

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

MENARD, INC.,

Plaintiff & Counter-defendant,

v.

DALLAS AIRMOTIVE, INC.,

Defendant & Counter-claimant,

and

TEXTRON AVIATION, INC.,

Defendant.

OPINION AND ORDER

18-cv-844-wmc

Following a jury award of \$685,000.00 in damages, in which the jury found in favor of plaintiff Menard, Inc. (“Menards”), and against defendant Dallas Airmotive, Inc. (“DAI”), the court entered judgment in Menards’ favor in the amount of \$676,989.00 to account for a small offset in attorneys’ fees awarded to DAI as a discovery sanction against Menards. (Jury Verdicts (dkt. ##386, 388); Am. Judgment (dkt. #400).) Pending before the court is plaintiff’s motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) to add prejudgment interest from the date of Menards’ injury to the entry of judgment, which Menards calculates as \$115,793.15. (Dkt. #408.) For the reasons that follow, the court will grant that motion.

BACKGROUND¹

In the spring of 2018, Menards offered up for sale two Cessna Citation Bravo planes. On April 23, 2018, Menards entered into a conditional agreement to sell the two planes for \$1,050,000.00. (Trial Ex. 21.) On April 24, Menards discovered a defect in the engines at issue in this lawsuit. On July 15, 2019, it sold the planes with the broken diffuser bolts for \$365,000.00. (Trial Ex. 20.) The court entered judgment on September 8, 2021, and amended that judgment on September 13, 2021, to correct a typographical error in the amount of damages awarded to Menards. (Dkt. ##390, 400.)

OPINION

Under Rule 59(e), parties may move to alter or amend a judgment to seek prejudgment interest. *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 175 (1989) (“[T]he Court of Appeals was correct to conclude that a postjudgment motion for discretionary prejudgment interest constitutes a motion to alter or amend the judgment under Rule 59(e).”); *see also Latino Food Marketers, LLC v. Ole Mexican Foods, Inc.*, No. 03-C-190-C, 2004 WL 1254027, at *1 (W.D. Wis. June 3, 2004) (granting Rule 59(e) motion and awarding \$51,388 in prejudgment interest).

Given that this case concerned state law claims decided in this court under diversity jurisdiction, 28 U.S.C. § 1332(a), Wisconsin law governs the availability and computation of prejudgment interest. *See Medcom Holding Co. v. Baxter Travenol Lab., Inc.*, 106 F.3d 1388,

¹ A detailed account of the facts surrounding the parties’ dispute can be found in the court’s decision on summary judgment. (Dkt. #141.) The brief background provided here is simply for context in deciding Menards’ present motion.

1405 (7th Cir. 1997) (“In diversity cases governed by *Erie*, federal courts look to state law to determine the availability of (and rules for computing) prejudgment interest.”). Turning to Wisconsin law, “prejudgment interest may be awarded where the amount of damages is ascertainable or determinable prior to judicial determination, either because the damages are liquidated or because there is a *reasonably certain* standard of measurement.” *First Wis. Trust Co. v. L. Wiemann Co.*, 93 Wis. 2d 258, 276, 286 N.W.2d 360 (1980) (emphasis added); *see also Allen & O’Hara, Inc. v. Barrett Wrecking, Inc.*, 964 F.2d 694, 696 (7th Cir. 1992) (“The most frequently stated rationale for the rule is that if the amount of damages is either liquidated or determinable by reference to some objective standard, the defendant can avoid the accrual of interest by simply tendering to the plaintiff a sum equal to the amount of damages.”) (quoting *Johnson v. Pearson Agri-Systems, Inc.*, 119 Wis. 2d 766, 771, 350 N.W.2d 127 (1984)). Moreover, Wisconsin statutes allow for the award of prejudgment interest at an annual rate of 5%. Wis. Stat. § 138.04.

