

DOCKET NO.: HHD-X07-CV19-6105100-S : SUPERIOR COURT  
RALPH A. PALUMBO : COMPLEX LITIGATION  
DOCKET  
v. : AT HARTFORD  
MESTEK, INC, ET AL. : JUNE 12, 2024

FILED

JUN 12 2024

HARTFORD J.D.

**MEMORANDUM OF DECISION RE PRE- AND POST-TRIAL INTEREST**

This matter comes before the court for a request of prejudgment and postjudgment interest following a bifurcated court trial. In the first portion of the trial the court found that an implied partnership existed, comprised of Mestek, Inc. (Mestek) and the plaintiff, John Palumbo (Palumbo), in which Mestek possessed a one-third interest and Palumbo a two-thirds interest but controlled by Mestek. The purpose of the partnership was the monetization of a Power Purchase Agreement (PPA) with the Connecticut Light and Power Company for the energy produced over a twenty-year period by a fuel cell generation facility. *Palumbo v. Mestek, Inc.*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X07-CV-19-6105100-S, 2021 WL 4777026 (August 11, 2021, *Moukawsher, J.*). The goals of the partnership were realized in the form of two agreements, both negotiated at Mestek's direction and under its control.

The first agreement involved a master lease between a Mestek affiliate, Mackeeber Associates, LLC (MacKeeber), as lessor, and the defendant, Mestek Energy Park, LLC (MEP), as lessee, for property in South Windsor, Connecticut (property) for the amount of \$50,004 per year. The second agreement involved a sublease of the property from MEP to South Energy Investments, LLC (SEI) under the terms of which SEI developed and constructed a fuel cell generation plant on the property which it leased at the annual rate of \$125,000. The second

portion of the trial resolved whether the rental amounts of the master lease and sublease violated any duties Mestek owed to Palumbo and whether Mestek improperly failed to pay Palumbo his portion of the profits realized by MEP, the manifestation of the parties' partnership. Palumbo asserted that the \$50,004 provided for in the master lease was excessive and diminished MEP's potential profit, the difference between the master lease and the sublease. The court found, following a trial of the issues, that the fair market value of the property is \$84,000, a sum greater than the \$50,004 provided for in the master lease.

This finding compelled the conclusion that Mestek did not breach its fiduciary duties to Palumbo by arranging for an excessive lease payment for the master lease, nor that Mestek, who sequestered the rental payments received without disbursing any to itself, was unjustly enriched. The court concluded that Mestek did breach its fiduciary duty to Palumbo by not paying him the profit derived from the sublease. At the court's request, the parties stipulated to the amount of Palumbo's two-thirds share of MEP's profits as calculated from the date that MEP first began to receive revenue, June of 2020, through the date of the court's trial memorandum, March 24, 2024. This sum was \$588,047.96. Stipulation, # 216, p. 2. Palumbo now seeks prejudgment and postjudgment interest pursuant to General Statutes § 37-3a.

Section 37-3a (a) provides in relevant part that "interest at the rate of ten per cent a year, and no more, may be recovered and allowed in civil actions . . . as damages for the detention of money after it becomes payable. . . ." "The decision of whether to grant interest under § 37-3a is primarily an equitable determination and a matter lying within the discretion of the trial court. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action. . . . The court's determination regarding the award of interest should be made in view of the demands of justice rather than through the

application of any arbitrary rule. . . . Whether interest may be awarded depends on whether the money involved is payable . . . and whether the detention of the money is or is not wrongful under the circumstances.” (Citation omitted; internal quotation marks omitted.) *MedValUSA Health Programs, Inc. v. MemberWorks, Inc.*, 273 Conn. 634, 666, 872 A.2d 423 (2005).

The court exercises its discretion and finds as a matter of fact that equitable considerations counsel no award of prejudgment interest. This is so because while Palumbo was found to have proven a claim for the failure of Mestek to pay him the profits due from the MEP lease receipts, his original claims were for an entirely different joint venture, one to develop, install and operate a 5-megawatt fuel cell generation plant over which he was to exercise control. The trial court, *Moukawsher, J.*, rejected this claim and instead found a more modest and realistic venture existed simply to monetize the PPA. It is true that Mestek asserted no partnership existed at all, or in the alternative that Palumbo had anticipatorily repudiated the partnership, both of which were rejected by the court. The court, however, finds that Mestek’s assertions were made in good faith and were a closer reflection of the facts as found by the court. Moreover, Mestek offered Palumbo written terms for the partnership that were consistent with the formulation ultimately found by the court, that is, a one-third interest for Mestek and, in effect, a two-third interest for Palumbo, control of the partnership by Mestek and an acknowledgment that the venture had been monetized via the SEI deal.

Furthermore, while Mestek withheld disbursement of profits from the sublease to Palumbo, it also incurred a financial loss by sequestering *all* profits, in effect holding them in escrow, without disbursement of any to itself. This was done in the context of ongoing, even bitter litigation, in which the fair market value of the lease had not been determined conclusively. An evaluation of the equities cannot ignore that Mestek effected a lease payment from

MacKeeber to itself in the amount of \$50,004, significantly less than the fair market value of the lease, \$84,000, representing an approximate 40 percent loss. For these reasons, the court finds as a matter of fact that equitable considerations do not warrant an award of interest.

The court awards Palumbo 4 percent postjudgment interest, a figure that more closely reflects the current economic realities than Palumbo's 10 percent request.

The court enters judgment in favor of Palumbo in the amount of \$588,047.96 and orders postjudgment interest in the amount of 4 percent.

THE COURT

/s/ #435707  
Cesar A. Noble  
Judge, Superior Court