

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THEODORE J. VALENTINO, SR., : 3:97CV2356
Plaintiff, :
 :
v. :
 :
S.B. THOMAS, INC., :
ENTENMANN'S, INC., :
CPC BAKING DISTRIBUTION :
COMPANY, INC., :
Defendants :

**RULING ON DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW
OR FOR CORRECTION OF THE VERDICT**

The above-captioned matter was the subject of a five day jury trial before the undersigned. On August 29, 2001, the jury found for the plaintiff, Theodore J. Valentino, Sr., on a violation of the Connecticut Franchise Act ["CFA"], in regard to Valentino's fifteen-year subdistributorship under Robert Nardello. The jury, by special verdict, found that S.B. Thomas terminated Valentino's franchise without giving the sixty day written notice required by the Connecticut Franchise Act. The jury awarded Valentino \$60,000 in damages for the sixty day period. The undersigned will enter judgment after ruling on post-trial motions filed by the defendants.

Pending before the Court is a motion by defendants S.B. Thomas, Inc., et al., for judgment pursuant to Fed.R.Civ.P. 50(b), i.e., judgment as a matter of law. In the alternative, the defendants request that the amount of Valentino's judgment

be reduced to \$1,766 and that he not be awarded attorneys' fees or prejudgment interest. For the reasons set forth below, this motion will be denied in its entirety.

BACKGROUND

The plaintiff alleged in his complaint that he was a franchisee as defined in the CFA (Conn.Gen.Stat. § 42-133e, et seq.), and was terminated from that franchise by the defendants, enabling them to sell the territory the plaintiff was servicing to a third party.¹ The plaintiff received written notice of the termination from the defendants on October 23, 1997, with the effective date of the termination on November 2, 1997. The plaintiff alleged a violation of the CFA requirement of sixty days written notice of termination. On August 29, 2001, the jury in the trial found for the plaintiff on the CFA violation.

The charge to the jury on the CFA violation was as follows:

Valentino alleges that he acted as a subdistributor of S.B. Thomas products for nearly fifteen years prior to his termination. He alleges that he acted as a franchisee as defined under the Connecticut Franchise Act and that he was subject to the protections of that act. He further alleges

¹ The plaintiff also alleged that he was a franchisee pursuant to a contract he claimed he entered into with S.B. Thomas. The jury found for the defendants on the breach of contract claim.

that the oral contract of February, 1997, was a franchise agreement, and that S.B. Thomas' breach of that agreement was also a violation of the Connecticut Franchise Act.

A franchisor is a person who grants a franchise to another person, including a manufacturer, refiner or producer or a distributor, wholesaler or jobber who grants to a distributor, wholesaler or jobber or retailer, as the case may be, the authority to use a trademark, tradename, service mark or other identifying symbol or name under a franchise. A franchisee is a person to whom a franchise is granted, including a distributor, wholesaler or jobber or retailer who is granted the authority under a franchise to use a trademark, tradename, service mark or other identifying symbol or name.

A franchise is an oral or written agreement or arrangement in which a franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor.

The Connecticut Franchise Act states in pertinent part that

No franchisor shall, directly or through any officer, agent, or employee, terminate, cancel, or fail to renew a franchise, except for good cause which shall include, but not be limited to the franchisee's refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement.

The franchisor shall give the franchisee written notice of such termination, cancellation or intent not to renew, at least sixty days in advance to such termination, cancellation or failure to renew with the cause stated thereon.

To find for Valentino on the grounds that he was a franchisee under the Connecticut Franchise Act, by virtue of being a subdistributor for Robert Nardello, you must find that S.B. Thomas granted him

a franchise. To find for Valentino on the grounds that he was a franchisee under the Connecticut Franchise Act, by virtue of the February, 1997, agreement, you must find that S.B. Thomas' agreement to sell him distribution rights itself created a franchise.

In order for a relationship to be characterized as a franchise under the Connecticut Franchise Act, a two-prong test must be satisfied. A franchisor must substantially prescribe a marketing plan for the business in question, and the operation of the franchisee's business pursuant to such a plan must make its business substantially associated with that of the franchisor. Absent a marketing plan or system prescribed by a defendant and a substantial association with its trademark or trade name, the Connecticut Franchise Act is inapplicable.

If you find that S.B. Thomas granted Valentino a franchise, then you must consider whether S.B. Thomas terminated that agreement, and if you so find, was that termination in violation of the Connecticut Franchise Act?

