



[2014] JMSC CIV 71

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 CD00126

BETWEEN	JAMAICA PRE-MIX CONCRETE LIMITED	CLAIMANT
AND	OTHNEIL LAWRENCE (T/A RUNAWAY BAY COMMUNICATION CENTRE)	1ST DEFENDANT
AND	ALECIA LAWRENCE (T/A RUNAWAY BAY COMMUNICATIONS CENTRE)	2ND DEFENDANT

Assessment of Damages – Default judgment for Principal amount entered – whether interest can be assessed- no contract for interest to be paid – Law Reform Miscellaneous Provisions Act.

Ms. Kristina Exell instructed by Bailey Terrelonge Allen for the Claimant

The 1st and 2nd Defendants unrepresented and not appearing

April 4 and 25, 2014

Coram: Batts, J.

[1] Upon this Assessment of Damages coming on for hearing on 4th April 2014, the Defendants were called, with no answer. Proof of service was provided by Affidavit of Service from Mr. Dwight Davis filed on 2nd April 2014. I commenced the matter and on completion delivered this judgment orally. I now reproduce that judgment with the assistance of Counsel's note as well as my own.

[2] Evidence was given by way of the Witness Statement of Mr. Wade Young, accountant, dated 14th March 2014, which was allowed to stand as his evidence-in-chief. A Bundle of Statements of account, invoices, delivery tickets and credit

memoranda was admitted into evidence as Exhibit 1. Notice of intention to so tender was served on the Defendants as per information provided by Claimants Counsel. Exhibit 2 was an extract from the Bank of Jamaica Statistical Digest July to September 2013 published by the Bank of Jamaica. Exhibit 3 was a document entitled Loan Rates for Commercial Credit, for March 31, 2012 to January 31, 2014 published by the Bank of Jamaica.

- [3] The Claimant's Counsel relied on Skeleton Submissions filed on April 1, 2014. In effect the submission is for interest in this matter to be awarded at a commercial rate. Reliance was placed on the Law Reform (Miscellaneous Provisions) Act and the Civil Procedure Rules 2002.
- [4] At the close of submissions I had concerns as to the power of the court to award such interest after judgment had been entered. My concern was heightened by the fact that neither pleadings nor evidence disclose a contract for the award of interest on sums outstanding. I therefore took time to consider. I now give my decision.
- [5] The pleadings and evidence indicate that the Claimant supplied quantities of pumped concrete to the Defendants. The balance outstanding is \$4,154,431.08. Paragraph 7 of the Particulars of Claim is as follows:
- “Further the Claimant claims interest at such commercial rate and for such period as this Honourable Court deems just”
- [6] On the 23rd October 2013, the Claimant filed a Request for Default Judgment, which went on to state, “Interest from July 17, 2012 to the date of judgment is to be assessed pursuant to CPR 12.11(b)”.
- [7] The Default Judgment entered on 23rd October 2013 entered in Binder Number 759 Folio Number 106 of the judgment book, states in part “IT IS THIS DAY ADJUDGED that the 1st Defendant and the 2nd Defendant do pay the Claimant

the sum of \$4,186,431.08 plus interest to the date of judgment at such rate to be determined by the Court.”

- [8] I am satisfied having considered the Rules, statutes and authorities provided by the Claimant that this is an appropriate case to assess an award of interest. The Claimant has placed itself within paragraph 2 of Rule 12.11 of the Civil Procedure Rules. Interest pursuant to the Law Reform Miscellaneous Provisions Act is now available even in the absence of pleadings; see ***Goblin Hills Hotels Limited v John Thompson and Janet Thompson SCCA No. 57/2007 unreported Judgment 5th June, 2009*** which the Claimant relied on. This is not the case here, as it was pleaded. Nor need there be an express contractual term. In Commercial matters interest may be awarded as compensation for being kept out of one’s money. See: ***British Caribbean Insurance Company Ltd v Perrier (1996) 33 JLR 119***, relied on in ***Design Matrix Limited and Orville Dixon v L. Phillips Suit No. CL 1994/D087 unreported judgment 19 April 2002***, as also the **Goblin Hill** case already cited.
- [9] Applying the principles and approach in the authorities I have decided to award interest at the rate at which the claimant would have had to borrow money in the place of the money wrongfully remaining unpaid. I will use the average such rate for the period commencing 18th July 2012, that being the date payments ceased.
- [10] The Claimant has put in evidence Exhibit 2 which shows commercial Bank Domestic currency weighted loan interest rates. The Column for commercial credit starts March 2012 and ends September 2013. Exhibit 3 gives the data in Exhibit 2 but extends it to the 31 January 2014. Averaging the rates from July 2012 to January 2014 I arrive at an interest rate of 12.82%.

[11] This will run 17th July 2012 to the date of this judgment, 25th April 2014. This assessment of Damages merges with the Default Judgment to become the judgment of the Court in this matter.

[12] Judgment is therefore entered for the Claimant against the Defendants as follows:

- (1) The sum of \$4,154,431.08;
- (2) The sum of \$919,278.80 being interest thereon at a rate of 12.82% from the 17th July 2012 to 25th April 2014.
- (3) The sum of \$10,000.00 court fees on claim
- (4) The sum of \$10,000 Attorney-at-Law cost on issue
- (5) The sum of \$12,000 Attorney-at-Law cost on entering judgment
Total \$5,105,709.88. Interest on that amount will run at the rate of 12.82% from 25th April 2014 to the date of payment.
- (6) Costs of the Assessment of Damages to the Claimant to be agreed or taxed.

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David Batts
Puisne Judge