

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2024/0011

BETWEEN:

**1ST NATIONAL BANK SAINT LUCIA LIMITED
(Qua Successor to Royal Bank of Canada)**

Appellant

and

WINSTON PAUL

Respondent

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mr. Trevor M. Ward
The Hon. Mr. Eddy D. Ventose

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Sardia Cenac-Prospere with her, Mr. Arthur Compass for the Appellant
Mr. Alvin St. Clair for the Respondent

2024: October 15;
December 9.

Civil appeal – Article 1009.1 of the Civil Code of Saint Lucia – Interpretation of guarantee – Whether the learned judge erred in the interpretation of guarantee - Whether the learned trial judge erred in law in conflating the obligations under the Loan and the Guarantee and finding the Guarantee to be more onerous - Whether the learned trial judge failed to award interest by way of damages in accordance with the Guarantee by mischaracterising the interest payable on the Guarantee as compound interest

The respondent and Trinity St. Lucia Limited (“Trinity”) entered into two loan credit facilities with Royal Bank of Canada (“RBC”); the first was dated 16th September 2016 and the second was dated 1st December 2016. The parties also entered into a Hypothecary

Obligation dated 18th January 2017. Pursuant to these, RBC loaned Trinity the sum of \$540,000.00 with interest at a rate of 7 per cent per annum (the "Loan"). The respondent then entered into a guarantee with RBC whereby he agreed to guarantee the payment on demand of the debts and liabilities of Trinity up to \$540,000.00 and to pay interest on the sum of \$540,000.00 at a rate of interest of 7 per cent from the date of demand to the date of payment before as well as after judgment (the "Guarantee"). On 31st March 2021, the banking business of RBC, including the Loan was transferred to the appellant, 1st National Bank Saint Lucia Limited (the "Bank"). The respondent failed to pay the sums as demanded by the appellant under the Guarantee.

On 4th September 2023, the appellant instituted proceedings against the respondent claiming the sum of \$540,000.00 with interest at a rate of 7 per cent or at a daily rate of \$103.5616 from 6th March 2023 until the date of payment and the sum of \$632,970.01 against the then first respondent, Trinity.

In their defence filed on 22nd September 2023, the respondent and Trinity inter alia denied liability except a loan facility with a principal starting amount of \$540,000.00 with interest annually of 7 per cent.

In her ruling dated 26th March 2024, the learned judge determined that the issue for determination was whether the language of the term of the Guarantee gives rise to a special agreement between the appellant and the respondent such that accrued interest included in the limit, bears interest, in accordance with Article 1009.1 of the Civil Code of Saint Lucia ("the "Civil Code"). The learned judge found that Article 1009.1 of the Civil Code requires that a special agreement is required to give effect to compound interest, and that by failing to stipulate in unequivocal terms that any accrued interest included in the limit of \$540,000.00 will bear interest, the clause is deficient for the purpose of Article 1009.1 and has resulted in ambiguity. Applying the *contra proferentum* rule, the learned judge held that the clause must be interpreted against the appellant. The learned trial judge entered judgment at para 1(ii) in favour of the appellant against the respondent in the sum of \$540,000.00 with interest continuing on the principal balance of \$475,045.20 at the rate of 7 per cent per annum from 6th March 2023 until the date of payment. She also ordered that the appellant shall not be entitled to recover a total sum which exceeded the sum of \$540,000.00.

Dissatisfied with the learned judge's ruling, the appellant filed a notice of appeal on 8th May 2024 which included 11 grounds of appeal. The three issues which arise on appeal are: (1) whether the learned trial judge erred in fact and law in her interpretation of the Guarantee; (2) whether the learned trial judge erred in law in conflating the obligations under the Loan and the Guarantee and finding the Guarantee to be more onerous; and (3) whether the learned trial judge failed to award interest by way of damages in accordance with the Guarantee by mischaracterising the interest payable on the Guarantee as compound interest.

Held: allowing the appeal and setting aside paragraph 1(ii) of the Order of the learned judge and substituting the following: "As against the appellant the sum of \$540,000.00 with interest at the rate of 7% per annum from 6th March 2023 until the date of payment", that:

1. Interpretation of a guarantee involves ascertaining the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. Thus, the question in this case is whether the reasonable person would understand that the phrase “debts and liabilities” includes any principal amount owing by Trinity to the appellant under the Loan and any outstanding interest on that principal amount. The factual matrix in this appeal was that the Guarantee was to protect the appellant from any financial loss occurring by reason that Trinity was unable to pay its debts and liabilities to the appellant under the Loan. There is nothing in the Guarantee which leads to the conclusion that interest is to be paid on the sum (representing total debts and liabilities) only in respect of the amount representing the principal of the Loan. Properly read, the clause covers the payment of interest on the total sum of debts and liabilities of Trinity and it does not matter that that sum included any unpaid interest on the Loan. Nothing in the relevant clause is ambiguous as to whether the phrase “debts and liabilities” includes any unpaid interest and there is therefore no need to have recourse to the *contra proferentem* rule.

Static Control Components (Europe) Limited v Egan [2004] EWCA Civ 392 applied; **Reynolds v State Insurance Corporation** Antigua and Barbuda HCVAP 2007/005 (delivered 8th February 2010, unreported) considered.

2. The effect of Article 1009.1 of the Civil Code is that interest from capital sums also bears interest when there is a special agreement to that effect. In this case, the Loan and the Guarantee are two separate agreements and the obligations under each are not the same. The Loan is relevant only in determining the total “debts and liabilities” of Trinity under the Guarantee. It is that sum that attracts interest under the Guarantee. It is technically not correct to refer to the portion of the debts and liabilities that represented “interest” under the Loan as “interest” under the Guarantee. For the purposes of the Guarantee, the respondent is not liable to pay compound interest as this would only be the case if the interest of 7 per cent was payable not only on the total sum of the debts and liabilities but also on any accumulated unpaid 7 per cent interest. Once it is accepted that for the purposes of the Guarantee, the only relevant interest is the 7 per cent to be paid by the respondent, the concerns of the learned trial judge that: (1) this results in an outcome which is more onerous to the guarantor, in compound interest being applied to a portion of the debt; (2) it is at odds with the facility which attracts interest only on a reducing balance; and (3) it is unreasonable to suggest that the liability of the guarantor in relation to interest should be different to that of the principal debtor, without a clear stipulation to that effect, are no longer live ones. The learned trial judge therefore erred in law in conflating the obligations under the Loan and the Guarantee. In any event, the trial judge’s finding that the Guarantee is more onerous does not affect the obligations of the respondent under the Guarantee. Consequently, no compound interest was applied to a portion of the debts and liabilities under the Guarantee that comprised interest under the Loan and Article 1009.1 is therefore not engaged.

Article 1009.1 of the **Civil Code of Saint Lucia** Chapter 4.01 of the Revised Laws of Saint Lucia 2015 considered.

JUDGMENT

- [1] **VENTOSE JA:** This is an appeal filed by the appellant on 8th May 2024 appealing against the decision of the learned trial judge dated 26th March 2024 in which the learned trial judge, among others, gave judgment against the respondent in the sum of \$540,000.00, with interest continuing on the principal balance of \$475,045.20 at a rate of 7 per cent per annum from 6th March 2023 until the date of payment.

Background

- [2] The appellant, 1st National Bank Saint Lucia Limited (the “**Bank**”), filed a claim form and statement of claim on 4th September 2023 in which it claimed against the respondent the sum of \$540,000.00 with interest at a rate of 7 per cent or at a daily rate of \$103.5616 from 6th March 2023 until the date of payment and the sum of \$632,970.01 against the then first respondent, Trinity St. Lucia Limited (“**Trinity**”). The appellant stated that Trinity and the respondent were customers of Royal Bank of Canada (“**RBC**”). The banking business of RBC, including the Loan (as defined below), was transferred to the appellant on 31st March 2021.
- [3] The respondent and Trinity entered into two loan credit facilities with RBC; the first was dated 16th September 2016 and the second was dated 1st December 2016. The parties also entered into a Hypothecary Obligation dated 18th January 2017. Pursuant to these, RBC loaned Trinity the sum of \$540,000.00 with interest at a rate of 7 per cent per annum (the “**Loan**”). The respondent entered into a guarantee with RBC whereby he agreed to guarantee the payment on demand of the debts and liabilities of Trinity up to \$540,000.00, and also to pay interest on the sum of \$540,000.00 at a rate of interest of 7 per cent from the date of demand to the date of payment, before as well as after judgment (the “**Guarantee**”). The respondent failed to pay the sums as demanded by the appellant under the Guarantee.

- [4] On 22nd September 2023, the respondent and Trinity filed their five-paragraph defence in which they: (1) denied that there are two loan facilities with the appellant, whether jointly or severally; (2) stated that the debt owed by them is overstated and that the debt is a single facility granted to Trinity and guaranteed by the respondent; (3) denied liability in respect of any loan facility but a loan facility with a principal starting amount of \$540,000.00 with interest annually of 7 per cent on reducing balance; and (4) stated that they have made payments towards the loan facility but acknowledge that they have defaulted and are in default.
- [5] The matter came up for hearing before the learned trial judge on 22nd November 2023 who adjourned the hearing to allow the parties to discuss and agree the appropriate terms for entry of judgment. At a further hearing on 30th November 2023, the parties had not yet settled the terms of the judgment, and the hearing was adjourned again. The matter came up for hearing before the learned trial judge for case management and reporting on settlement discussions on 25th January 2024. At that hearing, the learned trial judge noted that the parties had reached agreement on the terms for entry of judgment against Trinity but, disagreed on the terms for the respondent based on a difference of opinion on the interpretation of relevant sections of the Guarantee, which was the basis for liability against the respondent. The learned trial judge ordered the parties to file submissions and authorities on, whether the liability of the respondent is limited to: (i) a total sum of \$540,000.00 with no interest thereon, or (ii) the sum of \$540,000.00, plus interest accruing from the date such sum becomes due and payable, until payment in full, based on the terms of the Guarantee.

The decision in the court below

- [6] The matter came up for hearing before the learned trial judge on 13th March 2024 who delivered her ruling on the issue on 26th March 2024. The learned trial judge did not deliver a written judgment on the issue. Instead, she made a detailed order running five pages with full recitals giving the background to the issue, the submissions of the parties and her decision on the issue, which were then followed

by the actual orders. The entire document is referred to in this judgment as the “Order”. At para [7] of the Order, the learned trial judge stated that the issue for resolution was whether the plain meaning of the words used, and the language of the clause, gives rise to a special agreement between the appellant and the respondent such that accrued interest included in the limit, bears interest, in accordance with Article 1009.1 of **the Civil Code of Saint Lucia** (the “**Civil Code**”).¹

[7] In answering the question posed, the learned trial judge explained as follows:

“9. The Court notes that the limit is expressed in respect of the principal sum loaned to the first defendant. The Court further notes that there is nothing in the clause or the agreement which states categorically that in the event interest is included in this limit, at some time in the future, then such interest will bear interest. According to the claimant, this is to be (sic) presumed from the wording of the clause, because it says that the debts and liabilities include interest, then it goes on to set a limit (equivalent to the principal sum), and then says that such limit will attract interest from the date of demand.

10. The Court holds the view that for clarity and transparency, the agreement should have stated in precise language that if the limit included accrued interest at any time, then such interest will bear interest. It is the absence of such language to capture the essence of a special agreement under article 1009 (1), which has led to the conflict in interpretation, between the parties. The average customer, or reasonable man reading the clause would not apprehend that in [the] future the limit could include accrued interest, which is expected to attract further interest. The Court accepts the defendants submission that the application of compound interest should not be left to be deduced or implied from the wording of the clause, but rather should be stated in clear terms, to constitute a special agreement, for the purposes of article 1009 (1). It (sic) this arrangement is to be discerned by way of deduction, then it is not a special agreement.”

[8] The learned trial judge noted at para [12] of the Order that Article 1009.1 of **the Civil Code** expressly states that a special agreement is required to give effect to compound interest. In her view, this necessitates that such condition must be stated in unmistakably clear language that will be easily understood by the ordinary customer or reasonable man, leaving no room for uncertainty, or ambiguity, or the

¹ Chapter 4.01 of the Revised Laws of Saint Lucia 2015

parties being at odds in their understanding of the matter. The learned trial judge also noted that by failing to stipulate in unequivocal terms that any accrued interest included in the limit of \$540,000.00 will bear interest, the clause is deficient for the purpose of Article 1009 and has resulted in ambiguity. Consequently, the learned trial judge continued at para [13] that the *contra proferentem* rule therefore applies, and the clause must be interpreted strictly against the appellant. She continued that the respondent, as guarantor, should not be subject to repayment of the debt and liabilities in circumstances which flout the clear provision of Article 1009.1, which requires a special agreement.

- [9] The learned trial judge noted at para [14] that in responding to the submission of the respondent and Trinity that the appellant's interpretation would lead to disparity in the terms of repayment, between Trinity and the respondent, counsel for the appellant submitted that the primary obligation of Trinity should not be conflated with that of the respondent as guarantor, and that the terms of their respective obligations may differ. The learned trial judge at paras [15]-[16] expressed the following views about that submission:

"15. The Court is of the firm view that there must be a measure of congruence between the terms of the lending, and the conditions set for the guarantor. Based on the terms of the loan facility, the first defendant is subject to interest on the reducing balance of the loan, only. It is therefore inconceivable that a guarantor should be made to repay a liability on terms which are more onerous than that imposed on the principal debtor, for the same loan facility. If that is the case, such terms must be plainly and specifically stated, so as to be clearly understood by the guarantor. In this regard, the clause is deficient. If given the interpretation advanced by the claimant, it results in an outcome which is more onerous to the guarantor, in compound interest being applied to a portion of the debt. This is at odds with the facility which attracts interest only on a reducing balance. It is therefore unreasonable to suggest that the liability of the guarantor in relation to interest should be different to that of the principal debtor, without a clear stipulation to that effect.

16. On the other hand, the defendants' interpretation that the second defendant is liable for sums up to a limit of \$540,000.00 and no more, is also flawed. On reading the clause, in conjunction with the terms of the loan facility, interest is intended to apply to the principal sum, until payment. Thus, the second defendant will be liable to pay interest on the remaining

balance, until it is liquidated. This is the only interpretation which reflects commercial sensibility and the practicalities of the lending, in these circumstances.”

- [10] At para [17] of the Order, the learned trial judge held that, first, in relation to Trinity the appellant was entitled to combine liabilities up to a limit of \$540,000.00, comprising the principal balance of \$475,045.20 plus interest of \$64,954.80. Second, interest would continue to accrue only on the principal balance of \$475,045.20 from 6th March 2023 (the date of demand), until payment. Third, the interest component of \$64,954.80 shall not bear interest, because the clause had not stated with specificity that accrued interest on the principal balance carried interest. The learned trial judge therefore entered judgment at para 1(ii) in favour of the appellant against the respondent in the sum of \$540,000.00 with interest continuing on the principal balance of \$475,045.20 at the rate of 7 per cent per annum from 6th March 2023 until the date of payment. She also ordered that the appellant shall not be entitled to recover a total sum which exceeded the sum of \$540,000.00.

The Appeal

- [11] The appellant filed their notice of appeal on 8th May 2024 in which included 11 grounds of appeal. In submissions filed in support of the appeal, the appellant has abandoned the second ground of appeal. For the purposes of this appeal, I will adopt the three issues that the appellant submits are raised in their appeal, namely: (1) whether the learned trial judge erred in fact and law in her interpretation of the Guarantee; (2) whether the learned trial judge erred in law in conflating the obligations under the Loan and the Guarantee and finding the Guarantee to be more onerous; and (3) whether the learned trial judge failed to award interest by way of damages in accordance with the Guarantee by mischaracterising the interest payable on the Guarantee as compound interest.

Conclusions

- [12] The relevant clause of the Guarantee is as follows:

“... [Winston Paul] ... guarantee(s) payment on demand to [the Bank] of

all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, together **with interest on all such debts and liabilities** to the date of payment, commission, banking charges, legal or other costs, charges and expenses at any time owing by [Trinity] ... to the Bank or remaining unpaid by [Trinity] to the Bank, heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Bank and [Trinity] or by or from any agreement or dealings with any third party by which the Bank may be or become in any manner whatsoever a creditor of the customer or however otherwise incurred or arising anywhere within or outside the country where this guarantee is executed and whether [Trinity] be bound alone or with another or others and whether as principal or surety (such debts and liabilities being hereinafter called the "liabilities"); **the liability of [Winston Paul] hereunder being limited to the sum of Five Hundred and Forty Thousand Dollars, with interest from the date of demand for payment** at a rate equal to A) the Bank's Prime Interest Rate per annum in effect from time to time* minus 2.5% percent per annum ... as well after as before demand made or judgment obtained in any such case.

...

(2) This guarantee shall be a continuing guarantee and shall cover all the liabilities, and **it shall apply to and secure any ultimate balance due and remaining unpaid to the Bank.**" (Emphasis added)

- [13] The appellant submits that the learned trial judge: (1) fell into error by stating that the Guarantee did not clearly provide that if the limit of \$540,000.00 included interest, then such interest will bear interest; (2) misconstrued the Guarantee because she failed to consider its meaning, as a whole, in that the liabilities included interest and the Guarantee secured "any ultimate balance due and remaining unpaid to the Bank" up to a limit of \$540,000.00, with interest; and (3) fell into error in equating the guaranteed limit with the principal sum loaned (\$540,000.00), and therefore finding that it was intended that interest was to be applied to the outstanding principal amount of the loan (\$475,045.20).

- [14] It is immediately clear that the Guarantee is related to the Loan. The facility letter dated 9th September 2016 states that one of the facilities made available to Trinity was "\$540,000.00 Demand Loan repayable over 144 months by monthly installments of \$5,554.00 including interest". This was to "assist with the purchase of a property at the Morne costing \$540,000.00". The interest payable was the RBC business

prime rate of 9.5 per cent minus 2.5 per cent with an effective interest rate of 7 per cent.

- [15] The question that arises for determination is whether the phrase “interest on all such debts and liabilities” used in the Guarantee covers any interest component of the “debts and liabilities” of Trinity or whether “interest” applies to only the principal amount outstanding on the Loan. In the respondent’s view, the first approach gives rise to compound interest under the Guarantee, and that consequently engages Article 1009 of **the Civil Code** which provides as follows:

“**1009.** Interest from capital sums also bears interest:

1. When there is a special agreement to that effect;
2. When in any action brought such interest is specifically demanded;
3. When a tutor has received or ought to have received interest upon monies of his pupil and has failed to invest it within the term prescribed by law.”

- [16] Another question that arises is whether the interpretation of the terms of the Guarantee accords with the views of the appellant or that of the respondent. The applicable principles relevant to interpreting a guarantee were stated by the Court of Appeal of England and Wales in **Static Control Components (Europe) Limited v Egan**² as follows:

“**The relevant law**

12. Mr Lander has drawn our attention, as he did that of the recorder, to paragraphs 4.02 and 4.06 in Chapter 4, Construction, of Andrews and Millett, *The Law of Guarantees* (3rd Edition) (2000). These describe a general approach that contracts of suretyship “must be strictly construed so that no liability is imposed on the surety which is not clearly and distinctly covered by the terms of the agreement.” But paragraph 4.02 begins with the words “There is a substantial body of authority which indicates that contracts of suretyship are to be construed in the same way as any other contract.” And later, “... the court is entitled to look at the surrounding circumstances in order to identify the scope and object of the contract of suretyship, to the same extent that it would be entitled to look at the factual matrix as an aid to the construction of any other commercial agreement. A guarantee must be given a reasonable interpretation within the context in which it has been given.” Further, the chapter begins with an Introduction, paragraph 4.01, which includes “... a word of caution one must never

² [2004] EWCA Civ 392.

lose sight of the fact that ultimately what has to be determined is the intention of the parties to the contract in question. Thus, factors such as the context in which a phrase occurs, the wording of other parts of the contract and the factual matrix, may result in identical or similar wordings being given completely different interpretations in two different guarantees.”

13. In my view the principles described by Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 at 912H - 913 F apply to the construction or interpretation of this, or any other, guarantee. Mr Lander placed some reliance upon the particular words under consideration in section 3 (b) of the claim form in *ICS v West Bromwich* in an attempt to limit the application of the “principles” to a case such as that, in which the relevant wording itself was (in the words of Lord Hoffmann) very strange and badly drafted. But in my view, application of the passage and principles at 912 F - 913 E was not intended to be so limited and is not and has not been treated as being so limited.

14. Lord Hoffmann said:

“The principles may be summarised as follows.

- (1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
- (2) The background was famously referred to by Lord Wilberforce as the “matrix of fact.” But this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.
- (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification
- (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not (sic) the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as

occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax.

- (5) The “rule” that words should be given their “natural and ordinary meaning” reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said “if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.”

Interpretation of the guarantee

15. I now turn to interpret the guarantee in this case, applying the principles of *ICS v West Bromwich*. The end question is: what meaning would it convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties at the time of the contract? That background knowledge or matrix of fact would include the following: ...”

- [17] Accordingly, the question is what meaning would the clause convey to a reasonable person having all the background knowledge which would reasonably have been available to RBC and the respondent at the time of the contract? The factual matrix in this appeal was that the Guarantee was to protect the appellant from any financial loss occurring by reason that Trinity was unable to pay its debts and liabilities to the appellant under the Loan. While the Guarantee was related to the Loan and must refer to it as the obligations arising under it arise directly because of a default by Trinity of its obligations under the Loan, it must be remembered that the Guarantee is a separate contract. It is a contract entered into between the appellant and the respondent in respect of the debts and liabilities of Trinity, a third party, arising from the Loan.
- [18] The Guarantee states that: (1) the respondent guarantees to the appellant the payment of “all debts and liabilities”; (2) the respondent also guarantees to the appellant the payment of “interest on all such debts and liabilities”; (3) the liability of

the respondent is limited to the sum of \$540,000.00; (4) the liability of the respondent includes that sum “with interest from the date of demand for payment” at a rate of 7 per cent; and (5) it “shall apply to and secure any ultimate balance due and remaining unpaid to the Bank”. Would the reasonable person understand that the phrase “debts and liabilities” includes any principal amount owing by Trinity to the appellant under the Loan and any outstanding interest on that principal amount? It cannot reasonably be disputed that any unpaid interest on the principal amount of the Loan would be covered by the phrase “debts and liabilities” as used in the Guarantee.

[19] The Guarantee also provides that the respondent’s liability includes the sum representing the “debts and liabilities” and interest on that sum “from the date of demand for payment” at a rate of 7 per cent. It must also be noted that the obligation of the respondent to the appellant was not only in respect of the “debts and liabilities” of Trinity but also “commission, bank charges, legal and other costs, charges and expenses at any time owing” by Trinity to the appellant. None of these additional financial obligations are stated to attract any “interest”. It must therefore mean that the parties intended that any amount that falls within the phrase “debts and liabilities” must attract interest at a rate of 7 per cent. The clause also states that the liability of the respondent is limited to the sum of \$540,000.00. While this limit is equal to the principal sum of the Loan, nothing turns on this. The Guarantee does not in any way state that interest is to be paid on the sum (representing total debts and liabilities) only in respect of the amount representing the principal of the Loan. Nothing in the Guarantee leads to that conclusion.

[20] The learned trial judge was of the view that if the Guarantee intended that any interest accrued at any time to bear interest then the Guarantee “should have stated in precise language if the limit included accrued interest, then such interest will bear interest” (at para 10). I do not agree with the learned trial judge that the clause in the Guarantee was not sufficient or clear enough to cover any interest on the principal sum that would then attract interest by being included in the term “debts and liabilities”. In my view, properly read, the clause covers the payment of interest on

the total sum of debts and liabilities of Trinity, and it does not matter that that sum included any unpaid interest on the Loan. There is therefore no need to have recourse to the *contra proferentem* rule which this Court accepted in **Reynolds v State Insurance Corporation**,³ which provides that an ambiguous term in a contract will be construed against the interests of the party who imposed it. Nothing in the clause is ambiguous as to whether the phrase “debts and liabilities” includes any unpaid interest. It clearly does. Under the Loan, this sum is interest – Trinity’s interest; however, under the Guarantee that sum is still Trinity’s interest payment, but it is now reflected as a “debt or liability” for which the respondent is liable to the appellant under the Guarantee. It is simply not the respondent’s interest payment.

[21] If the interpretation of this clause in the Guarantee was covered by only ordinary rules of contractual interpretation, I would have found that the Guarantee properly interpreted means that interest is payable on any sum equal to the debts and liabilities of Trinity, and this includes any amount that represents interest on the Loan. However, this is not the end of the matter because Article 1009 of the **Civil Code** governs the payment of interest on interest, so its requirement arguably also needs to be satisfied.

[22] The effect of Article 1009.1 of the **Civil Code** is that interest from capital sums also bears interest when there is a special agreement to that effect. Does Article 1009.1 apply at all to the Guarantee? The learned trial judge stated at para 10 that the Guarantee “should have stated in precise language that if the limit included accrued interest at any time, then such interest will bear interest” in order to fall within “the essence of a special agreement under article 1009 (1)” of the **Civil Code**. She continued at para 12 that to satisfy the requirement of a special agreement for interest to bear interest that “must be stated in unmistakably clear language, which will be easily understood by the ordinary customer or reasonable man, leaving no room for uncertainty, or ambiguity, or the parties being at odds in their understanding of the matter”. The learned trial judge also stated that, in other words, by failing to stipulate

³ Antigua and Barbuda HCVAP 2007/005 (delivered 8th February 2010, unreported).

in unequivocal terms that any accrued interest included in the limit of \$540,000.00 will bear interest, the clause was deficient for the purpose of Article 1009.1, and that this resulted in some ambiguity.

[23] Does Article 1009.1 apply to the total sum payable by the respondent (the “debts and liabilities”) under the Guarantee when that sum includes an amount of interest that was unpaid by a third party? It must be remembered that there are two contracts. The Loan is relevant only in determining the total “debts and liabilities” of Trinity under the Guarantee. It is that sum that attracts interest under the Guarantee. When the total amount of the “debts and liabilities” of Trinity is determined up to the limit of \$540,000.00, it is that total amount that attracts interest at a rate of 7 per cent under the Guarantee. It seems to be irrelevant for the purposes of the Guarantee that the total amount includes an amount that represented interest under the Loan. For the purposes of the Guarantee, it is merely part of the debts and liabilities for which the respondent is responsible and which, according to the Guarantee, also bears interest at a rate of 7 per cent. It is technically not correct to refer to the portion of the debts and liabilities that represented “interest” under the Loan as “interest” under the Guarantee. For the purposes of the Guarantee, the respondent is not liable to pay compound interest as this would only be the case if the interest of 7 per cent was payable not only on the total sum of the debts and liabilities but also on any accumulated unpaid 7 per cent interest. This is not the case under the Guarantee as interest thereunder is not capitalised.

[24] The obligations of Trinity under the Loan and the respondent under the Guarantee do not mirror each other and there is no reason in principle why they should be the same in all respects. The learned trial judge was not correct in stating at para 15 that there must be a measure of congruence between the terms of the lending, and the conditions set for the guarantor. The terms of both agreements are those agreed to by the respective parties. While there should be some measure of congruence between the two agreements, this does not mean, as the learned trial judge accepted, that it is inconceivable that a guarantor should be made to repay a liability

on terms which are more onerous than that imposed on the principal debtor, for the same loan facility. The obligations under both agreements are not the same. In fact, they cannot and usually are not. Under the Loan, Trinity is obligated to pay the principal sum plus interest to the appellant by way of monthly installments until the amount of the Loan is fully liquidated. Under the Guarantee, the respondent is obligated immediately to pay to the appellant the total sum of the debts and liabilities of Trinity under the Loan plus interest.

[25] If a guarantor accepts liability under a guarantee that is arguably more onerous, that alone does not mean that it is wrong in principle for a guarantee to so provide. It is usually the case that the guarantee is payable immediately and this no doubt is a more onerous obligation on a guarantor, whereas the loan is payable by monthly installments over a period of time. This justification accepted by the learned trial judge, in my view, is incorrect as a matter of law and principle. Once it is accepted that for the purposes of the Guarantee, the only relevant interest is the 7 per cent to be paid by the respondent, the concerns of the learned trial judge that: (1) this results in an outcome which is more onerous to the guarantor, in compound interest being applied to a portion of the debt; (2) it is at odds with the facility which attracts interest only on a reducing balance; and (3) it is unreasonable to suggest that the liability of the guarantor in relation to interest should be different to that of the principal debtor, without a clear stipulation to that effect, are no longer live ones. In my view, the learned trial judge erred in law in conflating the obligations under the Loan and the Guarantee and, in any event, the trial judge's finding that the Guarantee is more onerous does not affect the obligations of the respondent under the Guarantee.

[26] Consequently, it is my view that no compound interest was applied to a portion of the debts and liabilities under the Guarantee that comprised interest under the Loan. It follows therefore that Article 1009.1 of the **Civil Code** is not thereby engaged to require a determination of whether there was a "special agreement" to the effect that interest from the capital sum should bear interest.

Disposition

[27] Based on the foregoing, I would allow the appeal against the decision of the learned trial judge and set aside paragraph 1(ii) of the Order of the learned trial judge and substitute the following:

(ii) As against the appellant the sum of \$540,000.00 with interest at the rate of 7% per annum from 6th March 2023 until the date of payment.

[28] The respondent shall pay costs in the appeal to the appellant to be assessed if not agreed within 21 days of today's date.

[29] I am grateful for the assistance provided by learned counsel.

I concur.
Margaret Price Findlay
Justice of Appeal

I concur.
Trevor M. Ward
Justice of Appeal

By the Court

Chief Registrar