If you find that S.B. Thomas did, in fact, terminate Valentino, then you must decide whether S.B. Thomas had "good cause" to do so. Under the Connecticut Franchise Act, good cause exists when a franchisor or franchisee materially breaches the agreement between them. However, good cause is not limited to proving contractual breaches of the franchise agreement, but may be based on a franchisor's legitimate business reasons.

If you find that S.B. Thomas had good cause to terminate Valentino, was that termination effective with less than sixty days notice?

The jury returned a special verdict, finding that Valentino proved by a preponderance of the evidence that S.B. Thomas had granted Valentino a franchise to service the route he was servicing as a subdistributor for Robert Nardello, and that S.B. Thomas had terminated that franchise. The jury awarded Valentino \$60,000 in compensatory damages for the

termination of the franchise without the required sixty days notice. The jury received instructions on compensatory damages only. It received no instruction on punitive damages.

DISCUSSION

Because a judgment as a matter of law intrudes upon the rightful province of the jury, it is highly disfavored. The Court of Appeals for the Second Circuit has repeatedly emphasized that when confronted with such a motion, the court must carefully scrutinize the proof with credibility assessment and all inferences made in favor of the nonmovant. A trial court may not grant a motion for judgment as a matter of law unless the evidence, when viewed in the light most favorable to the nonmoving party, is such that there can be only one conclusion as to the verdict that reasonable persons could have reached. A Rule 50 motion should be granted only where there was such a complete absence of evidence supporting the verdict that the jury's finding had to be the result of sheer surmise and conjecture. Falco v. Stew Leonard's, 187 F.R.D. 442 (D.Conn. 1999). This Court may grant a judgment as a matter of law only if this case meets these stringent standards.

The defendants' motion cannot meet the stringent

standards set forth above. The jury based its decision on extensive testimony given in regard to the fifteen-year subdistributorship, and was instructed in the law by a thoroughly discussed and contested jury charge which was subsequently agreed upon by both parties. The jury requested information from the Court during deliberations indicating its extensive inquiry into the matter of whether the subdistributorship was a franchise granted by S.B. Thomas, including the question of who notified Valentino that his subdistributorship was terminated, and how that notification was accomplished. The jurors were informed that the termination was mailed by the defendants directly to Valentino's home. Accordingly, this Court is loath to intrude on the rightful province of the jury by reversing the jury's findings. As noted earlier, the jury charge and the special verdict form were modified and adjusted to accommodate counsel for both parties, and were finally approved by both. The jury's special verdict will be validated.

AWARD OF DAMAGES

The defendants argue that the jury's award of \$60,000 was punitive, based on a technical violation of the CFA. The defendants state that the Court must reject the award as a matter of law because the CFA does not provide for punitive

damages.

The jury received the following instruction on compensatory damages:

Now, if you have found that Valentino has proven his claims by a preponderance of the evidence, then you may consider what damages, if any, are due to him, the injured party. Of course, the fact that I give you instructions on damages should not be taken as an indication that I think that damages should be, or should not be, awarded. That is a determination which is left entirely to you. I am instructing you on principles governing damages awards so that, in the event you should find the defendants liable, you will know on what basis to consider any award of damages.

Compensatory damages represent the sum of money that will fairly, adequately and reasonably compensate a person for harm proximately caused by another's conduct. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize a defendant. Neither can such damages be based on speculation.

An award of damages is designed to place the injured party, so far as it can be done by money, in the same position he would have been in had there been no unlawful conduct. The injured party may recover for those losses which he has proved by a preponderance of the evidence were the direct or natural result of the offending party's conduct. An injured party is entitled to those damages which the offending party should have realized might result from its conduct.

You may not guess or speculate as to the proper amount of the award of damages, but absolute certainty is not required. Reasonable certainty is the test. You must be able, in view of the evidence which is offered, to arrive with a reasonable degree of certainty at some conclusion as to what the plaintiff lost.

Applying these principles to the fact situation before you, should you conclude that S.B. Thomas breached the contract with Valentino, the proper measure of damages that may be awarded to Valentino

is the market value of the route on the date on which he was not allowed to purchase the route.

If you should find that Valentino is entitled to a verdict which is based in part on future profits, then it becomes the duty of the jury to ascertain the present worth in dollars of such future damages, since the award of future damages necessarily requires that payment be made now for a loss that will actually not be sustained until some future date. Under these circumstance, the result is that Valentino will, in effect, be reimbursed in advance of the loss and will have the use of money which he would not have received until a future date but for the verdict.

