

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

UNITED STARS INDUSTRIES, INC.,

Plaintiff,

v.

PLASTECH ENGINEERED PRODUCTS, INC.,

Defendant.

OPINION AND ORDER

06-C-0349-C

This civil suit for monetary damages is before the court for the purpose of calculating the interest owed plaintiff United Stars Industries, Inc. by defendant Plastech Engineered Products, Inc. following a determination that defendant breached the parties' long term supply agreement. In an order entered on June 5, 2007, I concluded that plaintiff was entitled to damages in the amount of \$811,993 for invoices unpaid by defendant, plus interest at the rate of 1% a month on those unpaid invoices, and \$264,574 for its losses on the finished products and raw materials it had on hand at the time of defendant's breach. Because the amount of interest owed was not clear from the record, I asked plaintiff to submit a proposed itemization of interest owed.

Plaintiff submitted a calculation, showing that it was entitled to \$172,103.40 in

interest on its unpaid invoices and claiming prejudgment interest at the rate of 5% a year on its losses relating to raw materials and finished products. Plaintiff contends that this latter amount meets the prerequisite for prejudgment interest under Wisconsin law that the amount be fixed and determinable at the time of breach and up to the date of entry of judgment. Kilgust Heating Div. of Wolff, Kubly & Hirsig, Inc. v. Kemp, 70 Wis. 2d 544, 549-50, 235 N.W.2d 292, 295 (1975). Plaintiff alleges that as of the October 19, 2005, the date on which defendant told plaintiff it was cancelling its orders, the losses on raw materials and finished products was fixed and determinable in an amount of at least \$264,574. It calculates that at an annual rate of 5%, simple interest due from October 19, 2005 to June 1, 2007 amounts to \$22,180.12.

Not surprisingly, defendant objects to the amount of interest attributable to the invoices and to any claim for interest on the materials and products. It contends that plaintiff's calculation is wrong in two respects: it shows interest as beginning to run on the invoices from the date of the issuance of the invoices in contradiction of payment terms that specified that interest was not due until 45 days from the date of issuance. It asserts that plaintiff erred in compounding the interest, arguing this violates the Wisconsin rule that "simple interest is used in contract cases unless the contract specifies otherwise." Allen & O'Hara, Inc. v. Barrett Wrecking, Inc., 964 F.2d 694, 696 (7th Cir. 1992) (citing W.G. Slugg Seed & Fertilizer, Inc. v. Paulsen Lumber, Inc., 62 Wis. 2d 220, 228, 214 N.W.2d

413, 418 (1974)).

On the first point, defendant misreads plaintiff's interest calculation. It does not claim interest accruing from the day an invoice was issued, but from 45 days later, just as defendant would have it.

On the second point, plaintiff relies on the express provision in the invoices that "seller at his option will charge the Buyer 1% interest per month on any balance not paid within the stated time." It asserts that this language establishes that it is not limited to simple interest under Wisconsin's default provision but is entitled to interest on all unpaid balances, including that part of the balance that represents accrued interest. Neither party has cited any case supporting or contradicting plaintiff's position and I have not been able to find one on point. However, the natural reading of "balance" in plaintiff's invoices is that it includes both previously unpaid interest charges and invoice amounts. The two amounts constitute the "balance due." Such a reading is supported by business practice. The whole point of adding an interest charge on an invoice is to make it disadvantageous for the buyer to treat the seller as a no-interest lender. Compounding interest increases the disincentive for the seller to withhold or delay payments. Therefore, I conclude that plaintiff is entitled to interest on the unpaid invoices through June 12, 2007, in the amount of \$172,103.40.

The next question is whether plaintiff is entitled to prejudgment interest on finished goods and raw materials. Defendant opposes any such award, arguing that the amount of

damages for these items was in dispute throughout the trial, making an award of interest inappropriate. It notes that it was not until September 28, 2006, that plaintiff identified its damages for these items as being \$353,836.00, that plaintiff's chief financial officer testified at trial that the damages were approximately \$270,000.00 and that the court awarded plaintiff \$264,574.00. It raises the additional objection that in the June 5 order, the court awarded plaintiff interest only on its invoices and not on the raw materials or finished products.

It is true that the June 5 order did not address the issue of interest on the losses represented by the materials and products but that omission does not bar an award now that the amount of those losses has been determined definitively. Nor does the fact that the final determination of loss was not made until after trial. Defendant was aware from the day this suit was filed that plaintiff had incurred losses resulting from defendant's breach of the supply contract and the basis for those losses (ordered materials that could not be used for other customers and finished products that were custom orders, not suitable for resale to others.). Although the final figure was determined by the court and included deductions for scrap sales and other mitigating steps that plaintiff took to reduce its losses, it is fair to say that defendant could have determined immediately upon the breach that the losses were at least \$264,574. Applying the 5% rate allowed under Wisconsin law, the prejudgment interest due is \$22,180.12 for the period from October 19, 2005 to June 1, 2007.

ORDER

IT IS ORDERED that plaintiff United Stars Industries, Inc. is entitled to judgment in its favor in the amount of \$811,993.00 for unpaid invoices for product shipped to defendant Plastech Engineered Products, Inc. during the period August 10, 2005 through October 6, 2005, plus contractual interest of \$172,103.40, and in the amount of \$264,574.00 for the losses plaintiff incurred on raw materials and finished products, plus prejudgment interest in the amount of \$22,180.12. The clerk of court is directed to enter judgment for plaintiff in this amount.

Entered this 11th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge