



[2022] JMSC Civ 75

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018 HCV 04666

BETWEEN

DAIDRE ANN ROWE

CLAIMANT

AND

MICHAEL DODD

DEFENDANT

IN OPEN COURT

Ms Deborah Dowding instructed by Nunes Scholefield DeLeon and Co Attorneys-at-law for and on behalf of the Claimant

Mr Michael Dodd appearing on his own behalf

Heard: May 25, 2022 and June 7, 2022

Assessment of Interest payable on debt outstanding

MOTT TULLOCH-REID

[1] The Claimant claimed against the Defendant the sum of \$2,436,548.20 as monies due and owing for medical services rendered. The sum was claimed as at November 17, 2017 to the date of judgment or sooner payment plus interest at 1% above the commercial bank's lending rate.

[2] The parties having settled on the fact that sums have been paid towards the principal with only \$366,000 left to be paid, have sought the Court's assistance in determining the amount of interest owing as they could not agree on that amount.

[3] I sought to find out from Ms Dowding why the commercial interest rate was claimed. She indicated that that is the rate that is used when debts are due. Ms Dowding has relied on the case of **Jamaica Pre-Mix Concrete Limited v Othneil Lawrence (t/a Runaway Bay Communication Centre and Alecia Lawrence (t/a Runaway Bay Communications Centre) [2014] JMSC Civ 71** to support her position that the applicable interest rate is the commercial interest rate. Paragraph 5 of the judgment of Batts J reads as follows:

"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.'"

[4] Batts J awarded the commercial rate in that case. I disagree with Ms Dowding's position that interest should be awarded at the commercial rate in the case at bar. In the **Jamaica Pre-Mix case** the parties being sued were operating commercial entities and it is understandable that the commercial rate would be applied as all the parties were commercial entities and that the transaction was commercial in nature. This is not so in the case before me. In the case before me the Claimant sues in her own name. I would not define this relationship as commercial in nature but that a medical doctor was offering a service to one of her patients. I am supported in my decision by the definition of commercial as set out in **The Concise Oxford English Dictionary 10th edition revised**. The definition of commerce as stated therein reads as follows:

"concerned with or engaged in commerce."

[5] Commerce is defined as

"the activity of buying and selling especially on a large scale".

[6] I do not find that a commercial relationship existed between the parties and that the commercial interest rate should be applied in these circumstances.

[7] I will rely instead on the **Law Reform (Miscellaneous Provisions) Act** (“LRMPA”) to determine how interest is to be dealt with in this instant. There is no evidence before me that a contract existed between the parties which stipulated that interest was to be paid at a certain rate on sums outstanding when the medical procedure was performed. Given the absence of this information, I am guided by Section 3 of the LRMPA which allows me to exercise my discretion in determining the interest payable. Section 3 of the LRMPA provides that:

“In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damage for the whole or any part of the period between the date when the cause of action arose and the date of the judgment: Provided that...”

[8] I am of the view that interest should be applied to the debt at the rate of 3% per annum. Interest is the compensation payable to the Claimant, in this instance, for being kept out of money which was due to her. In determining the rate of interest payable, I considered that had the Claimant had that money in the bank she would have accrued interest on her savings. The Bank of Jamaica’s website provided some guidance in assisting me in determining the overall time deposits average weighted rate for the period December 2018 (when interest would have begun to accrue) to March 2022 (which is the last average available at the time when the matter came up for hearing before me on May 25, 2022). The average weighted rate for the period was calculated as being 2.6% which I have rounded up to 3% which is in keeping with interest rate allowed when an assessment is done in open court. I believe 3% is a reasonable interest rate payable in the circumstances.

[9] Ms Dowding has indicated that the loan had been paid over time. She has produced a document to highlight how she calculated interest payable. The document sets out the payments made over time. I am of the view that interest

would be applied to the sums on the reducing balance. Ms Dowding's document reflects a similar position. Ms Dowding's calculations do not find favour with me in one respect. She applied interest at the rate of 6% on the sum of \$1,452,985.55 as at July 14, 2020 when she says the default judgment was entered. This is in fact not so. The Court's record indicate that the default judgment was entered on September 15, 2020 and it is from that date that interest would accrue at the rate of 6% because on that day the sum owing became a judgment debt.

[10] In addition, the request for the default judgment and the signed default judgment itself, said that the default judgment was entered not for the sum of \$1,452,985.55 but for the sum of \$1,219,548.20. It is that sum to which the interest of 6% has to be applied. That is the claim.

[11] The information was inputted into an Excel spreadsheet with what I believe to be the appropriate formulae. Interest would be applied on the debt outstanding on the reducing balance over time. Each time a payment was made towards the debt, it would be applied to the total owing which would include interest. As at today, the total interest already paid by the Claimant amounts to \$269,386.72.

[12] On my calculation the total amount that would have been owing by the Defendant to the Claimant is \$1,362,462.50 as at September 14, 2020. This however is not the sum that was claimed in the default judgment. In the default judgment request the sum that the Claimant sought to recover was \$1,219,548.20.

[13] What remains outstanding by the Defendant is a sum that comprises principal and interest amounting to \$462,640.62.

[14] On the issue of costs. Costs are awarded in the amount of \$56,000 for the entry of the default judgment pursuant to CPR Part 65 Appendix A Table 2 (1) and on the assessment of damages of interest in the amount of \$45,000.00 (which represents time spent in Court on May 25, 2022 as well as time to produce document on which Claimant intended to rely for interest to be determined). I am mindful that Ms Dowding would fall into Band C where attorney's fees are to be

determined and would be at the higher end of the scale and have taken that into consideration in assessing the costs to be awarded.

[15] I therefore order as follows:

- a. The Defendant is to pay the Claimant the sum of \$462,649.62 plus interest at 6% per annum from June 8, 2022 to the date the judgment is paid in full.
- b. The Defendant is to pay the Claimant costs in the claim in the amount of \$100,000.
- c. The Claimant's attorneys-at-law are to file and serve the Formal Order.