D.N. CV 06 5014930 S (X02) : SUPERIOR COURT

DUR-A-FLEX, INC. : JUDICIAL DISTRICT OF

VS. : WATERBURY AT WATERBURY

LATICRETE INTERNATIONAL, INC. ET AL : COMPLEX LITIGATION

: MAY 27, 2010

MEMORANDUM OF DECISION

RE: POST VERDICT MOTIONS

I. BACKGROUND

The above-entitled matter was tried before a jury for a period of eight weeks. The Plaintiff Dur-A-Flex, Inc. (hereinafter referred to as "Dur-A-Flex") alleged three counts against Defendant Laticrete International Inc.(hereinafter referred to as "Laticrete"). First, Dur-A-Flex alleged that Laticrete and Defendant Rosi Rooshenas (hereinafter referred to as "Rooshenas") had misappropriated trade secrets from the Plaintiff in violation of Connecticut General Statutes Sections 35-50 et seq.(hereinafter referred to as "CUTSA"). Second, Plaintiff alleged that Defendant Laticrete had breached the terms of a Non-Disclosure Agreement between the parties. Third,

Plaintiff alleged that the Defendant Laticrete had violated Connecticut General Statutes Section 42-110g et seq.,the Unfair Fair Trade Practices Act (hereinafter referred to as "CUTPA").

Dur-A-Flex had been a supplier of colored sand to Laticrete for many years. Laticrete was the only customer of Dur-A-Flex for this product. The two parties were never competitors. Ms. Rooshenas, an employee of Laticrete, also signed the Non-Disclosure Agreement. She had assisted Dur-A-Flex in color matching the numerous colors used by Laticrete in its usage of sand for tile grout. She had also visited the Dur-A-Flex plant many times.

In view of the sensitive nature of the information, the Court will be very generic in its description of the Complaint. The allegations of the Complaint concerned the process, and/or the components parts thereof, for the production of the colored sand. This process, and/or component parts thereof, included, among other things, the nature of the binder used in the process and the temperature at which the sand was heated.

The parties engaged in a business relationship for many years. When Dur-A-Flex noticed a substantial reduction in the orders from Laticrete it investigated the cause, and subsequently instituted this litigation.

On May 18, 2010, the jury returned a verdict in favor of Dur-A-Flex on the CUTSA count against Laticrete in the total amount of $ 43.7 million. The jury found in favor of Defendant Rooshenas on the CUTSA Count. The jury also found in favor of Dur-A-Flex on the Breach of Contract Count, but awarded $ 0 damages. The jury also found that an unfair trade practice had occurred, but that there was no ascertainable loss as a result thereof.

On May 20, 2010, this Court conducted a hearing, pursuant to the CUTSA statute to determine if a reasonable royalty should be awarded and/or an injunction should issue. The Court also heard evidence regarding whether or not the actions of Laticrete were wilful and malicious, which, if found, could result in a double damage award and punitive damages.

On May 21, 2010, this Court conducted a further hearing regarding the issue of attorneys fees which may be awarded under both CUTSA and the Non-Disclosure Agreement.

On May 27, 2010, this Court conducted an additional hearing regarding the issue of whether a Prejudgment Remedy should now issue in view of the verdict. In addition, the Court heard the Defendant's Motion to Set Aside the Verdict and considered certain miscellaneous motions. The Court reserved decision on all of the aforesaid motions.

II. DISCUSSION

A. Reasonable Royalty

C.G.S. Section 35-52 (b) provides:

> If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

Section (a) of that section provides, in relevant part, that any

injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

The parties have stipulated that, in the event that the Court determines that a reasonable royalty should be awarded, any royalty should not extend longer than five years at the rate of $10,000.00 per month. Laticrete does not concede that there should be a reasonable royalty and does not agree that, if a reasonable royalty is found, said royalty should extend for a period of five years.

Laticrete began to produce its own colored sand in 2004. In 2005, its production had expanded to encompass the United States. The parties had agreed, after some rulings by the Court, that any award made by the jury should be capped at the end of 2009. The reason for this stipulation was that there was a suggestion that Laticrete had changed its process for producing colored sand in January, 2010. Thus, if found, Laticrete would no longer be using the process, or component parts thereof, which the jury determined was a trade secret that had been misappropriated.

The Court has now heard evidence regarding Laticrete's new process. The Court finds, and Dur-A-Flex counsel agrees, that the new process is different than the Dur-A-Flex process for 39 of the 40 colors produced by Laticrete. An entirely different chemical compound is being used in the process. The process, however, appears to be unchanged for the color "Bright White", which is one of Laticrete's best selling colors. "Bright White" was one of the colors which Dur-A-Flex had produced for

Laticrete. There was evidence that there was usually some problem with the "whiteness" of the color and Laticrete would add its own enhancement before selling the product. However, said enhancement does not change the fact that the sand had been manufactured through the Dur-A-Flex process.

The Court finds that it would be unreasonable to prohibit future use. The product has been on the market for many years. Therefore, the Court issues an injunction, pursuant to C.G.S. Sec. 35-52 (b) conditioning future use upon the payment of a reasonable royalty in the amount of $10,000.00 per month for a period of five years. Pursuant to the language of the statute, the Court finds that the use could have been prohibited when it was nationally distributed in 2005. In view of the fact that it has been marketed for approximately five years, a five year reasonable royalty award seems appropriate. The Court further orders that said monthly payment is to be made to a third party escrow agent who is to hold said funds until the resolution of the case.

B. Wilful and Malicious Misappropriation

C.G.S. Section 35-53 (b) provides:

> In any action brought pursuant to subsection (a) of this section, if the court finds wilful and malicious misappropriation, the court may award punitive damages in an amount not exceeding twice any award made under subsection (a) and may award reasonable attorney's fees to the

prevailing party.

It has been held that "the flavor of the basic requirement to justify an award of punitive or exemplary damages has been repeatedly described in terms of wanton and malicious injury, evil motive and violence. . . . Punitive damages may be awarded only for outrageous conduct, that is, for acts done with bad motive or with a reckless indifference to the interests of others." Triangle Sheet Metal Works, Inc. v. Silver, 154 Conn. 116, 128, 222 A.2d 220 (1966). Thus, in Elm City Cheese Co., Inc. v. Federico, 251 Conn. 59, 752 A.2d 1037 (1999), an award of wilful and malicious misappropriation was upheld where there existed a breach of fiduciary duty and where the defendant had expressed "ill will" toward the principal owner of the plaintiff.

A Federal Circuit Court, applying Illinois' version of CUTSA, concluded that misappropriation of a trade secret is not wilful or malicious unless it is motivated by malice against the plaintiff. Roton Barrier, Inc. v. The Stanley Works, 79 F.3d 1112, 1121 (Fed. Cir. 1996). Further, when a former employee took the plaintiff's property, which property helped the employee set up a competing firm, a Connecticut Superior Court declined to award punitive damages under Section 35-53(b). "While the evidence supports a finding that the defendant was clearly motivated to help himself, there is no evidence from which the court may reasonably infer that the defendant intended to harm the plaintiff." Dunsmore & Associates., Ltd. v. D'Alessio, Superior Court, Judicial District of New Haven at New Haven. Docket No. CV00 409906 (January 6, 2000, *Levin, J.*) The Court also noted that "malice imports a motivating intent or design, actual or constructive to harm." Id.

In this case, there is no evidence of a specific intent to harm. Laticrete was not a competitor of Dur-A-Flex. Laticrete certainly acted in its own best interests to maximize both supply and profit. However, there is no evidence from which the Court may reasonably infer that Laticrete intended to harm the Plaintiff. It is natural that the production by Laticrete would result in a decrease and ultimate stoppage in the orders to Dur-A-Flex. However, this natural occurrence of events, even in the presence of a misappropriation, does not rise to the high standard of "wilful and malicious". The evidence cited by the Plaintiff certainly supports the verdict, but does not justify a finding of wilful and malicious. Therefore, the Court finds that the actions of Laticrete were not wilful and malicious and, consequently, declines to award punitive damages in this matter.

C. Attorneys Fees

In view of the Court's ruling that Laticrete's actions were not wilful and malicious, the Court does not award attorneys fees pursuant to the CUTSA Count.

The Non-Disclosure Agreement did contain a provision for attorneys fees. Section 3 of the Non-Disclosure Agreement provides as follows:

> Enforcement In the event that Ms. Rooshenas and/or Laticrete shall breach this agreement, or in the event that such breach appears to be an imminent possibility, Dur-A-Flex shall be entitled to legal and equitable remedies afforded to it by law

as a result of the breach, and may, in addition to any
and all forms of relief, recover from Ms. Rooshenas
and Laticrete all reasonable costs and attorney's fees
encountered by it in seeking any such remedy.

