

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 92-3821

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WALLE CORPORATION,

Plaintiff/Counter-Defendant/  
Appellant/Cross-Appellee,

VERSUS

ROCKWELL GRAPHIC SYSTEMS, INC., MAN ROLAND INC.  
and MAN ROLAND DRUCKMASCHINEN AG,

Defendants/Counterclaimants  
Appellees/Cross-Appellants,

and

RYAN & WILLEFORD,

Appellant/Cross-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-90-2163-N)

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(November 2, 1993)

Before HIGGINBOTHAM, DAVIS, and SMITH, Circuit Judges.

PER CURIAM:<sup>1</sup>

Having reviewed the briefs of the parties and the applicable portions of the record, and having heard the argument of counsel, we are convinced that none of the issues raised in these appeals, with the exception of Walle's claim for prejudgment interest

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<sup>1</sup>Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

discussed below, has arguable merit. The evidence was legally sufficient to uphold Walle's jury verdict, and the evidence of a proposed settlement was properly excluded. Walle cannot recover both lost profits and loss of goodwill because they are duplicative. Corporations cannot recover damages for inconvenience. Walle was entitled to the dollar cost of replacing the defective printing press at the time of trial. The district court did not err in awarding Walle civil contempt damages against Rockwell's former counsel for violation of a protective order.

We disagree, however, with the district court's failure to award damages for prejudgment interest on Walle's damages for future lost profits. Under Louisiana law, prejudgment interest is awarded in all actions for damages **ex delicto**, regardless of whether those damages are for present or future losses. **See, Martino v. Sunrall**, 619 So. 2d 87, 92-93 (La. Ct. App. 1st Cir. 1993), **Tastet v. Joyce**, 531 So. 2d 520, 523 (La. Ct. App. 5th Cir. 1988).

The district court refused to award prejudgment interest on future damages because the court ruled that Walle's damages were **ex contractu**. "The classical distinction between 'damages ex contractu' and 'damages ex delicto' is that the former flow from the breach of a special obligation contractually assumed by the obligor, whereas the latter flow from the violation of a general duty owed to all persons." **Davis v. LeBlanc**, 149 So. 2d 252, 254 (La. Ct. App. 3d Cir. 1963).

The district court relied on **Davis v. Leblanc** in holding that actions in redhibition are properly characterized as **ex contractu**,

so that prejudgment interest would not attach to awards of future damages. We do not read **Davis** so broadly. In **Davis v. LeBlanc**, the plaintiff sued strictly for redhibition, with fraud as a component of the redhibition claim; the plaintiff asserted no separate cause of action to recover for the seller's fraud. Walle, on the other hand, actually asserted a separate **ex delicto** tort claim for fraud in the inducement and the jury found in Walle's favor on this claim. Because Walle prevailed on a tort theory independent of its redhibition claim, it is entitled to recover prejudgment interest on the damages for future losses.

Accordingly, the judgment of the district court is affirmed in all respects, except on the award of interest. The case is remanded so that the district court can modify the judgment to include interest consistent with this opinion.

AFFIRMED in part; REVERSED in part and REMANDED.