Consistent with Wisconsin law, Menards asserts that “the reasonably certain standard of measurement was the difference in fair market value of two Cessna Citation Bravo aircraft before and after the discovery of the broken diffuser bolts.” (Pl.’s Mot. (dkt. #408) 3.) In response, DAI principally rests its opposition on an argument that the case could have resulted in either no damages to Menards if DAI has been successful on its defamation counterclaim, which it ultimately was not, *or* a reduced amount of damages if DAI had been successful in demonstrating contributory negligence on the part of the engine manufacturer, Pratt & Whitney, which it ultimately was not.

However, neither of these arguments confront or undermine Menards' argument that its damages were subject to a reasonably certain standard of measurement on June 15, 2019, when Menards' sold its two planes at arm's length for an amount \$685,000 less than the amount that had been conditionally agreed to, again at arm's length, the day before an inspection revealed the broken diffuser bolts that the jury found DAI's negligence had caused. Instead, DAI simply argues that until the jury returned its verdict uncertainty remained as to whether Menards would prevail on liability, whether it would be entitled to any damage award in light of DAI's counterclaim for defamation, or whether Pratt & Whitney would be on the hook to pay some of the damages. This uncertainty has nothing to do with whether the amount of Menards' damages for its negligence claim were reasonably certain. *See Klug & Smith Co. v. Sommer*, 83 Wis. 2d 378, 385, 265 N.W.2d 269, 272 (1978) (“[T]he existence of a setoff, counterclaim, or cross-claim which is unliquidated will not prevent the recovery of interest on the balance of the demand.”).

At most, DAI points out that the jury did not award the full amount of the damages Menards requested of \$739,857 in damages, consisting of exactly \$685,000 for the diminution in market value of the two planes, plus an additional \$50,000 for an engine inspection and \$4,857 for storing the defective engines before and after that inspection. The jury's verdict strongly suggests they rejected the other, two categories of damages, but accepted Menards' straightforward argument that the change in market value reflected Menards' injury due to DAI's negligence. *See Dahl v. Hous. Auth. of Madison*, 54 Wis. 2d 22, 32 194 N.W.2d 618, 623 (1972) (explaining that a discrepancy between the amount requested and the amount awarded will raise a red flag only when the amount requested

was “substantially in excess of the amount finally determined to be due”). Admittedly it is not an absolute certainty that the jury accepted this argument, rather than made an oddly coincidental reduction in each category of damages to arrive at exactly the same sum as the lost market value caused by DAI’s negligence, but it is *reasonably* certain. So, too, Wisconsin law recognizes that the best evidence of market value is the price set at an arm’s length sale. See *State ex rel. Keane v. Bd. of Rev. of City of Milwaukee*, 99 Wis. 2d 584, 588, 299 N.W.2d 638, 640 (Ct. App. 1980) (“Valuation of both real and personal property for property tax purposes is based upon fair market value, ‘the amount it will sell for upon arms-length negotiation in the open market, between an owner willing but not obliged to sell, and a buyer willing but not obliged to buy.’”) (quoting *State ex rel. Mitchell Aero, Inc. v. Board of Review*, 74 Wis. 2d 268, 277, 246 N.W.2d 521, 526 (1976)). As such, the court agrees that Menards’ damages could be calculated using a “reasonably certain standard of measurement” under Wisconsin law.

Accordingly, prejudgment interest will be awarded at 5% interest from the date Menards discovered its injury on April 24, 2018, through the date of entry of the original judgment, September 8, 2021, in the total amount of \$115,793.15.²

² By the court’s math, a simple interest calculation would result in slightly less than the \$115,793.15 calculated by plaintiff. However, because defendant did not object to plaintiff’s method for calculating prejudgment interest -- rather, it objected to any award -- the court will accept plaintiff’s calculation and award that amount.

ORDER

IT IS ORDERED that:

- 1) Menard, Inc.'s motion to alter or amend the judgment to add prejudgment interest (dkt. #408) is GRANTED.
- 2) The clerk's office is directed to enter an amended judgment awarding prejudgment interest in the amount of \$115,793.15.

Entered this 21st day of June, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge