

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHCV2009/0766

BETWEEN:

Charles Joseph

Claimant

And

The Antigua Commercial Bank

Defendant

Appearances:

Mr. Charles Joseph in person for the **Claimant/Appellant**

Mrs. Tracy Benn - Roberts for the **Defendant/Respondent**

2010: February, 12; March, 12;
2010: March 29

DECISION

1. This is an application by one Charles Joseph for the balance of an interest award on a Judgment for damages in the suit, No. 309 of 1999. The Judgment of the Court of Appeal was delivered on September the 16th 2003¹. The Defendant contests the claimant's application and on the 15th of January 2010 filed its application to strike out the claimant's application. The applications were heard together. On the 29th of March 2010 I gave my decision on both applications in Chambers, orally. I undertook to put it in writing and do so now.
2. The substantive High Court Judgment, the subject of the claimant's application now before me, went on appeal in Civil Appeal No. 9 of 2002, bearing fruit for the Claimant/Applicant. The result of the Court of Appeal Judgment was an increase in the award of damages to the claimant from \$10,000.00 to \$50,000.00. The Court of Appeal judgment was delivered on September 16th 2003. The claimant is before the court on an application which seeks to enforce the judgment order in relation to the interest award thereto. The claimant contends that the Defendant miscalculated the amount of interest due on the Judgment sum when it used an erroneous method of calculation – that is, using the amount of days over which to apply the interest rate as opposed to the

¹ The High Court judgment was delivered in May of 2002.

number of years.² The Respondent applied by Application dated January 15th 2010 to strike-out the Claimant's application on several grounds including, the expiration of the applicable Limitation period; that the claimant owes the respondent bank the outstanding sum of \$130,000.00 on another judgment of the court³; that the claimant brought this application pursuant to the wrong and inapplicable Rule; and that the respondent Bank does not owe the claimant the interest alleged. For Purposes of the Limitation Act 1997, (see 26.2 and 29.6 thereof) for the recovery of interest or arrears of interest; no action shall be brought after the expiration of 6 years from the order on which the interest becomes due, which in the instant case became due at the latest, on the day of the Court of Appeal Judgment, September 16th 2003.

3. Very simply, the applicant cannot recover the arrears of interest on an application filed after the expiration of 17th September 2009 - 6 years⁴.
4. The Claimant/Applicant claims the balance of the interest on his judgment sum and seeks to recover it on the application ANUHC2009/0766; a new suit number, filed on December 30th 2009; a date clearly outside of the limitation period.
5. However, the Claimant/Applicant contends, that he had made his initial application, as it turns out, improperly, before the Court of Appeal. The matter came before the Court of Appeal in December 2009 by "Notice of Application" file dated September 16th 2009. At that time the Appeal Court properly had before it an appeal by the said claimant on another (but generally related) suit from the decision of a Master of the High Court. The claimant alleges that he was advised by the Court on that occasion that his application to recover the Judgment interest ought to have been made before the High Court. He purports to do so now with the Application 2009/0766 filed on December 30th 2009. In the "Certificate of Result of Appeal" arising out of the said Court of Appeal hearing of December 2010, the "*judgment interest*" application was simply dismissed on the ground that the Court of Appeal had no jurisdiction to hear it.
6. The Applicant Submits; that his application before the Court of Appeal was filed within the Limitation period, and that upon being informally directed to bring his application before the High Court, he was advised by the Registry staff that the new suit number was merely for Identification purposes and did not represent a new suit. He contends in effect that his original on-time application before the Court of Appeal continues seamlessly in this application before me now. That the new suit number is a mistake by the Registry, is a mere allegation at this time. Save for his assertion, the applicant has not led any evidence in support of the allegation against the Registry. Let me say this, the Appeal record file dated the 25th November 2009 at page "1" thereof, refers to an appeal against a decision of the Master which is wholly unrelated to the specific interest issue raised in this application⁵. Nowhere in that record of Appeal does it identify the alleged "*judgment interest*" as an issue for determination. I am unable to see how it can, in any event, be suggested that the issue concerning the outstanding judgment interest was properly before the Court of Appeal in December 2009⁶. This application before me was

² The Defendant contends that the method it applied was more advantageous to the claimant and that the full judgment sum and interest has been paid to the claimant.

³ This fact has not been disputed by the Claimant/applicant.

⁴ See Rule 3.2 of the Eastern Caribbean Supreme Court Civil Procedure Rules ("CPR2000") for the computation of time.

⁵ It is a matter between the same parties however.

⁶ Even if the "interest" issue was part of the Appeal record before the Court of Appeal in December 2009, the findings in this decision still apply and stand.

filed 30th December 2009, is a new application and among other things is simply out of time.

7. The Court does not believe that it is necessary to set out in detail its resolution of the other issues raised by the Defendant/ Respondent in its application to strike out the claimant's application to recover the judgment interest⁷. The court adopts the grounds of the application set out in the notice of application and affidavit thereto filed by the defendant on the 15th January 2010 and makes a finding adverse to the claimant.

ORDER

8. FOR THE REASONS PROVIDED ABOVE, IT IS HEREBY ORDERED AS FOLLOWS:

- i. That the claimant's application ANUHCV2009/0766 filed December 30, 2009 is dismissed in its entirety;
- ii. That the Defendant's application of the 15th January 2010 is upheld thereby striking out the claimant's application.
- iii. That the claimant do pay the Defendant's Costs of the hearing of this application pursuant to the CPR2000.⁸

DAVID C HARRIS
JUDGE, ANTIGUA AND BARBUDA.

⁷ Indeed, the Limitation matter alone, disposes of the applications.

⁸ The two applications were heard together and for the purposes of the Costs award are treated as one (1) application and hearing.