

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

**GRENADA
CLAIM NO. GDAHCV2013/0536**

In The Matter Of The Companies Act 1994

**And In The Matter Of The Investigation Of
The Company Of Western Bells And
Company Limited Pursuant To Section
241, 518 And 519 Of The Companies Act
1994**

BETWEEN:

**[1] SELWYN SMITH
[2] CHRISTILENA SMITH**

Claimants

and

**[1] WESTERN BELLS AND COMPANY LIMITED
[2] CHARLES WILLIAMS**

Defendants

and

CHARLOS FOODMART

Chargee

Appearances:

Ms Celia Edwards Q C with her, Mr Zuriel Francique for the claimants

Ms Rosana John with her, Ms. Shireen Wilkinson for the defendants

2020: July 9, 17

JUDGMENT

- [1] **Actie J:** This application raises the issue of whether interest is due and payable on a mediation agreement made between the parties which was made an order of the court.

Background

- [2] On 18th August 2015, the parties attended a court referred mediation session and reached a settlement. The Defendants agreed to pay the Claimants the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) in full and final settlement of all matters between the parties. It was further agreed that the sum of \$100,000.00 was to be paid on or before the 31st December 2015 and the remaining balance of \$250,000.00 to be paid on or before 31st December 2016, with a “Liberty to Apply” clause.
- [3] By letter dated 15th January 2016, the Defendants through counsel informed the claimants of their inability to make the payments in the manner agreed. The Defendants suggested the sale of shares as an alternative method to pay off the agreed sum. The Claimants did not respond to the letter.
- [4] The defendants eventually made payment of the full sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) on 6th March 2019. By letter dated 11th March 2019, the Claimants through counsel demanded payment of interest on the judgment debt. On May 8th, 2019, the Claimants filed a committal application against the debtors for the failure to pay interest in the sum of \$66,500.00.

- [5] The Claimants contend that **Section 27A of the Supreme Court Act, inserted by the West Indies Associated States Supreme Court (Grenada) (Amendment) Act, 2009**, now provides for the automatic attachment of post-judgment interest in the State of Grenada and that the said order being an order of the Court, automatically attracts interest at the statutory rate. The Claimants contend that the mediation agreement having been made into an order of the High Court, breach thereof would trigger the statutory interest provisions.
- [6] Counsel for the defendants in response contends that given the unique nature of Mediation Agreements which are later crystallized in a Form 9 judgment, that the Order of December 3rd, 2016 is not a "relevant judgement" and as such Section 27A of the Supreme Court Act cannot apply. Counsel states further that the Judgment was not a *relevant judgement* as it was not a Judgement of the High Court or order which gives rise to the judgement debt.
- [7] Counsel further contends that upon payment of the sum as was agreed in the said Mediation Agreement, albeit that the payment was late, that the defendants had satisfied the debt. Counsel argues that the said Agreement was explicit that the payment was in full and final settlement of the Claim with no caveat or exceptions. Counsel states in the context of Mediation where the parties agree on the manner in which a legal dispute should be settled, had the issue of interest been an issue, it would have been included in the Agreement. Moreover, the Claimants had the ability to use the "Liberty to Apply" clause of the agreement.
- [8] Counsel for the defendants cites the dicta of Ellis J in **Greenbank Road**

Company Limited v David Clasen¹, in what in my view is a clear analysis of the nature a mediation order. The learned judge states:

“[10] Generally, at the end of a successful mediation session, the parties will draw up an agreement that embodies all the main points of what has been agreed. Both parties will sign this agreement bringing the dispute to an end.

[11] Where the agreement results from an out-of-court mediation, it is a standard contract. It then becomes the responsibility of the parties to adhere to the terms of the mediation agreement because it is intended by its very nature to be a binding contract. If either side does not honor the terms of the contract, then the only course open to the other party is to pursue an action in court. When this happens, the innocent party will sue not only for the original disagreement, but also for breach of contract, seeking specific performance relief or damages or both.

[12] However, where the agreement results from a mediation process which is court connected, typically, the Parties would attend before a judge to have the agreement crystallized into an order of the court usually with some terms added in for enforcement purposes. The agreement is filed with the court as the court’s judgment and is made part of the court’s record. An appropriate order would normally dispose of the claim.

[13] In such cases, the agreement is still a legally binding and enforceable contract, but a party who breaches the terms of the agreement could be held in contempt of court, pay some heavy fines, and possibly serve a term of imprisonment. If the agreement is not added to the court record, it is nevertheless still binding like any other agreement made between the parties but in most cases the parties should properly first seek to get a ruling before it can be enforced.

[14] It is clear to this Court that the Parties to Cause 242 of 2013 intended to formalize the terms of the Mediation Agreement and to bring it under the imprimatur of the Court. It follows that the terms of the Agreement became an order of the Court on 27th November 2013 and the Parties were at liberty to apply for the purpose of carrying terms of the Agreement into effect. Such an application would have to be made in the context of that Cause and would not necessitate the initiation of entirely new legal proceedings.

¹ BVIHCV2015/0112.

[15] In the Court's judgment that course would certainly be more consistent with the overriding objective which calls upon to the Court to deal with cases justly, economically and expeditiously, and which imposes upon parties, a duty assist the Court in furthering that objective. To the extent that this Claim seeks to deal with the terms of that Agreement, this Court is of the view that the appropriate course would have been to solicit a ruling and/or direction from the Court under the banner of that action"

Law and Analysis

[9] The only issue arising in this application is whether post judgment interest accrues on the mediation agreement which was made an order of the court.

[10] **Section 27A of The West Indies Associated States Supreme Court Act (Grenada) (Amendment) Act, 2009** provides for interest on judgment debts and reads as follows: - .

27A. Interest of judgement debts

(1) For the purposes of this section-

"judgement debt" means a debt under a relevant judgement;

"relevant judgement" means a judgement of the High Court for the payment of a sum of money and, in relation to a judgement debt, means the judgement or order which gives rise to the judgement debt.

(2) This section shall not apply where a relevant judgement was given before the date of commencement of the Act.

(3) Until it is satisfied, every judgement debt shall bear interest at such rates as the High Court may determine and in the absence of such determination, the rate of interest shall be six per cent per annum.

(4) Unless it is otherwise ordered by the Court, the rate of interest under subsection (3) shall be calculated from the time of the giving of the relevant judgement, as the case may be,

notwithstanding that the giving of the relevant judgement has been suspended by any other proceedings either in the High Court or on appeal.

- [11] **Section 27 A of The West Indies Associated States Supreme Court Act (Grenada) (amendment) Act** confers upon the Court the right to award post judgment interest. The term “relevant judgment” in my view, refers to a judgment arising from proceedings before the court. The award of post judgment interest arises where there is an expressed agreement to pay interest or can be implied from the course of dealings between the parties. The nature of the claim such as breach of contract, relationship between creditor/debtor/surety, mortgagor and mortgagee, vendor and purchaser, principal and agent are some of the matters which will attract post judgment interest unless the parties by agreement dispense with an award of interest. Any action which involves some form of pecuniary transaction or loss would be considered as “a relevant judgment” for the purpose of awarding interest under Section 27 A.
- [12] The court, in furthering the overriding objective by actively managing cases, usually encourages parties to utilize mediation as an appropriate form of dispute resolution. The parties in this claim reached an amicable resolution at the mediation session. The defendants’ contention that the nature of the mediation agreement does not comport with the definition of a “relevant judgment” to attract interest under the new Section 27 A of The West Indies Associated States Supreme Court Act is fallacious. The court annexed mediation is not just a mediation outcome or a mere contract but is an order of the court that usually gives finality to a claim filed in court. The mediation agreement is in the nature of a consent order pursuant to CPR 42.7 which crystalizes into the judgment of the court. The claimants in this case became judgment creditors not by the procedure (that is, not through the mediation process) but through the crystallization of the mediation agreement into a

judgment debt. A cause of action filed in court merges in the judgment of the court whether by consent or after trial. Owing to the merger, interest in respect of the judgment can only be recovered under the judgment unless the parties expressly agreed to waive interest on the judgment debt.

[13] Counsel for the defendants is of the view that the mediation agreement did not provide for the payment of interest and it was therefore incumbent on the claimants to have engaged the “Liberty to Apply” clause to claim for the payment of interest after the defendants defaulted in payment. I disagree. As indicated above, the mediation agreement having been made an order of the court automatically attracts post judgment interest in accordance with Section 27A. On the contrary, the onus was on the defendants to have engaged the “Liberty to Apply” clause to seek a variation of date of payment dates when it became known of their inability to meet the deadline dates specified in the court order for the payment of the judgment debt.

[14] The Court of Appeal in **Vera Douglas v Agnes Deane**² states that “the provision for the attachment of post judgment interest is a matter of substantive law (as distinct from procedure)”. The principle on which interest is payable is to compensate the successful party for being kept out of which the judgment debtor should have paid at an earlier time³. The delay in the payment of the judgment debt can force the judgment creditor either to borrow money or to use his personal funds which could have been deployed profitably for other purposes. An award of interest seeks to compensate for the loss occasioned as a result of the delay in payment.

[15] Counsel for the claimants/judgment creditors referred to the learning in **the Supreme Court Practice at Para 553** where it reads “**Interest on a judgment by consent for instalments does not run until the instalments fall due**”. The Order of the court directed the defendants to pay the claimants the sum

² GDAHCAVAP 2011/020

³ Wenworth v Wiltshire county council (1993) QB 654.

of \$100,000.00 on or before the 31st December 2015 and the sum of \$250,000.00 on or before the 31st December 2016. The failure of the defendants to pay the debt on the dates ordered means that interest accrued respectively from the date the sums became due.

ORDER

[16] In summary it is declared and ordered that:

- (1) The mediation agreement for the payment of the agreed sum having been made an order of the court crystallized into a “relevant judgment” and automatically attracts post judgment interest pursuant to **Section 27A of the West Indies Associated States (Grenada) Supreme Court Act**.
- (2) The post judgment interest started to run from the dates that the debt became due until the date of full settlement.
- (3) The defendants are to pay interest at the rate of 6% on the sum of \$100,000.00 from the 31st December 2015 and at the rate 6% on the sum of \$250,000.00 from 31st December 2016, respectively, until the payment was made in full.

**Agnes Actie
High Court Judge**

By the Court

Registrar