In order to make a reasonable adjustment for the present use, interest-free, of money representing a lump sum payment of anticipated future loss, the law requires that the jury discount or reduce to its present worth the amount of the anticipated future loss by taking (1) the interest rate, or the return which Valentino would reasonably expect to receive on the investment of a lump sum payment, together with (2) the period of time over which the future loss, whatever that amount, would reasonably be certain to earn or return if invested at such a rate of interest over such a future period of time. Then you should include in your verdict an award for only the present worth, the reduced amount of the total anticipated future loss.

The Court disagrees with the defendants' contention that the jury award was punitive, based on the Court's admonishment above that compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize a defendant. The Court also disagrees with the defendants that Valentino was entitled to only sixty days of lost profits, or that the jury awarded the \$60,000 based on the rate of \$1,000 per day for sixty days. The defendants were the authors of

the complex formulations present in the jury charge to be utilized by the jury in determining compensatory damages. The Court is not privy to the methodology the jury utilized in determining the award, nor is counsel for the parties privy to that information. The Court will not second-guess the jury's determination of compensatory damages.

ATTORNEYS' FEES

The defendants also contend that Valentino should not be awarded attorneys' fees because he was not a "successful" plaintiff, noting that the jury did not find for Valentino on his breach of contract claim, or on the alleged violation of the Connecticut Unfair Trade Practices Act. The defendants also state that the CFA provides no guidance as to what it means for the plaintiff to be successful.

The CFA does not require that a litigant be successful on all counts brought before the court. Conn.Gen.Stat. § 42-133g. The statute provides in pertinent part that in an action for violation of the CFA, "such franchisee, if successful, shall be entitled to costs, including, but not limited to, attorneys' fees." The Court construes the plain language of the statute in finding that because Valentino was successful in proving a violation of the CFA, he is entitled to attorneys' fees under § 42-133g. Whether he won or lost on

the other counts is irrelevant to the CFA's award of attorneys' fees.

PREJUDGMENT INTEREST

The defendants also argue that prejudgment interest should not be awarded to Valentino, or in the alternative, if the Court does award prejudgment interest, it should be calculated on the defendants' determination of a just award of \$1,766. The defendants also state that the Court must consider whether the amount to which the plaintiff was found to be entitled was a liquidated sum.

Connecticut law allows a court discretion to award prejudgment interest, to determine when such interest commences, and what rate of interest to apply. Hudson River Cruises, Inc. v Bridgeport Drydock Corporation, 892 F.Supp. 380 (D.Conn. 1994). An award of prejudgment interest must take into account the following factors: (1) the need to fully compensate the wronged party for actual damages suffered; (2) considerations of fairness and the relative equities of the award; (3) the remedial purpose of the statute involved; and (4) such other general principles that are deemed relevant by the court. Worthington v City of New Haven, 1999 WL 958627 (D.Conn. 1997). In addition, plaintiff's counsel correctly points out that "whether a sum of money has been liquidated

may be useful but is not a controlling factor; and the allowance of interest is primarily an equitable determination to be made within the discretion of the trial court." Scribner v O'Brien, 363 A.2d 160, 169 (Conn. 1975).

This Court finds that prejudgment interest is proper based on the jury's finding of a violation of the CFA. In its discretion, the Court will award such interest to Valentino from the date of the violation, calculated on \$60,000, the amount awarded by the jury.

CONCLUSION

For the reasons set forth above, the defendants' motion for judgment pursuant to Fed.R.Civ.P. 50(b) and for correction of the verdict (Doc. # 72) is hereby DENIED.

The clerk is instructed to enter judgment in favor of the plaintiff in the amount of \$60,000, with prejudgment interest at the U.S. 52-week Treasury Bill rate, pursuant to 28 U.S.C. § 1961(a), compounded from November 2, 1997, to the date of this ruling. The Court awards reasonable attorneys' fees to the plaintiff pursuant to Conn.Gen.Stat. § 42-133g. Plaintiff's counsel is ordered to submit a documented motion for attorneys' fees.

SO ORDERED.

_____/s/_____

Warren W. Eginton, Senior U.S. District Judge

Dated this 28th day of October, 2001, at Bridgeport,
Connecticut.