

**BNP Paribas, Singapore Branch v Natixis, N.Y.
Branch**

2022 NY Slip Op 30679(U)

March 2, 2022

Supreme Court, New York County

Docket Number: Index No. 651764/2020

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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BNP PARIBAS, SINGAPORE BRANCH,

Plaintiff,

- v -

NATIXIS, NEW YORK BRANCH,

Defendant.

INDEX NO. 651764/2020

MOTION DATE 01/24/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 52, 53

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT.

In motion sequence number 012, defendant Natixis, New York Branch (Natixis) moves, pursuant to CPLR 2221(d), 5015, and 5019, for leave to reargue and/or to correct the court’s order dated January 7, 2022 to provide for the computation of pre-judgment interest at the applicable contractual rate rather than the statutory rate.

On January 7, 2022, this court granted plaintiff BNP Paribas, Singapore Branch’s motion for summary judgment in lieu of complaint and awarded damages of \$46,076,165.15, with interest at the rate of 9% per annum from the date of February 20, 2020 until the date of the decision and thereafter at the statutory rate. (NYSCEF Doc. No. [NYSCEF] 47, Decision and Order [Seq. 001].) Defendant asserts that the contractual rate for prejudgment interest should apply, not the 9% statutory rate. Defendant admits that the issue of prejudgment interest was not raised in the underlying 3213 motion.

CPLR 5015 (a), empowers a court to vacate a judgment for five enumerated reasons; however, “a court may vacate its own judgment for sufficient reason and in the interests of substantial justice.” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 [2003] [citations omitted]; see also *Matter of HMC Holding Corp. v 539 Gates, LLC*, 170 AD3d 560 [1st Dept 2019] [vacating of confirmation of an arbitration award where there was sufficient reason in the interest of justice].)

The Standby Letter of Credit (SBLC) directs that any draw request must include a written drawing certification in the form provided in the SBLC. (NYSCEF 48, SBLC at 3¹.) The drawing certification form provides, in relevant part,

“2.WE HAVE REQUESTED PAYMENT FROM BUYER PER THE ATTACHED PHOTOCOPY, FACSIMILE OR TELEX COPY OF THE INVOICE IN THE AMOUNT OF U.S. DOLLARS. . . (AMOUNT IN WORDS AND FIGURES) AND AS OF THE DATE HEREOF BUYER HAS FAILED TO PAY US SUCH AMOUNT. THIS DRAWING IS IN THE AMOUNT OF U.S. DOLLARS . . .(AMOUNT IN WORDS AND FIGURES) WHICH IS NOT IN EXCESS OF THE AMOUNT FOR WHICH PAYMENT HAS BEEN REQUESTED AS SET FORTH IN PARAGRAPH 2 HEREOF, PLUS INTEREST (INTEREST SHALL BE CALCULATED ON THE ONE MONTH LONDON INTERBANK OFFERED RATE (LIBOR) FOR U.S. DOLLAR DEPOSITS OFFERED BY BLOOMBERG PUBLICATION AT 11:00 A.M. LONDON TIME AS QUOTED ON PAGE BBAM IN EFFECT ON THE DATE BUYER'S PAYMENT WAS DUE, PLUS THREE PERCENT PER ANNUM) FROM . . . (DATE BUYER'S WAS DUE) THROUGH THE DATE OF YOUR PAYMENT HEREUNDER. PAYMENT OF THE AMOUNT DEMANDED HEREUNDER, INCLUDING INTEREST, IS REQUESTED TO BE MADE NOT LATER THAN 10:00 A.M. LOCAL TIME AT YOUR OFFICE WITHIN THREE BANKING DAYS AFTER THE DATE OF YOUR RECEIPT OF THIS REQUEST.”

(*Id.* at 4-5.) Plaintiff asserts that this language clearly was intended to apply to the period between the buyer's default and defendant's payment of beneficiary's draw, and

¹ NYSCEF pagination.

that interest was to be included in defendant's payment made within three days after the draw.

“New York courts have long held that when an agreement involving an indebtedness ‘provides that the interest shall be at a specified rate until the principal shall be paid, then the contract rate governs until payment of the principal, or until the contract is merged in a judgment.’ Said another way, when the principal on a loan is due on a date certain and the debtor fails to make payment, the interest rate in the contract will be used to calculate interest on unpaid principal from the date of maturity of the loan to the entry of judgment. Thus, inclusion of a clause directing that interest accrues at a particular rate ‘until the principal is paid’ (or words to that effect) alters the general rule that interest on principal is calculated pursuant to New York’s statutory interest rate after the loan matures or the debtor defaults.”

(*NML Capital v Republic of Argentina*, 17 NY3d 250, 258-259 [2011] [citations omitted].)

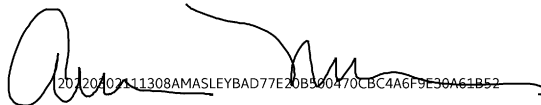
The interest referred to in the SBLC was due from February 20, 2020 through the date when defendant made payment, which was to occur within three business days of plaintiff’s request. Defendant did not pay the full amount owed. Thus, the interest continued to run at the rate prescribed by the SBLC. All remaining arguments have been considered and are without merit.

Accordingly, it is

ORDERED that defendant’s motion is granted and the order directing the County Clerk to enter judgment is vacated; and it is further

ORDERED that movant is directed to submit a proposed judgment in MS Word to SFC-Part48@nycourts.gov reflecting the correct prejudgment interest rate calculated on the one month London Interbank Offered Rate (LIBOR) for U.S. dollar deposits offered by Bloomberg Publication at 11AM London time as quoted on page BBAM in effect on the date that the buyer’s payment was due, plus 3% per annum. If plaintiff disputes the

calculation, it shall submit a counter proposed judgment within 5 days of the movant's submission.



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3/2/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE