

IN THE HIGH COURT OF KIRIBATI 2014

CIVIL CASE NO. 87 OF 2012

	[CARPENTERS HARDWARE	PLAINTIFF
	[
BETWEEN	[AND	
	[
	[BETIO SHIPYARD COMPANY LTD	DEFENDANT

Before: The Hon Chief Justice Sir John Muria

24 November 2014

Ms Botika Maitinnara for Plaintiff

Ms Taaira Timeon for Defendant

JUDGMENT

Muria CJ: There are only two issues which the Court is asked to determine in this case. The first issue is: what is the applicable rate of interest in this case? Secondly, when should the interest begin to run?

BRIEF BACKGROUND

The case brought by the plaintiff against the defendant for breach of contract and sought damages in the sum of FJ\$65,348.00, equivalent to

AUD40,586.30. Default judgment was entered against the defendant on 21 August 2012 in the sum of FJD65,348.00 plus interest at 15% per annum and \$500.00 costs. It took some time before the defendant settled the judgment sum and cost.

On 12 September 2014 the defendant paid the principal sum of AUD40,586.30 (FJD65,348.00) plus \$500.00, a total of AUD41,086.30. The remaining issues over the rate and commencement date of the interest are now to be determined by the Court.

RATE OF INTEREST AND WHEN TO COMMENCE FROM

Ms Maitinnara of Counsel for the plaintiff/judgment creditor submitted that the interest claim was pleaded, although in the Statement of Claim the interest rate pleaded is 15% per annum from 31 August 2007 until payment of the sum due. In the default judgment the interest rate is put at 15% per annum.

Ms Maitinnara submitted that despite the rate of interest of 15% per annum stated in the default judgment, the appropriate rate should be 13.5% as agreed to by the parties and shown in the supporting documents. Counsel further submitted that the interest rate of 13.5% was to run from the due date on each of the Invoices until payment.

In addition, Counsel submitted that the Court can order the interest to be cumulative. I take it that the plaintiff is seeking compound interest.

On the plaintiff's calculation, the total cumulative interest calculated at 13.5% per annum calculated from the dates of the invoices payable is AUD58,872.77 or FJD93,607.71. Alternatively, the plaintiff would accept the non-cumulative interest at 13.5% per annum calculated from the dates of the Invoices until payment in the sum of AUD38,826.55.

Ms Timeon of Counsel for the defendant submitted that the applicable rate is 15% per annum as stated in the default judgment. In support of her argument, Counsel referred the Court to section 8(1) of the *Government Liability Act*. Counsel also submitted that the interest rate should run from the date of judgment, 21 August 2012, to the date of payment, 12 September 2014. Ms Maitinnara argued that section 8(1) of the *Government Liability Act* does not apply here since the defendant is a Government private limited company.

The plaintiff's right to interest in this case is not disputed and so it is not an issue. Also not in dispute is the general principle that the award of interest is in the discretion of the Court. The questions to be determined are the rate of interest and the time the interest should commence from.

It is to be noted that as a matter of general principle that where the contract between the disputing parties provides an agreed interest rate to apply, if the debt becomes due, then the interest due to the plaintiff may be calculated based on the agreed interest. In the present case the parties

clearly agreed to 13.5% per annum from “due date to payment/acceptance date” as shown on the document “DOCUMENTARY BILLS – LODGEMENT LETTER”. If the agreed rate of interest is the one pleaded by the plaintiff, I would have no hesitation in accepting the plaintiff’s submission. There has been no amendment to the plaintiff’s pleadings. Unfortunately the plaintiff’s case must be taken as pleaded.

Normally where the plaintiff is relying on the interest agreed to by the parties, the rate of interest as agreed is pleaded and calculated the amount owing under the agreed rate of interest and included in the statement of claim.

Each case is decided on its own facts. In the present, the appropriate rate of interest to be applied is 15% per annum. This is determined on the basis that the interest pleaded in the plaintiff’s claim is 15% and not 13.5% as agreed to with the defendant. The plaintiff must be taken to know of the agreed interest rate but have chosen to claim 15% instead as stated in its pleadings.

The provision of section 8(1) of the *Government Liability Act* in my view does not apply here. The defendant is, although a Government owned company, is a private limited company with its own existence in law under the rule in *Salomon –v- Salomon [1897] AC 22*. Any liability incurred by the defendant belongs to the defendant. However, it seems that the Government of Kiribati has been shouldering the burdens created by these

Government owned private limited companies, including the present defendant, out of commercial and moral expediency rather than legal obligation. That of course is not a matter that concerns us in this case.


The next question is: when should the interest rate begin to run? Counsel for the plaintiff, relying on the contract, suggests that the interest rate should run from the date of invoice to the date of payment. That is a claim of interest for a period commencing before judgment until payment. There is authority in the case law in Kiribati to support the proposition that a judgment creditor is entitled to claim interest for a period before judgment is entered to the date of judgment. See *Korieta –v- Broadcasting and Publications Authority* [2011] KHC 40, Civ. Case 08 of 2011 (31 October 2011). There is also authority in Kiribati for the proposition that a judgment creditor is entitled to claim interest from the date of judgment until payment. See *Attorney-General –v- Waysang Kum Kee t/a WKK Shipping Line* (31 August 2011) Kiribati Court of Appeal Civ. App. 11/11.

In the present case, the plaintiff pleads 15% interest from 31 August 2007 until payment in their statement of claim. Unfortunately for the plaintiff, 15% is not what they agreed to with the defendant. So the 15% interest awarded cannot run from the date of invoice to date of payment. In the circumstances the 15% interest is to run from date of judgment to the date of payment.

The interest is awarded on non-cumulative or simple interest basis.

Order accordingly.

Dated the 28th day of November 2014



SIR JOHN MURIA
Chief Justice