Defendant Laticrete argues that the attorneys fees, if any, should be limited to the work related to the alleged breach of contract. Plaintiff, however, argues that, pursuant to the language of the contract, Dur-A-Flex's entitlement to reasonable attorney's fees and costs is in addition to any and all forms of relief. It argues that Dur-A-Flex is entitled to recover all reasonable costs and attorney's fees associated with pursuing any and all forms of legal relief related to the enforcement of the Non-Disclosure Agreement and the protection of Dur-A-Flex's confidential information. This would, it argues, encompass every claim in the case. The Court agrees. The language in the contract is very broad and covers all reasonable attorneys fees and costs incurred in the case.

Defendant Laticrete argues that the Plaintiff should not be entitled to attorneys fees because they were not claimed pursuant to the Contract Count in the Complaint. A review of the Plaintiff's Third Amended Complaint indicates that the Plaintiff did not claim attorneys fees pursuant to the Contract Count. The claim for relief indicates: "d. Attorney's fees pursuant to C.G.S. Sections 35-54 and 42-110g et. seq.." Further, there is no language in the body of the complaint to suggest that Dur-A-Flex was requesting attorneys fees pursuant to the Contract Count. In order to recover attorneys fees, Defendant argues, the Plaintiff must specifically plead the statute or contract under which those fees are sought. See generally Campbell v.

Lichtenfels, Superior Court, judicial District of new haven at new Haven. Docket No. CV 04 4005066 S (October 3. 2005, *Zoarski, JTR.*). Plaintiff argues that the Defendant had prior notice that attorneys fees were claimed pursuant to the Contract Count. It further argues that since it alleged a breach of the contract in the complaint, and the contract had a provision for costs and attorneys fees, the issue was sufficiently raised.

"The common law rule in Connecticut, also known as the American Rule, is that attorneys fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent contractual or statutory exception. . . . Commissioner of Environmental Protection v. Mellon, 286 Conn. 687, 695, 945 A.2d 464 (2008). "When prosecuting a civil matter, the general rule is that a prayer for relief must articulate with specificity the form of relief that is sought. . . . A party who fails to comply with this rule runs the risk of being denied recovery." Levesque Builders, Inc. v. Hoerle, 49 Conn. App. 751, 758, 717 A.2d 252 (1998). "It is generally true . . . that the allegations of the complaint provide the measure of recovery, and the judgment cannot exceed the claims pleaded, including the prayer for relief. . . . These requirements . . . are based on the principle that a pleading must provide adequate notice of the facts claimed and the issued to be tried. . . . The fundamental purpose of these pleading requirements is to prevent surprise of the defendant. . . . The purpose of these general pleading requirements is consistent with the notion that the purpose of specific pleading requirements. . . is to promote the identification, narrowing and resolution of issues before the court." Todd v. Gilmes, 217 Conn. 1, 9-10, 583 A.2d 1287 (1991).

In the present case, the parties had stipulated that, in the

event of an award in favor of the plaintiff, the issue of attorneys fees would be considered by the Court as part of any post verdict hearings. This stipulation was entered between counsel prior to the start of trial. At that time, and during several exchanges in open court during the trial, it was clear that the plaintiff was claiming attorneys fees pursuant to the Contract Count. Defendant never raised the "pleadings issue" during any of the exchanges. Accordingly, Laticrete was on notice that Dur-A-Flex would be seeking attorneys fees regarding all counts if it recovered a plaintiff's verdict.

In Andersson v. Rogers, Superior Court, Judicial District of Litchfield. Docket No. CV 05 4003580 S (February 11, 2009, *Marano, J.*), the court determined that even though the plaintiff did not make a specific claim for attorney's fees in his prayer for relief, the fact that his complaint referenced an easement/covenant which explicitly provided for reasonable attorney's fees was sufficient to put the defendant on notice that the plaintiff may seek attorney's fees as a portion of his recovery. The court further noted that in addition to the references in the complaint, the plaintiff raised the issue of attorney's fees during trial and that a post judgment hearing on the reasonableness of the fees was conducted.

The Court finds that the Defendant Laticrete was on notice regarding Plaintiff's claim for attorneys fees on the Contract Count. The matter was raised in open court both prior to and during the trial. The claim is also contained within the body of the Contract which is the subject of the breach. For the Court to rule otherwise would be elevating form over substance. Neither the issue of attorney's fees nor the Plaintiff's claim under the Contract Count came as a surprise to the Defendant.

The parties had also stipulated that the answers to the interrogatories on the separate counts could serve as independent verdicts. There was a concern on both sides that, given the nature of the evidence, the jury could award double damages for the same actions. In order to avoid this result, the jury was instructed not to enter an item of damages on the verdict form if said item had already been awarded as damages on any of the counts. In its response to interrogatory number 6 the jury indicated that Defendant Laticrete International, Inc. breached the Non-Disclosure agreement between the parties and that such breach of contract caused damages to be sustained by the Plaintiff. However, in response to interrogatory number 7 the jury answered that the Plaintiff had sustained zero damages as a result of the breach. In view of the response to interrogatory number 6 the Court awards nominal damages to the Plaintiff on the Contract Count in the amount of $1 dollar. "The award of nominal damages is appropriate when there is a clear invasion of a legal right . . . but no finding of a compensable injury." Lyons v. Nichols, 63 Conn. App. 761, 769, 778 A.2d 246 (2001).

An award of punitive damages is appropriate where the plaintiff has recovered nominal damages. Associated Investment Co. Ltd. Partnership v. Williams Associates IV, 230 Conn. 148, 161 n. 16, 645 A.2d 505 (1994)

The Court has evaluated the Plaintiff's claim for attorney's fees in light of the twelve factors described in Riggio v.Orkin Exterminating Co., 58 Conn. App. 309, 318, 753 A.2d 423 (2000). The Court notes that the case involved in excess of 6,400 hours of time and involved extremely novel and difficult issues of law. Further, the hourly rate of $350.00 per hour for trial time is very reasonable for someone with the experience of

Plaintiff's counsel. The matter required a great deal of skill and expertise and Plaintiff's counsel was required to refuse other matters to pursue the case. The Court notes that both the Plaintiff's President and the attorney for the Plaintiff testified that there was a 10 per cent contingency arrangement as a success fee. However, although plaintiff's attorney remembered a signed agreement to that effect, no agreement was produced at the hearing. Rule of Professional Conduct Section 1.5 (c) provides, in relevant part:

> A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentages of the recovery that shall accrue to the lawyer as a fee in the event of settlement, trial or appeal, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

Defendant Laticrete argues that any agreement not conforming to this rule is invalid, and a violation of the Rules of Professional Conduct. See Statewide Grievance Cmte. v. Gifford, 76 Conn. App. 454, 465, 820 A.2d 309 (2003). Therefore, it argues that this Court should not countenance such an agreement, and should decline to consider it in any award of

reasonable attorney fees.

The President of Dur-A-Flex testified that there was a 10% contingency agreement in force. The attorney for Dur-A-Flex also testified to the existence of said agreement. The absence of a writing may create a cause for concern among the parties. However, it does not afford Defendant the opportunity to use said absence as a sword to reduce a reasonable attorney's fees award. Defendant has no standing to challenge the nature of the agreement between the Plaintiff and its attorney. The question is one of reasonableness. Thus, in Engleman v. Conn. Gen.Life Ins. Co., Superior Court, Judicial District of New Haven at New Haven. Docket No. CV 92 0337028 S (December 5, 1997) the court held that an opponent of a party entitled by statute to an attorney's fee cannot avoid or minimize the obligation because the party's contingent fee arrangement is not reduced to writing. Further, in Estate of Salerno, 42 Conn. Supp. 526, 533-534, 630 A.2d 1386 (1993), the trial court held that the protections of C.G.S. Section 52-251c, the statute that governs contingent fee agreements in tort cases, can be waived by a client.

In Mozzochi v. Beck, 204 Conn. 490, 500, 529 A.2d 171 (1987), the Connecticut Supreme Court held that an opposing party in litigation lacks standing to sue the attorney of a party opponent based on a violation of the Rules of Professional Conduct. Further, the Court held that because the plaintiff had failed to "allege the existence of a relationship with [opposing counsel] by virtue of which he would be the foreseeable beneficiary of the legal services rendered by [the attorney] to (his former party opponent]" the plaintiff lacked standing to sue for an alleged breach of the Rules of Professional Conduct which states that "Violation of a Rule should not give rise to a

cause of action nor should it create any presumption that a legal duty has been breached.". See also Standish v. Sotavento Corp., 58 Conn. App. 789, 755 A.2d 910 (2000). Thus, the Court rejects Defendant Laticrete's claim that the contingency agreement cannot be considered.

