

STATE OF NORTH CAROLINA  
BRUNSWICK COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
19 CVS 865

CAMPBELL SALES GROUP,  
INC. d/b/a LEATHER ITALIA,  
USA,

Plaintiff,

v.

NIROFLEX BY JIUFENG  
FURNITURE, LLC; HIGH POINT  
MARKETING GROUP, INC.;  
GENFINE FURNITURE  
INDUSTRY, LTD. a/k/a  
HUIZHOU JIUFENG SCIENCE  
TECHNOLOGY INDUSTRIAL  
CO. LTD.; MICHAEL  
ELKHATIB; and JOHN THOMAS  
MOODY a/k/a QUING CHUN  
MU,

Defendants.

**ORDER AND JUDGMENT ON  
COUNTERCLAIMS**

1. **THIS MATTER** comes before the Court on its own motion. On 5 December 2022, the Court issued an Order and Opinion on Motions for Summary Judgment (the “Summary Judgment Order,” ECF No. 168) that, *inter alia*, granted summary judgment on the liability issue as to Defendant Genfine Furniture Industry, Ltd. a/k/a Huizhou Jiufeng Science Technology Industrial Co. Ltd.’s (“Genfine”) counterclaims in this action for breach of contract with regard to certain shipments of furniture for which it did not receive payment from Plaintiff (“LIU”).

2. Genfine argued that it was entitled to a judgment in the following amounts on its counterclaims:

\$484,134.35 for the price of the Received Goods and the Abandoned Goods, plus \$33,174.91 in incidental damages, plus interest of \$5,147.52 through May 26, 2019, plus interest of \$106.11 per day from May 26, 2019 through the date of judgment, and that the judgment bear interest at the legal rate of 8%.

(Summary Judgment Order ¶ 139.)

3. In its Summary Judgment Order, the Court ruled that LIU “has failed to meaningfully challenge Genfine’s calculation of damages attendant to its counterclaims. Moreover, the Court has carefully reviewed the evidence submitted by Genfine in support of its requested damages and is satisfied that they are supported by admissible evidence.” (Summary Judgment Order ¶ 140.)

4. However, the Court ordered the parties to submit supplemental briefs based on its determination that “Genfine ha[d] not clearly explained the basis for its calculation of interest[.]” (Summary Judgment Order ¶ 141.)

5. In their supplemental briefs, the only real dispute between the parties as to the proper calculation of interest concerns the applicable date of breach of the contracts that form the basis for Genfine’s counterclaims to be used in computing prejudgment interest. The Court held a hearing on this issue on 20 January 2023.

6. North Carolina’s General Statutes provide that “[i]n an action for breach of contract . . . the amount awarded on the contract bears interest from the date of breach.” N.C.G.S. § 24-5(a) (2021). *See also Cleveland Constr., Inc. v. Ellis-Don Constr., Inc.*, 210 N.C. App. 522, 536–37 (2011) (repeating the well-settled rule that in a breach of contract action, interest accrues from the date of the breach).

7. Here, Genfine argues that in support of its motion for summary judgment it offered undisputed evidence on this issue by providing invoices that

contained an estimated shipping date for each container of furniture for which payment was never received from LIU. (ECF Nos. 133.3, 133.4.) Genfine contends that under the terms of the Payable Agreement executed by Genfine and LIU—which was also included in the summary judgment record—the date of the breach for each shipment of goods was thirty days after the listed estimated shipping date, as payment was due under the Agreement thirty days after shipping. (ECF No. 133.2.)

8. In response, LIU contends that Genfine failed to satisfy its burden on this issue at the summary judgment stage based on the fact that it did not offer evidence that the goods were *actually shipped* on the estimated shipping dates. Given the absence of such evidence, LIU asserts, the Court should instead exercise its discretion and simply use the filing date of Genfine’s counterclaims as the date upon which interest began to accrue.

9. The Court concludes that LIU’s argument rests on a misapprehension of the parties’ applicable burdens at the summary judgment stage. It is well settled that “the party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact by the record properly before the court and his entitlement to judgment as a matter of law . . . . If the moving party meets this burden, the party who opposes the motion for summary judgment must either assume the burden of showing that a genuine issue of material fact for trial does exist or provide an excuse for not so doing.” *Vassey v. Burch*, 301 N.C. 68, 72–73 (1980) (cleaned up).

10. Genfine met its burden on summary judgment by providing competent evidence of the shipping dates of each of the containers at issue through evidence stating the anticipated date of departure of each of the furniture shipments. LIU, as the non-moving party, had the burden of rebutting Genfine's evidence and—as noted in the Court's Summary Judgment Order—failed to do so.

11. LIU has failed to offer any evidence that would tend to show that the estimated shipping dates listed on the individual invoices were inaccurate and that the furniture was actually shipped on later dates. Therefore, the Court is satisfied that it is appropriate to treat as the date of breach for each shipment the date falling thirty days after the anticipated shipping date.<sup>1</sup>

12. The Court notes that the cases cited by LIU in support of its request that the Court instead use the date the counterclaims were filed as the date of breach are materially distinguishable. In those cases, the claimant failed to offer any adequate basis for the Court to determine the actual date of the breach. *See, e.g., F.E. Myers Co., Div. of McNeil Corp. v. Pipe Maint. Servs., Inc.*, 599 F. Supp. 697, 704–05 (D. Del. 1984) (awarding interest on a breach of contract judgment from the date of the filing of the complaint where “[Plaintiff] contend[ed], *without stating any reasons*, that it [was] entitled to prejudgment interest from February 4, 1983”) (emphasis added).

13. Having determined the appropriate dates of the breaches, the Court is satisfied that Genfine's remaining calculations in its summary judgment materials support its requested prejudgment interest. Genfine calculated its interest as follows:

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<sup>1</sup> The Court observes that LIU makes no argument that the furniture at issue was not actually shipped on the estimated shipping dates.

prejudgment interest accrued on the outstanding balance of the goods at the legal rate of 8%; as of 26 May 2019, \$5,147.52 in interest had accrued; after 26 May 2019, interest accrued at a rate of \$106.11 per day through the date of the judgment; there are 1,338 days between 26 May 2019 and 23 January 2023—the date of this Judgment, and therefore, \$147,122.70 in prejudgment interest has accrued as of the date of this Judgment.<sup>2</sup>

**THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

Judgment is hereby entered against Plaintiff Campbell Sales Group. Inc. d/b/a Leather Italia, USA in favor of Defendant Genfine Furniture Industry, Ltd. a/k/a Huizhou Jiufeng Science Technology Industrial Co. Ltd. in the amount of \$517,309.26 to bear interest at the legal rate of 8% from the date of this Order and Judgment plus \$147,122.70 in prejudgment interest.

**SO ORDERED**, this the 23rd day of January, 2023.

/s/ Mark A. Davis  
Mark A. Davis  
Special Superior Court Judge for  
Complex Business Cases

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<sup>2</sup> As noted above, the Court has already ruled in the Summary Judgment Order that no genuine issue of material facts exists as to any other aspect of Genfine's right to a judgment as a matter of law on its counterclaims. (Summary Judgment Order ¶ 138.)