underutilization of its equipment on the work site, which the plaintiff alleged was caused by the defendant’s delays, was unreliable because “it was based upon flawed arithmetic and incorrect factual information.” *Id.* at 3. The defendant argues that, since Sheridan’s was the only testimony or evidence on this claim, it is accordingly entitled to judgment as a matter of law on the claim. *Id.*

¹ Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all
(continued on next page)

Petitions for judgments as a matter of law under Rule 50(a)(1) Fed.R.Civ.P. will be granted only in those instances where, after having examined the evidence as well as all permissible inferences drawn therefrom in the light most favorable to non-movant, the court finds that a reasonable jury could not render a verdict in that party's favor. In carrying out this analysis the court may not take into account the credibility of witnesses, resolve evidentiary conflicts, nor ponder the weight of the evidence introduced at trial.

In order to overcome a Rule 50 petition the party carrying the burden of proof must have introduced at trial sufficiently adequate evidence for the jury to determine the plausibility of a particular fact. Thus, in order to support a jury finding on such an issue, the evidence presented must make the existence of the fact to be inferred more probable than its non-existence.

Irvine v. Murad Skin Research Labs., Inc., 194 F.3d 313, 316 (1st Cir. 1999) (citations and internal quotation marks omitted). The underutilization-of-equipment claim was only one of several presented to the jury, and the jury was not required by the verdict form to indicate what portion of its damages award, if any, was specific to that or any other claim.

The plaintiff makes several arguments in opposition to the motion. It is not necessary for me to consider whether, as the plaintiff contends, the defendant failed to preserve all of the specific arguments presented in its motion or whether the motion is actually an untimely challenge to Sheridan's testimony under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). Plaintiff's Objection to Defendant's Motion for Judgment as a Matter of Law or For a New Trial² (Docket No. 46) at 1-2, 9-10. I deny the motion on its merits.

A jury verdict must not be set aside as a matter of law "unless there was only one conclusion the jury could have reached." *Crowley v. L.L. Bean, Inc.*, 303 F.3d 387, 393 (1st Cir. 2002) (citation omitted). That is not the case here. Counsel for the defendant highlighted on cross-examination of Sheridan the alleged errors which it now asserts render his testimony inadmissible. As was the case

proceedings in this case, including trial, and to order the entry of judgment.

² I assume from its content that this document was submitted in connection with this case. It bears no caption whatsoever.

in *Cummings v. Standard Register Co.*, 265 F.3d 56, 65 (1st Cir. 2001), that cross-examination “allow[ed] the jury room to discredit [the] testimony accordingly.” The jury in this case apparently chose not to do so. That choice was properly presented to the jury. The defendant has not shown here, any more than it did at trial, that Sheridan’s testimony was so lacking in foundation, so replete with errors or otherwise so lacking in a factual basis that the jury should not have been allowed to consider the claim in support of which it was offered.

The defendant’s motion is **DENIED**.

II. The Plaintiff’s Motion

The plaintiff, Mirra Company, moves for an order “correcting” the judgment by adding prejudgment interest. Mirra’s Rule 60(a) Motion to Correct Judgment, etc. (Docket No. 48) & Mirra’s Supplement and Amendment to Its Rule 60(a) Motion, etc. (“Supplement”) (Docket No. 50). The defendant opposes the motion on several grounds. MSAD 35’s Opposition to Mirra’s Motion to Correct Judgment, etc. (“Opposition”) (Docket No. 52).

The defendant conceded liability on the plaintiff’s breach-of-contract claim in this case. The only issue for the jury with respect to the plaintiff’s claim was the amount of damages. *See* Verdict Form (Docket No. 38). That claim was brought under Maine state law. “[W]hen a plaintiff secures a jury verdict based on state law, the law of that state governs the award of prejudgment interest.” *Aubin v. Fudala*, 782 F.2d 287, 289 (1st Cir. 1986). Where it is the practice of the federal district court in which trial was held to mention only the amount of the damage award and not costs or interest in the judgment entered on the docket, Fed. R. Civ. P. 60(a) is the appropriate vehicle by which the plaintiff may seek addition of interest to the judgment. *Id.* at 289-90. That is the case here. Contrary to the defendant’s arguments, this motion is not premature and Fed. R. Civ. P. 58 does not bar the inclusion of prejudgment interest in an order of judgment. The amount of the judgment was fixed on

the day on which it was entered. My ruling on the defendant's motion to amend that judgment, set forth above, means that the amount has not changed. Under ordinary circumstances, it would be merely "a simple, mechanical, nondiscretionary task for the clerk," *id.* at 289, to apply Maine law and calculate the amount of prejudgment interest to be awarded to the plaintiff in this case.

However, Maine law has created an unusual set of circumstances with respect to prejudgment interest. The apparently applicable statute provides, in relevant part:

1. Prejudgment interest; rate; avoidance. In all civil actions . . . prejudgment interest shall be assessed at a rate:

A. For actions in which the damages claimed or awarded do not exceed the jurisdictional limit of the District Court set forth in Title 4, section 152, subsection 2, of 8% per year; and

B. For other actions, equal to the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the first calendar week of the month prior to the date from which the interest is calculated under section 1602-A, plus 1%.

Prejudgment interest shall accrue from the time of notice of claim . . . upon the defendant until the date on which an order of judgment is entered. If no notice of claim has been given to the defendant, prejudgment interest shall accrue from the date on which the complaint is filed. If the prevailing party at any time requests and obtains a continuance for a period in excess of 30 days, interest shall be suspended for the duration of the continuance.

14 M.R.S.A. § 1602(1). A problem arises in this case because the current version of 4 M.R.S.A. § 152 imposes no jurisdictional limit on the Maine district court. Prior to March 15, 2001 the jurisdictional limit of the Maine district court established by section 152 was \$30,000. 4 M.R.S.A. § 152, Historical and Statutory Notes at 202.

The plaintiff contends that it is entitled to prejudgment interest at the rate of 8% because the Maine Superior Court has chosen to resolve the issue created by the Maine Legislature's failure to amend section 1602 by applying that rate to all civil judgments. Supplement at 2-3. It supports its

position with the affidavit of its counsel setting forth a conversation he had with an assistant clerk of the Maine Superior Court (Cumberland County). Affidavit of David P. Ray (Exh. A to Supplement) ¶¶ 2-4. The defendant correctly points out that this information is hearsay. Opposition at 4. In response, the plaintiff offers to bring “persons with direct knowledge” about the Maine Superior Court’s practice to an evidentiary hearing. Mirra’s Reply Memorandum, etc. (“Reply”) (Docket No. 53). No such hearing is necessary. The state trial court’s practice, unreported in any decision of the Maine Law Court and thus unreviewed by that court, does not constitute a binding interpretation of state law. I would not expect the chief justice of the Maine Superior Court to testify in this court concerning the reasons behind that court’s decision, if indeed it has reached such a decision, to interpret the unamended section 1602 in this manner. A representative of the Superior Court clerk’s office would not be the appropriate person to testify concerning those reasons. In the absence of some explanation of the state court’s reasoning, I would not find its position persuasive.

One obvious purpose of section 1602 as it applied before March 15, 2001 was to allow prejudgment interest on relatively small judgments, where fairness to the parties with respect to the prevailing interests rates in the economy at large would not be of great concern, to be calculated easily and quickly. The use of a rate established with reference to interest rates prevailing in the national economy for larger judgments speaks to fairness without requiring the legislature constantly to amend the statute to account for economic changes. As the Maine Legislature stated when it enacted 14 M.R.S.A. § 1602(1)(B):

Thus, under sections 3 and 4 [14 M.R.S.A. § 1602(1)(A) & (B)], for the larger cases, the interest rates judgment debtors and their insurers will pay will reflect the current value of money in society, rather than a specific statutory rate that may be high, given current economic conditions. In this way, insurance payments for large damage awards will not be artificially inflated so that an unnecessary cost may be reflected in increased insurance premiums for all.

Statement of Fact, 1987 Me. Laws P.L. 646 (L.D. 2520) at 11-LR4976. That purpose would not be served by a decision to apply a flat rate of 8% to all civil judgments, regardless of whether that rate is significantly higher or lower than that currently prevailing in the national economy, merely due to an oversight by the legislature when it amended section 152. The necessary result in most cases would be a windfall to plaintiffs, as in this case, or defendants, depending on the status of the economy. The First Circuit has stated that its practice, in dealing with requests for prejudgment interest, is “not [to] anticipat[e] changes in state law in advance of the state courts.” *Bogosian v. Woloohojian*, 158 F.3d 1, 8 (1st Cir. 1998). I will follow that practice here and order the clerk to apply the rate of prejudgment interest established by 14 M.R.S.A. § 1602(1)(B).

The defendant disputes the number of days for which the plaintiff seeks an award of prejudgment interest. First, it contends that the suspension provision of section 1602 applies because “Mirra consented to an enlargement of the discovery and motions deadlines of 111 days from March until July, 2002 and a postponement of the trial from May until September, 2002.” Opposition at 5. The court’s file indicates that the enlargement of the discovery and motions deadlines was requested jointly by both parties. Joint Objection to Scheduling Order and Proposed Discovery Plan (Docket No. 11). I see no indication in the file that the plaintiff alone requested a postponement of the trial from May until September 2002. Under these circumstances the plaintiff cannot be said to have requested and obtained a continuance of any kind.

The defendant also contends that a lower rate of interest is applicable and that the number of days for which the plaintiff seeks prejudgment interest is excessive. Opposition at 4-5. On the latter point, the plaintiff agrees that it is entitled to prejudgment interest for a period of 592 days rather than the 622 days sought in its motion. Reply at 5 n.4. On the former point, I agree with the plaintiff, *id.* at 4, that the reference to “first calendar week of the month” in section 1602 means the first full week of

the month. The defendant does not contend that the rate submitted by the plaintiff is incorrect when the statutory language is so interpreted.

The plaintiff's motion to correct the judgment is **GRANTED**. The clerk is directed to add to the judgment prejudgment interest for a period of 592 days at an annual rate of 2.41%.

Dated this 6th day of May 2003.

David M. Cohen
United States Magistrate Judge

Plaintiff

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