Blue Sage Capital, LP v Alfa Laval U.S. Holding Inc.
2018 NY Slip Op 32000(U)
August 16, 2018
Supreme Court, New York County
Docket Number: 650413/2014
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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BLUE SAGE CAPITAL, L.P.

Plaintiff,

- v -

ALFA LAVAL U.S. HOLDING INC.,

Defendant.

---X

INDEX NO. 650413/2014

MOTION DATE

MOTION SEQ. NO. 10

DECISION AND ORDER

HON. MARCY S. FRIEDMAN:

Alfa Laval U.S. Holding Inc. (Alfa Laval) moves for leave to reargue its post-trial motion for prejudgment interest on a jury award. Alfa Laval's post-trial motion was determined by this court by decision and order dated April 3, 2018 (Prior Decision). Leave to reargue is granted and, upon reargument, the court adheres to its Prior Decision.

Alfa Laval seeks reargument of what it characterizes as "the Court's determination that Sellers 'won' a judgment." (Alfa Laval Memo. in Supp. of Motion to Reargue, at 2.) As held in this court's Prior Decision, notwithstanding the jury's rejection of Blue Sage's $8 million dollar earnout claim,

> "Blue Sage is entitled to recover $1,063,254 in unpaid earnout payments. In denying Alfa Laval's summary judgment motion, which sought dismissal of all of Blue Sage's earnout claims, this court determined as a matter of law, based on its interpretation of the earnout provisions, that Blue Sage was entitled to at least that amount. (2016 WL 3632480, at * 3.) The issue of whether Alfa Laval must pay Blue Sage the $1,063,254 was not put to the jury, based on the parties' stipulation that, under this court's decision and subject to Alfa Laval's right to appeal, Alfa Laval must pay Blue Sage at least that amount. (Dec. 20, 2017 Trial Tr. at 1737-1738.)"

(Sup Ct, NY County, Apr. 3, 2018, Index Nos. 650413/2014 and 650527/2014, slip op at 4.)

Alfa Laval fails to raise a bona fide dispute as to whether Blue Sage is entitled the $1.063 million. On the contrary, at the trial, Alfa Laval expressly stipulated that Blue Sage would be entitled to this sum "subject to two caveats: One, the – subject to, you know, any appellate rights with respect to the ruling on summary judgment; but . . . More importantly, we would have a right to a setoff, given our claim against them for $12 million. If the jury came back with $8 million, they would not be entitled to 1.063. We would be entitled to less than the $8 million but they would not be entitled to the 1.063." (Dec. 18, 2017 Trial Tr. at 1563; see also, Dec. 20, 2017 Trial Tr. at 1732, 1736-1738 [discussion of stipulation].) In view of this unequivocal agreement on the record, Alfa Laval cannot now be heard to claim that "there never was a 'stipulation'." (Alfa Laval Reply Memo. on Motion to Reargue, at 1.)

Alfa Laval also seeks reargument on "the calculation of the amount on which Alfa Laval is entitled to prejudgment interest." (Alfa Laval Memo. in Supp. of Motion to Reargue, at 2.) While Alfa Laval contends that "[t]he Court properly determined that Alfa Laval is entitled to prejudgment interest from July 31, 2012, the date on which Sellers breached their representations and warranties under the Purchase Agreement" (id., at 3), Alfa Laval claims that, in calculating the effect of the offset on the prejudgment interest, "the Order fails to account for the fact that the 'mutual debts' of the parties -- to the extent that the debts were mutual at all -- arose years apart." (Id., at 2.) In particular, Alfa Laval claims that "[b]ecause of Sellers' various breaches, Alfa Laval was deprived of the use of $4,000,000 since July 31, 2012 and is entitled to interest on that amount at least until Sellers' entitlement to the earnout payment accrued." (Id., at 5.) Alfa Laval argues that the earnout payment "accrued" on either "December 20, 2017, the date of the verdict rejecting Blue Sage's claims, or, in the alternative, . . . July 7, 2016, the date Alfa Laval's summary judgment motion was denied." (Id., at 2.) Alfa Laval concludes that the

application of Blue Sage's offset of $1.063 million to Alfa Laval's $4 million jury award as of the breach date of July 31, 2012 was not proper for prejudgment interest purposes. Alfa Laval did not raise this argument in its post-trial motions.

In its post-trial motions, Alfa Laval did address, as an alternative, the effect that applying the offset would have on Alfa Laval's status as the prevailing party. Thus, Alfa Laval argued that "even if the Court were to consider an Earnout Period Two payment as part of its prevailing party analysis, the result would not change. Subtracting Sellers' 'claim' to $1,063,524 for Earnout Period Two from Alfa Laval's $4,000,000 breach of contract judgment leaves Alfa Laval with a net judgment in its favor of nearly $3,000,000." (Alfa Laval Memo. in Supp. of Post-Trial Motions, at 10.) However, while acknowledging the possibility that the court would apply an offset for prevailing party purposes, and despite Blue Sage's argument for the application of the "interest on the net balance rule" (Sellers' Interest and Attorney Fee Briefing, at 8), Alfa Laval's papers were devoid of any argument or analysis as to what effect the offset should have on prejudgment interest. Rather, Alfa Laval summarily argued that there was no "legal basis to deny AL statutory prejudgment interest on its full $4,000,000 judgment running from July 31, 2012." (Alfa Laval Reply Memo. on Post-Trial Motions, at 3.) Alfa Laval also opposed the $1,063,254 offset, claiming that it was not a "judgment or award of the type necessary to invoke the 'interest on the net balance' rule." (Id., at 3.) Alfa Laval did not undertake any discussion of how the offset would be applied if the court determined that "the interest of the net balance" rule should be followed.

While Alfa Laval raises an interesting argument as to the application of the offset, that argument is not now properly before this court. Alfa Laval had a full opportunity to raise the argument in its post-trial motion papers and failed to do so. A reargument motion does not

"serve to provide a party an opportunity to advance arguments different from those tendered on the original application." (Foley v Roche, 68 AD2d 558, 567-568 [1st Dept 1979].) The court accordingly declines to entertain Alfa Laval's new theory on this motion, and adheres to its Prior Decision regarding the award of prejudgment interest.

It is hereby ORDERED that the motion of Alfa Laval U.S. Holding Inc. for leave to reargue is granted and, upon reargument, the court adheres to its decision and order dated April 3, 2018.

8/16/2018
DATE

MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE