

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

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2019/0045

BETWEEN:

**THE ATTORNEY GENERAL OF THE FEDERATION OF ST. CHRISTOPHER AND
NEVIS**

Appellant

and

SKN CHOICE TIMES LIMITED

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mr. Mario Michel
The Hon. Mde. Gertel Thom

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Terence Byron for the Appellant
Mrs. Angela Cozier for the Respondent

2022: March 22;
May 27.

Civil appeal — Contract law — Breach of contract — General damages — Whether the respondent had complied with the terms of the contract between the parties — Whether the learned judge erred in his calculation of damages awarded to the respondent for breach of contract — Whether the learned judge erred in his stipulation of the date by which the general damages awarded to the respondent was payable — Interest — Pre-judgment interest — Whether the learned judge erred in his award of interest on damages payable to the respondent — Costs — Whether the learned judge erred in awarding prescribed costs to the respondent

On 1st September 2014, the Government of the Federation of St. Christopher and Nevis (hereafter “the Government”) represented by the Attorney General, entered into an agreement with SKN Choice Times Limited (hereafter “Choice”) under the terms of which the Government engaged the services of Choice ‘to carry live or via recording all broadcasts or as much as reasonably possible of the broadcasts of the Government, those of the National Parliament and those of any department of the Government which is deemed appropriate for such broadcast’. Choice claims that it duly and faithfully fulfilled its obligations

under the contract, whilst the Government, since 15th March 2015, refused to continue to honour the contract. Choice further claims that it had continued to allow all of the Government's broadcasts to be published on its station even up to the filing of their claim against the Government on 14th December 2015.

Because of the Government's alleged failure to honour its payment obligations under the contract, Choice instituted proceedings against the Government, claiming: "(1.) payment of the amount of \$225,000.00 ECC representing the contract sum up to 31st August 2016 in the terms of the contract between the parties entered into on the 1st September 2014 for the provision of broadcast services provided by the Claimant to the 'Government of St. Christopher and Nevis', represented by the Defendant (2.) general damages for breach of contract (3.) statutory interest on the sum of \$225,000.00 ECC from 15th March 2015 until full payment of the said sum (4.) statutory interest on the damages awarded from the date of judgment until full payment thereof (5.) costs [and] (6.) such further or other relief as the court considers just." After trial of the matter by the learned judge on 15th October 2019, he rendered an oral judgment whereby he made the following orders: "1. Judgment is entered in favour of the Claimant in the sum of \$225,000.00 for breach of contract to be paid by the Defendant within 14 days of today's date. 2. The Claimant is entitled to interest at a rate of 5% per annum on the total sum from 15 March 2015 until final payment. [and] 3. Prescribed costs are awarded to the Claimant pursuant to CPR 65.5 to be paid by the Defendant within 14 days of today's date."

Being dissatisfied with the decision of the learned judge, the Attorney General appealed on 14 grounds of appeal. In summary, the issues before this Court are: (i) Whether Choice had complied with the terms of the contract between the parties; (ii) Whether the learned judge erred in his calculation of damages awarded to Choice for breach of contract; (iii) Whether the learned judge erred in his stipulation of the date by which the general damages awarded to Choice was payable; (iv) Whether the learned judge erred in his award of interest on damages payable to Choice; and (v) Whether the learned judge erred in awarding prescribed costs to Choice.

Held: allowing the appeal in part and making the orders set out at paragraph 33 of this judgment, that:

1. Having before him the evidence of Choice's witnesses attesting to the fact that Choice had complied with the terms of its contract, and that it was the Government which was in breach of its contract with Choice, and having no evidence to the contrary, the learned judge did not err in finding in favour of Choice and determining that it was the Government which failed to meet its obligations under the contract. There is no basis therefore for this Court to disturb the learned judge's findings on breach of the contract between the parties.
2. The amount which would have been paid to Choice if the contract had not been breached would be \$12,500.00 on 15th March 2015 and \$12,500.00 on the fifteenth day of each succeeding month until 15th August 2016, totaling \$225,000.00; which is the amount ordered by the learned judge to be paid by the Government to Choice

for breach of contract. Therefore, the judge's calculation of damages for breach of contract is affirmed.