Pursuant to the dictates of Schoonmaker v. Lawrence Brunole, Inc., 265 Conn. 210, 270, 828 A.2d 64 (2003), the Court has performed a two step analysis in evaluating this award of attorney's fees involving a contingency agreement. First, the Court has evaluated the reasonableness of the fee agreement itself. The Court finds that the terms are reasonable. Certainly, a 10% contingency arrangement is not excessive in a matter of this nature. Further, the Court accepts the testimony of counsel to the effect that the hourly rate was not increased for trial due to the existence of the contingency agreement. Second, the Court should only depart from the fee agreement to prevent "substantial unfairness" to the party, typically the defendant, who bears the ultimate responsibility for payment of the fee.

The Court finds that the fee agreement is not unfair to Defendant Laticrete. Even after allowing the reasonableness of the hourly rate together with the 10% contingency, the attorneys fees are not in excess of 6 million dollars. In a case of this complexity and attorneys' time this amount is both fair and reasonable. This Court has had occasion to award higher attorneys fees when the recovery has been much less than $43.7 million. There is no unfairness to Defendant Laticrete in this award of attorneys fees. Therefore, the Court finds both the fee agreement and the hourly rate to be reasonable. The Court further finds that the number of hours worked are reasonable for the nature of the litigation. The Court, accordingly awards the

Plaintiff on the Contract Count the sum of $1,479,731.50 for hourly attorney's fees and $4,370,000.00 based upon the contingency agreement of 10% of the $43.7 million jury verdict. The total attorneys fees awarded are $5,849,731.50 together with costs of $394,887.55. The Court finds both the award of fees and costs to be fair and reasonable.

D. Prejudgment Remedy

C.G.S. Section 52-278h provides that an application for prejudgment remedy may be filed at any time after the institution of an action. The jury has rendered a unanimous verdict of $43.7 million in favor of the Plaintiff and against Laticrete after a trial on the merits, finding by a fair preponderance of the evidence that Laticrete violated the Connecticut Uniform Trade Secrets Act, C.G.S. Section 35-50, et seq.. In addition, the Court had made an additional award of reasonable royalty in the total sum of $600,000.00 over a five year period and an additional award of $6,244,619.05 in attorney's fees and costs. Plaintiff has made the necessary requisite showing of probable cause.

Defendant Laticrete objects to the nature of the property to be attached in the event an attachment should issue. It claims that any attachment on its inventory, receivables and cash will result in unfairness to Defendant Laticrete. In lieu, thereof, it argues that if said assets are to be attached the Plaintiff should post a $10 million dollar bond.

C.G.S. Section 52-278d (c) provides that "In determining whether to grant a request for a bond and, if granted, the amount

of the bond to be set, the court shall consider the nature of the property subject to the prejudgment remedy, the method of retention or storage of the property and the potential harm to the defendant's interest in the property that the prejudgment remedy might cause. The Court has considered all of these elements. The Plaintiff has indicated that it seeks, at this time to file UCC filings with the Secretary of State. It has represented that it will not seek and will waive its right to a priority after the 45 day waiting period. The Court has evaluated the harm to the Defendant with the right of the Plaintiff to secure its verdict. The Court, accordingly, denies Defendant Laticrete's Request for a Bond. Therefore, the Court orders that a prejudgment remedy in the amount of $50,544,619.05 shall issue in favor of the plaintiff against Laticrete. The Plaintiff may attach all real property, intellectual property rights, and equipment and machinery owned by Defendant Laticrete. Plaintiff may also file UCC statements with the Secretary of State relating to all inventory, receivables and cash of the Defendant. With the proviso that the Plaintiff, as per its representation, will not seek priority as to those filings after the 45 day filing period has expired. A restraining order shall issue against the Defendant Laticrete from transferring any assets to its foreign subsidiaries and/or its two shareholders Henry Rothberg and David Rothberg, and/or to any third party out of the ordinary course of business or from otherwise dissipating the assets of the corporation until and unless adequate security is posted in the form of a bond or attachment to secure the amount of this prejudgment remedy. The term "ordinary course of business", for the purpose of this restraining order, shall include the payment of all taxes on behalf of the two shareholders.

Defendant Laticrete must disclose the existence, location, and extent of its interest in property or debts owing to it sufficient to satisfy this prejudgment remedy.

E. Motion to Set Aside the Verdict

Defendant has moved to set aside the verdict. The Court has previously ruled on many of the issues raised in the motion. Further, the Court finds that the verdict was justified by the evidence and the amount was well within the damages testimony presented by the expert witness for the plaintiff. Certainly, the amount of the verdict, given the evidence presented during the trial, does not shock the conscience of the Court. Accordingly, the Motion to Set Aside the Verdict is denied. Further, the Motion for Remittitur is denied. Also, the motions for Arrest of Judgment and for Judgment Notwithstanding the Verdict are denied. In addition, the Court orders that nominal damages of $1 dollar be added to the Contract award.

Defendant Rosi Rooshenas has moved for a Judgment as to Counts Two and Four. The Court had directed a verdict in her favor as to Count Four. The Jury returned a verdict in her favor as to Count Two. Therefore, the Motion is granted.

Defendant Laticrete has moved for Judgment as to Counts Seven and Eight. The Court granted a Directed Verdict as to both Counts. Therefore, the Motion is granted.

Defendant Laticrete has moved for Judgment as to Counts Three and Five. Count Five is the CUTPA Count. The Jury found that there was no ascertainable loss as to the CUTPA Count. An ascertainable loss is an essential element of the cause of action. Therefore, the Court grants the Motion as to Count

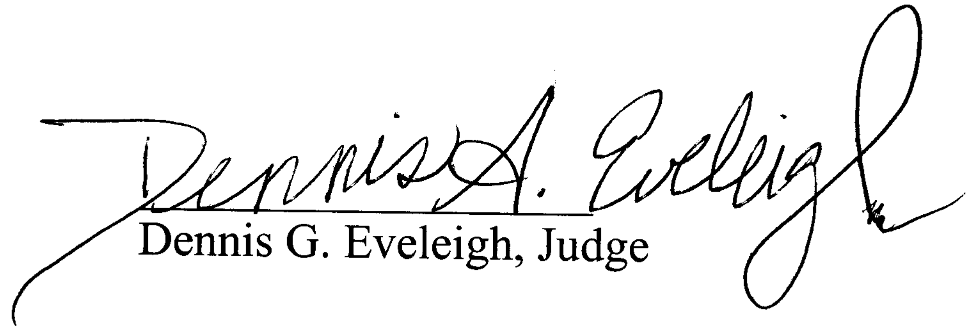
Five. The Court denies the Motion as to Count Three. The Jury answered Interrogatory Number 6 "Yes" to the effect that there was a Breach of Contract which caused damage to the Plaintiff. This finding was essential to the liability on the Breach of Contract Count. The Court has awarded nominal damages in view of the answer to Interrogatory Number 6. Therefore, the Motion as to Count Three is denied.

III. CONCLUSION

Based upon the foregoing reasons, the Court orders that a reasonable royalty of $10,000.00 per month for a period of five years be awarded to the Plaintiff. A third party escrow agent must be established to receive these payments. The Court finds that Defendant Laticrete's conduct was not wilful and malicious, and therefore, does not award punitive damages on this Count. Therefore, the Court does not award attorneys fees on the CUTSA Count. The Court awards $1 dollar nominal damages on the Contract Count. The Court awards reasonable attorney's fees in the amount of $1,479,731.50 for hourly fees and $ 4.37 million on the contingency fee agreement for a total reasonable attorney's fee of $5,849,731.50 on the Contract Count. The Court also awards reasonable costs in the amount of $394,887.55 on the Contract Count. The Court grants a prejudgment remedy to Dur-A-Flex in the amount of $50,544,619.05 dollars. The Court further orders a restraining order as contained in the body of this opinion. The Court further denies the Defendant's Motion to Set Aside the Verdict. The Court also denies the Defendant's Motion for Arrest of Judgment and for Judgment Notwithstanding the Verdict. The

Court enters Judgment in favor of Rosi Rooshenas as to Counts Two and Four of the Complaint. The Court enters Judgment in favor of Laticrete on Counts Five, Seven and Eight of the Complaint. Judgment may enter for the Plaintiff on Count One, pursuant to the jury verdict of $43.7 million, and Count Three as indicated above. Judgment shall enter accordingly on all counts.

THE COURT



Dennis G. Eveleigh, Judge