

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BOWEN MEDICAL COMPANY, LTD.
a/k/a MASSACHUSETTS MEDICAL
COMPANY, LTD.,

Plaintiff,

ORDER

02-C-0170-C

v.

NICOLET BIOMEDICAL INC.,

Defendant.

On November 14, 2002, I granted defendant Nicolet Biomedical, Inc.'s motion for summary judgment as to plaintiff's claims and defendant's counterclaim for \$266,756.87. However, because defendant did not tell the court how interest was to be calculated, I gave it until November 22, 2002, to do so. I gave plaintiff until November 29, 2002, to respond. The interest calculation is the only issue that remains outstanding in this case.

On November 22, defendant Nicolet submitted a detailed breakdown showing \$29,383.55 in interest due as of December 2, 2002. Plaintiff did not file a response to defendant's calculations. Instead, on November 29, 2002, defendant filed a notice of

substitution of counsel, a motion for reconsideration of this court's November 14 order and a brief in support of that motion. In its brief, plaintiff requests reconsideration as to three issues: (1) certain undisputed facts relating to the alleged intentions of defendant Nicolet; (2) application of the economic loss doctrine; and (3) the \$266,756.87 amount owed for equipment and services rendered. Plaintiff asserts further that a "detailed brief will be forthcoming quite shortly, quite possibly as early as Monday, December 2." In order to solidify the tentative nature of this statement, I will allow plaintiff to file its "detailed brief" no later than December 6, 2002. If plaintiff fails to do so, I will rule on its motion to reconsider on the basis of its November 29 brief. In any event, I will notify defendant if a response is required. A response will be needed only if plaintiff's brief covers issues not resolved in the November 14 order.

In addition, plaintiff seeks a clarification that the dismissal of defendants Benjamin S.C. So and Wilson Chan d/b/a Synapse Instrument Co. for failure to prosecute is *without prejudice*. The request is legitimate and will be granted.

ORDER

IT IS ORDERED that

1. Plaintiff Bowen Medical Company, Ltd. a/k/a Massachusetts Medical Company, Ltd. may have until December 6, 2002, to file its "detailed brief" in support of its motion

for reconsideration; I will notify defendant Nicolet Biomedical, Inc. if a response is required;
and

2. Plaintiff's request for clarification is GRANTED; the dismissal of defendants Benjamin S.C. So and Wilson Chan d/b/a Synapse Instrument Co is without prejudice.

Entered this 3rd day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge