

SHELL FIJI LTD v SUSHIL CHAND (CBV0003 of 2011)

SUPREME COURT OF FIJI — CIVIL JURISDICTION

5 GATES P

24 July, 7 August 2012

10 **Practice and procedure — interest — payments in compliance with stay orders — nature and effect of payment in as condition of stay — calculation of interest — whether interest can be claimed on costs orders — whether post judgment interest claimable — whether payment made into Court as condition of stay is equivalent to pre-trial payment — High Court Act s 22 — (Imperial) Judgments Act s 17 — Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree s 2**

15 Stays of execution were granted by the High Court and the Court of Appeal. In compliance with the stay orders, two sums were paid into court and were placed in an interest bearing account or accounts. Due to accrued interest, the monies paid by the petitioner were in excess of the final award. The Supreme Court ordered payment of damages, and the respondent applied to the court by summons for directions on the payment out of these monies, which were already in court due to the stay orders.

20 **Held –**

(1) Payment made into court by a defendant pre-trial is not the same as a payment made in compliance with conditions imposed for the interlocutory relief of a stay order pending appeal. Payments made in compliance with the orders for stay have no bearing on the question of interest but rather are ordered to secure the availability of funds to satisfy a judgment.

25 (2) Costs do attract post judgment interest, which commences from the date of judgment.

Hunt v R M Douglas (Roofing) Ltd [1988] 3 All ER 823, cited.

(3) The interest on every judgment debt accrues automatically and runs from the date of pronouncement of judgment.

30 *Parsons v Mather & Platt Ltd* [1977] 2 All ER 715, cited.

(4) The applicable rate of interest on judgment debts is fixed at four percent, which has to be levied on the entire judgment, including the costs element and unpaid interest. Directions made regarding award of damages

35 **Cases referred to**

Boswell v Coaks (1887) 57 LJ Ch 101; *Byrne v JS Hill & Associates Ltd* (unreported) Civil Appeal 33 of 1993, 19 August 1994; *Campbell (Donald) and Co v Pollak* [1927] AC 732; *Charan v SCC* Civil App 12 of 1989, 27 October 1989; *Charan v SCC* [1994] FJHC 3; *Erven Warnink BV v J Townend & Sons (Hull) Ltd (No 2)* [1982] 3 All ER 312; *Findlay v Railway Executive* [1950] 2 All ER 969; *Hunt v R M Douglas (Roofing) Ltd* [1988] 3 All ER 823; *Koya v Dominion Finance Ltd* HBC193.09L 9 March 2012; *Pyman & Co v Burt, Boulton* [1884] WN 100; *Warner v Hagerman* HBC425.09S 13 August 2010, cited.

40 *QBE Insurance (Fiji) Ltd v Ravinesh Prasad* Civil App No CBV0003.09 (March 2012), considered.

45 *H. Nagin* instructed by *Messrs Gibson & Co*, Labasa for the Petitioner.

Amrit Sen instructed by *Messrs Maqbool & Co*, Labasa for the Respondent.

Ruling [on final payment out upon conclusion of Supreme Court litigation]

50 [1] **Gates P.** Appellate litigation concluded in this matter on 4th May 2012 when the Supreme Court handed down its judgment.

[2] The orders of the Court were [at p 11]:

5 “We therefore vary the award of the Court of Appeal by awarding \$45,000 as general damages (for pain and suffering and loss of amenities), thus totaling a sum of \$57,400 being \$45,000 as general damages and \$12,400 as special damages (being loss of earnings) with interest as set out in the judgment of the Court of Appeal. We dismiss the appeal subject to the above variation in respect of damages. We also affirm the costs awarded by the Court of Appeal and in addition grant costs of this appeal as \$5,000 to be paid to the Respondent by the Petitioner.”

10 [3] However certain matters concerning the calculation of interest, the dates between which it was payable, whether interest can be claimed on the costs orders, whether post judgment interest is claimable and whether the surplus payment into court originally paid as a condition of stay is equivalent to a pre-trial payment in thus protecting the Petitioner [Defendant] from incurring any further costs or interest charges. The Respondent has applied to court by
15 summons for directions on the payment out of monies already in court by reason of the stay order.

[4] The resultant award at the end of the proceedings in the Supreme Court could be tabulated as follows:

- 20 1. General Damages \$45,000 [not disputed]
2. Special Damages \$12,400 [not disputed]
Sub-total \$57,400
3. Interest @ 6% [not disputed] on \$57,400 from 20th August 2001 to 8th February 2011 [dates not disputed], \$32,652.96 [@ \$9.44 per day x 3,459 days]
25 4. a. High Court Costs \$ 7,500
b. Court of Appeal Costs \$ 5,000
c. Supreme Court Costs \$ 5,000
Sub-total \$17,500
[not disputed, but Petitioner argues no post judgment interest allowable on costs order]
30 5. Post judgment interest on Judgment Debt at 4% [disputed].
Nature and Effect of Payment in as a Condition of Stay

[5] On 18th July 2008 Scutt J granted a stay of execution pending appeal of the judgment in the High Court delivered on 27th May 2008 by Jitoko J. A stay was
35 also granted by the Court of Appeal after its judgment. As a result two sums were paid into court, \$33,637.93 and \$90,405.11. Both sums were placed in an interest bearing account or accounts. It is obvious that with accrued interest the Petitioner [Defendant] has paid into court monies in excess of the final award. It is not
40 disputed that the balance capital sum plus interest belongs to the Petitioner, and after payment out to the Respondent of the award, the balance must be paid out to the Petitioner, and I now so order.

[6] However a payment into court made by a defendant pre-trial is not the same thing as a payment made in compliance with conditions imposed for the interlocutory relief of a stay order pending appeal. The first payment in, the
45 pre-trial payment, secures for the defendant a tactical advantage. For if the plaintiff fails to accept the amount and goes on with the trial but achieves judgment for less than the payment in, the defendant will get his costs thereafter. In such circumstances the defendant is seen as a “successful party”. This was the principle of law laid down by Viscount Cave LC in *Campbell (Donald) and Co v Pollak* [1927] AC 732, at 811; *Findlay v Railway Executive* [1950] 2 All ER
50 969.

[7] In the instant case, the payments in were made in compliance with the orders for stay. They have no bearing on the question of whether interest ceases to be earned for the payee on monies paid in but rather they are ordered to secure the availability of funds to satisfy a judgment.

5 **Is Interest Allowable on Costs?**

[8] No citation was provided by Mr Nagin for the proposition that an order for costs does not attract post judgment interest. Authority has established clearly that costs do attract post judgment interest which commences from the date of judgment: *Hunt v RM Douglas (Roofing) Ltd* [1988] 3 All ER 823 applying
 10 *Pyman & Co v Burt, Boulton* [1884] WN 100; *Boswell v Coaks* (1887) 57 LJ Ch 101.

Post Judgment Interest

[9] By virtue of s 22 of the High Court Act, Cap 13 s 17 of the (Imperial) Judgments Act 1838 remains in force in Fiji. This section provides that “every
 15 judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment until the same shall be satisfied”. The interest accrues automatically and no order of the Court is necessary. It runs from the date of pronouncement of judgment in Court *Parsons v Mather & Platt Ltd* [1977] 2 All ER 715 approved in *Erven Warnink BV v J*
 20 *Townend & Sons (Hull) Ltd* (No 2) [1982] 3 All ER 312.

[10] This interpretation has been applied in several cases in Fiji including *Charan v SCC* Civil App 12 of 1989, 27th October 1989; *Charan v SCC* [1994] FJHC 3; *Byrne v JS Hill & Associates Ltd* (unreported) Civil Appeal 33 of 1993;
 25 19th August 1994; *Warner v Hagerman* HBC425.09S 13th August 2010; *Koya v Dominion Finance Ltd* HBC193.09L 9th March 2012.

[11] In *QBE Insurance (Fiji) Ltd v Ravinesh Prasad* Civil App NoCBV0003.09 18th August 2011 Calanchini JA in the Supreme Court pointed out that there was no specific provision in the Law Reform (Miscellaneous Provisions) (Death and
 30 Interest) Act to cover interest after judgment. Section 22(1) of the High Court Act provided for the statutes of general application in force in England on 2nd January 1875 to be in force in Fiji. The Judgments Act 1838 was held to be such an Act.

[12] In the absence of specific legislation in Fiji, Calanchini JA considered that
 35 s 9 of the Interpretation Act had the effect of extending the application of the English rates of interest (as raised by statutory orders from time to time) to Fiji. For instance in 1983 the rate stood at 8%.

[13] Subsequent to the decision in *QBE Insurance* (supra) however, an amendment decree has been made stating that every judgment debt is now to
 40 carry interest at 4%: s 2 of the Law Reforms (Miscellaneous Provisions) (Death and Interest) (Amendment) Decree 2011 amending s 4 of Cap 27. So the applicable rate on judgment debts is now fixed at 4%. It is to be levied on the entire judgment including the costs element and unpaid interest.

[14] I re-tabulate the award:
 45 1. General Damages \$ 45,000
 2. Special Damages \$ 12,400
 Sub-total \$ 57,400
 3. Interest @ 6% on \$57,400 from 20th August 2001 to 8th February 2011 [@
 50 \$9.44 per day x 3,459 days]
 \$32,652.96

4. a. High Court Costs \$ 7,500
 b. Court of Appeal Costs\$ 5,000
 c. Supreme Court Costs\$ 5,000
 Sub-total\$ 17,500
- 5 5. Post Judgment interest on Judgment Debt
 (i) 4% interest on revised Court of Appeal award and costs [\$108,926.04 from 8.2.11 to 7.8.12 amounting to 1 year 5 months 30 days (ie: a total of 577 days) at the rate of \$11.94 per day
 $577 \text{ days} \times \$11.94 = \$ 6,889.38$
 (ii) Supreme Court costs=\$ 5,000
- 10 (iii) 4% interest on SC costs from 4.5.12 to 7.8.12.55 x 96 days= \$ 52.80
 Grand Total [as at 7.8.12]= \$114,495.14
 Interest will accrue hereafter at \$12.49 per day until settlement.
- 15 [15] The Respondent was to all intents and purposes successful in his application. His counsel had to attend this court from Labasa to have the matter concluded. He is entitled to some costs for a day away, the summons and affidavit, written submissions and oral argument. I fix costs summarily at \$1,250.
- 20 [16] Accordingly I direct payment out to the Respondent of \$114,495.14 plus today's costs of \$1,250. The balance held by the Registrar is to be returned to the Petitioner immediately thereafter.

Directions made.

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