3. There is no legally nor logically justifiable basis for a judge to set 'an expiration date' for the payment of an award of damages. Therefore, the learned judge's order that the award of \$225,000.00 was to be paid by the Government within 14 days of the date of the order is set aside.
4. The High Court in St. Christopher & Nevis has jurisdiction to award pre-judgment interest and post-judgment interest. However, the learned judge did err when he assimilated pre-judgment interest and post-judgment interest, which are payable from and to different dates and sometimes at different rates, and with pre-judgment interest being discretionary and post-judgment interest being mandatory. By way of pre-judgment interest the judge ought to have ordered interest on each amount of \$12,500.00 from the date when that payment became due until the date of judgment. Therefore, the learned judge erred when he ordered that interest on the entire amount of \$225,000.00 was to be paid from 15th March 2015, because all that was due on 15th March 2015 was \$12,500.00 and not \$225,000.00, and \$25,000.00 was due and not \$225,000.00 on 15th April 2015, and continuing with this arithmetic progression until 15th August 2016. As to the rate of interest to be applied in respect of pre-judgment interest, this can vary, but is essentially a discretionary power to be exercised by the judge. The learned judge chose to apply the same rate to the award of pre-judgment interest as is statutorily applied to post-judgment interest, and no issue can be taken with him on his exercise of discretion in this regard, even though this Court might have applied a different rate.

Section 7 of the **Judgments Act** Cap 3.14, Revised Laws of Saint Christopher & Nevis 2002 applied; **Alphonso and Others v Deodat Ramnath** (1997) 56 WIR 183 followed; **Steadroy Matthews v Garna O'Neal** BVIHCVAP2015/0019 (delivered 16th January 2018, unreported) followed; **Andrey Adamovsky et al v Andriy Malitskiy et al** BVIHCMAP2014/0022 (delivered 3rd February 2017, unreported) followed; Section 29 of the **Eastern Caribbean Supreme Court (Saint Christopher & Nevis) Act** Cap 3.11, Laws of Saint Christopher and Nevis applied.

5. An award of costs, both as to the incidence of it and the quantum of it, is - subject to Parts 64 and 65 of the **Civil Procedure Rules 2000** - at the discretion of the trial judge. In this case, the learned judge made an award of prescribed costs to be paid to Choice by the Government and there is no basis for this Court to disturb his order.

Parts 64 and 65 of the **Civil Procedure Rules 2000** applied.

JUDGMENT

- [1] **MICHEL JA:** This is an appeal against a decision of the learned judge contained in an oral judgment rendered by him on 15th October 2019.

Background

- [2] The brief facts of the case are that on 1st September 2014, the Government of the Federation of St. Christopher and Nevis (hereafter “the Government”) represented by the Attorney General, entered into an agreement with SKN Choice Times Limited (hereafter “Choice”) under the terms of which the Government engaged the services of Choice ‘to carry live or via recording all broadcasts or as much as reasonably possible of the broadcasts of the Government, those of the National Parliament and those of any department of the Government which is deemed appropriate for such broadcast’.
- [3] The agreement provided in clause 1 that:
“Reasonable notice of each such live broadcast shall be given to Choice beforehand and wherever possible a schedule of assignments requiring both live and recorded programs shall be prepared and given to Choice at least one (1) week in advance.”
- [4] Clause 2 of the agreement provided that: ‘As full and inclusive remuneration for all services to be rendered by Choice to the Government hereunder Choice agrees to accept payment in the sum of EC\$12,500.00 per month...’.
- [5] Clause 5 of the agreement provided as follows:
“If for any reason Choice does not perform 100% of the services to be rendered in any one day/week/or month, it shall where appropriate within two weeks of the end of the relevant period perform extra services such that the services not performed have been made up for and thereon it shall be entitled to the payment agreed per month for its services.”
- [6] Clause 6 provided as follows:

“If Choice does not perform the services herein agreed to be performed over the period of two (2) consecutive months, the Government may give Choice time over which it may perform additional services to make up the shortfall and if it does not do so within the time allowed, the Government may terminate this Agreement at its discretion and Choice shall not be entitled to any payment corresponding to the period over which it was in default.”

- [7] Choice claims that it has duly and faithfully fulfilled its obligations under the contract, whilst the Government has, since 15th March 2015, refused to continue to honour the contract. Choice further claims that it had continued to allow all of the Government’s broadcasts to be published on its station even up to the filing of their claim against the Government on 14th December 2015. Choice claims also that, because of the Government’s failure to honour its payment obligations under the contract, it instituted proceedings against the Government, claiming:

- “(1.) payment of the amount of \$225,000.00 ECC representing the contract sum up to 31st August 2016 in the terms of the contract between the parties entered into on the 1st September 2014 for the provision of broadcast services provided by the Claimant to the ‘Government of St. Christopher and Nevis’, represented by the Defendant
- (2.) general damages for breach of contract
- (3.) statutory interest on the sum of \$225,000.00 ECC from 15th March 2015 until full payment of the said sum
- (4.) statutory interest on the damages awarded from the date of judgment until full payment thereof
- (5.) costs
- (6.) such further or other relief as the court considers just.”

- [8] After trial of the matter by the learned judge on 15th October 2019, he rendered an oral judgment whereby he made the following orders:

- “1. Judgment is entered in favour of the Claimant in the sum of \$225,000.00 for breach of contract to be paid by the Defendant within 14 days of today’s date.

2. The Claimant is entitled to interest at a rate of 5% per annum on the total sum from 15 March 2015 until final payment.
3. Prescribed costs are awarded to the Claimant pursuant to CPR 65.5 to be paid by the Defendant within 14 days of today's date."

The appeal

[9] By notice of appeal filed on 27th November 2019 and amended on 28th November 2019, the Attorney General appealed the decision of the learned judge on 14 grounds of appeal. Submissions in support of the appeal were filed on behalf of the Attorney General on 28th December 2021, whilst submissions in opposition to the appeal were filed by Choice on 28th January 2022.

[10] The essential question in this appeal is whether Choice had complied with the terms of the contract between the parties by carrying as much as reasonably possible of the broadcasts of the Government, the National Parliament and those of any department of the Government which were deemed appropriate for such broadcasts, in the absence of any notice by the Government to Choice of broadcasts to be carried, or any schedule of assignments requiring both live and recorded programmes given to Choice at least one week in advance of the broadcasts.

Discussion

[11] In its pleadings and in the evidence which it led, Choice averred and alleged that it had complied with the terms of the contract; it so pleaded in its statement of claim and it called 2 witnesses at the trial to give evidence to that effect. In his defence, the Attorney General denied that Choice fulfilled its obligations under the agreement but led no evidence to substantiate this denial.

[12] Before this Court, the Attorney General seeks to rely on a statement made by the learned judge in his oral judgment that – 'The Claimant has provided evidence that it has performed some, but not all of its obligations under the agreement...'. The Attorney General juxtaposes this statement by the learned judge with clause 5 of the agreement set out in paragraph 5 hereof, and submits that, as found by the

learned judge, Choice had not performed all of its obligations under the contract and, as provided for in the contract, they are not therefore 'entitled to the payment agreed per month for its services'.

[13] The Attorney General does not, however, put the learned judge's statement in context or juxtapose it with several other statements which he made in his oral judgment, which make it abundantly clear that the judge found that to the extent that Choice did not carry any of the Government's broadcasts or perform any extra services, it was because of the fault of the Government in not giving notice to Choice of the broadcasts or not providing Choice with a schedule of assignments, which the Government was required to do by virtue of clause 1 of the contract.

[14] The learned judge, having before him the evidence of Choice's witnesses attesting to the fact that Choice had complied with the terms of its contract, and that it was the Government which was in breach of its contract with Choice, and having no evidence to the contrary, found in favour of Choice and determined that it was the Government which failed to meet its obligations under the contract and to pay to Choice the sum of \$12,500.00 per month from 15th March 2015 to 31st August 2016.

[15] There was evidence before the judge on the basis of which he could make the findings that he did and no evidence to the contrary. There is no basis therefore for this Court to disturb the learned judge's findings on breach of the contract between the parties.

[16] This then leads on to the orders made by the judge by way of damages for breach of contract, the setting of a date by which the damages must be paid, and the award of interest on the entire amount of damages at the rate of 5% from 15th March 2015 until final payment.

[17] Once the court has determined that a contract between two parties has been breached by one of the parties, the court must then determine what is the

appropriate remedy for the breach. In a contract for services, such as the one between the parties to this case, the remedy would be either specific performance or damages. An order for specific performance was not, however, an option which was available to the court in this case because, by the time the court was adjudicating upon this matter, the time by which the contract was to be performed had elapsed well over 3 years before. In the circumstances of this case, therefore, an award of damages was the remedy available to the court to redress the Government's breach of its contract with Choice.

[18] The measure of damages in contract is well established as being such sum as would put the aggrieved party in the position in which it would have been had the contract been performed. In this case, the uncontroverted evidence is that the last payment made by the Government to Choice was the payment of \$12,500.00 due on 15th February 2015. The next payment would have been due on 15th March 2015 in the sum of \$12,500.00, and a like payment would have been due on the 15th day of every month thereafter until 31st August 2016.

[19] It is to be noted that although payments were to be made on the fifteenth day of every month, it appears that each such payment was due in respect of the period from the first to the last day of the month; so that the payment due on 15th August 2016 would be for the period from 1st August 2016 to 31st August 2016. The amount therefore which would have been paid to Choice if the contract had not been breached would be \$12,500.00 on 15th March 2015 and \$12,500.00 on the fifteenth day of each succeeding month until 15th August 2016, totaling \$225,000.00; which is the amount ordered by the learned judge to be paid by the Government to Choice for breach of contract.

[20] As to the part of the learned judge's order which stipulated that the \$225,000.00 was to be paid by the Government within 14 days of the date of the order, I would set it aside as being neither legally nor logically justifiable. The court's award of general damages is payable either from the date when the amount would have been

due if the contract had been performed, which in this case is 15th March 2015 and continuing on the 15th day of every month thereafter until 15th August 2016, or from the date of the order awarding damages, which in this case is 15th October 2019 delay in payment from the date it was due to the date when it is paid is compensable by an award of interest.

[21] There are two categories of interest which may be awarded in this case, one is pre-judgment interest and the other is post-judgment interest. The entitlement to and quantification of post-judgment interest is uncontentious, since it is specifically provided for in the **Judgments Act**.¹ The entitlement to and quantification of pre-judgment interest, however, still attracts some debate, even 25 years after this Court affirmed the award of pre-judgment interest in the case of **Alphonso and Others v Deodat Ramnath**.²

[22] In the case of **Steadroy Matthews v Garna O'Neal**,³ in giving judgment in this Court, I repeated and reaffirmed a statement which I had previously made in this Court in the case of **Andrey Adamovsky et al v Andriy Malitskiy et al**,⁴ and which I will rely on in this case with regard to payment of pre-judgment interest. I said then and repeat now, that:

“It cannot be disputed that a party wrongfully deprived by another of money to which the first party is entitled ought to be compensated for his loss, not just by an award to him of the sum of money to which he was entitled, but so too by an award of the time value of the money from the date of its appropriation to the date on which it is ordered to be paid to him. This latter award is what is referred to as an award of pre-judgment interest.”

[23] This statement has been treated as representing the position of this Court on the award of pre-judgment interest in the British Virgin Islands (hereafter “the BVI”), and in the other member states and territories of the Eastern Caribbean Supreme Court which have legislative provisions materially identical to section 7(1) of the **Eastern**

¹ Cap 3.14, Revised Laws of Saint Christopher & Nevis 2002.

² (1997) 56 WIR 183.

³ BVIHCVAP2015/0019 (delivered 16th January 2018, unreported).

⁴ BVIHCMAP2014/0022 (delivered 3rd February 2017, unreported).

Caribbean Supreme Court (Virgin Islands) Act⁵ (hereafter “the BVI Act”). It may be useful to reproduce here section 7(1) of the BVI Act Section 7(1) reads:

“The High Court shall have and exercise within the Territory all such jurisdiction (save and except the jurisdiction in Admiralty) and the same powers and authorities incidental to such jurisdiction as on the first day of January, 1940 was vested in the High Court of Justice in England.”

- [24] As I said in **Steadroy Matthews v Garna O’Neal**: ‘The effect of section 7 of the BVI Act is to give to the High Court in the BVI the same jurisdiction, and the powers and authorities incidental to the jurisdiction, as was vested in the English High Court as of 1st January 1940.’

The powers and authorities incidental to the jurisdiction vested in the English High Court as of 1st January 1940 include those contained in section 3(1) of the United Kingdom (hereafter “the UK”) **Law Reform (Miscellaneous Provisions) Act, 1934**,⁶ which reads:

“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 damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment...”

- [25] Section 3(1) of the UK **Law Reform (Miscellaneous Provisions) Act, 1934** provides for the award by the court of pre-judgment interest in proceedings for the recovery of any debt or damages; and section 7(1) of the BVI Act applies this provision to the BVI.

- [26] The **Eastern Caribbean Supreme Court (Saint Christopher & Nevis) Act**⁷ (hereafter “the St. Kitts Act”) does not depend on reception provisions in order to apply the provisions of section 3(1) of the UK **Law Reform (Miscellaneous Provisions) Act** to St. Kitts. Instead, section 29 of the St. Kitts Act reproduces

⁵ Cap 80, Revised Laws of the Virgin Islands.

⁶ Chapter 41.

⁷ Cap 3.11, Laws of Saint Christopher and Nevis.

(almost verbatim) section 3(1) of the UK **Law Reform (Miscellaneous Provisions) Act**, thus giving the High Court and Court of Appeal in St. Kitts the same power as the court in the BVI to award pre-judgment interest in any proceedings for the recovery of any debt or damages.

- [27] Having earlier in this judgment reproduced section 3(1) of the UK **Law Reform (Miscellaneous Provisions) Act**, it is worth reproducing here section 29 of the St. Kitts Act, which reads:

“In any proceedings for the recovery of any debt or damages, in the High Court or Court of Appeal, 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 damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment”

- [28] The High Court in St. Kitts has jurisdiction to award pre-judgment interest by virtue of section 29 of the St. Kitts Act and has jurisdiction to award post-judgment interest by virtue of section 7 of the **Judgments Act**. The learned judge did err, though, when he assimilated pre-judgment interest and post-judgment interest, because these are payable from and to different dates and sometimes at different rates and with one being discretionary and the other mandatory. Section 7 of the **Judgments Act** provides that every judgment debt shall carry interest at the rate of 5% per annum from the time of entering up of the judgment until the judgment debt is satisfied, whilst section 29 of the St. Kitts Act provides that the court may award interest, if it thinks fit, on the whole or any part of the debt or damages, for the whole or any part of the period between the date when the cause of action arose and the date of judgment, at such rate as it thinks fit.

- [29] The learned judge also erred when he ordered that interest on the entire amount of \$225,000.00 was to be paid from 15th March 2015, because all that was due on 15th March 2015 was \$12,500.00 and not \$225,000.00, and \$25,000.00 was due and not \$225,000.00 on 15th April 2015, and continuing with this arithmetic progression until 15th August 2016. What ought to have been ordered therefore by way of pre-

judgment interest is interest on each amount of \$12,500.00 from the date when that payment became due until the date of judgment. I am confident that there is some mathematical formula which can and should be used to calculate the interest thus payable and I will leave the actual calculation to others more mathematically inclined.

[30] As to the rate of interest to be applied in respect of pre-judgment interest, this can vary, but is essentially a discretionary power to be exercised by the judge. The learned judge chose to apply the same rate to the award of pre-judgment interest as is statutorily applied to post-judgment interest, and no issue can be taken with him on his exercise of discretion in this regard.

[31] The total award of damages and pre-judgment interest is payable - like any other money judgment - from the date of the judgment, and the penalty for late payment of it is an award of interest from the date of the judgment to the date of payment.

[32] As to costs, an award of costs, both as to the incidence of it and the quantum of it are - subject to Parts 64 and 65 of the **Civil Procedure Rules 2000** - at the discretion of the trial judge. In this case, the learned judge made an award of prescribed costs to be paid to Choice by the Government and there does not appear to be any basis for this Court to disturb his order.

[33] I accordingly make the following orders:

1. The appeal against the award by the learned judge for damages for breach of contract is dismissed and the award by him of \$225,000.00 to the respondent to be paid by the appellant is affirmed.
2. The appeal against the fixing by the learned judge of a period of 14 days by which the sum of \$225,000.00 is to be paid is allowed and the award of damages is payable as of the date of the learned judge's order.

3. The appeal against the award by the learned judge of interest at the rate of 5% on the total sum of \$225,000.00 from 15th March 2015 until final payment is set aside and replaced by an award of interest from the date when each payment of \$12,500.00 became due to the date of the judgment in the court below at the rate of 5% per annum.
4. Interest is awarded to Choice on the judgment debt in accordance with section 7 of the **Judgments Act**.
5. The appeal against the award of prescribed costs to Choice in the court below is dismissed and the award of prescribed costs pursuant to rule 65.5 of the **Civil Procedure Rules 2000** is affirmed.
6. Costs to Choice on the appeal is to be assessed by a judge of the High Court or master, if not agreed between the parties within 21 days of the date of this judgment; which costs must not exceed two-thirds of the amount awarded in the court below. This final cost award to Choice payable by the Government is to be discounted by 25% in view of the partial success of the Government on some of the awards made.

I concur
Davidson Kelvin Baptiste
Justice of Appeal

I concur
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar