SUPREME COURT OF QUEENSLAND

CITATION:	*Platinum Investment Group Pty Ltd v Anderson & Ors* [2018] QSC 2
PARTIES:	**PLATINUM INVESTMENT GROUP PTY LTD ACN 161 744 903** (applicant) **v** **EMILY SKYE ANDERSON** (first respondent) and **DECLAN ANTHONY REDMOND** (second respondent) and **EMILY SKYE FIT PTY LTD ACN 602 692 642** (third respondent) and **ACN 162 585 533 PTY LTD ACN 162 585 533** (fourth respondent)
FILE NO:	BS No 10745 of 2017
DIVISION:	Trial Division
PROCEEDING:	Originating Application filed on 13 October 2017
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 January 2018
DELIVERED AT:	Brisbane
HEARING DATE:	27 October 2017; supplementary written submissions received on 1 November 2017
JUDGE:	Burns J
ORDER:	**The orders of the court are that:** **1. The proceeding pending in the District Court at Brisbane between the applicant as plaintiff and the respondents as defendants (No BD2149 of 2016) be transferred to the Supreme Court at Brisbane;** **2. The applicant is granted leave pursuant to r 375 of the *Uniform Civil Procedure Rules* 1999 (Qld) to**

amend its claim and statement of claim;

3. **The application is otherwise adjourned to a date to be fixed;**

4. **The costs of and incidental to this application shall be each party's costs in the proceeding.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – TRANSFERS AND CONSOLIDATIONS – where the applicant had commenced a proceeding against the respondents in the District Court at Brisbane – where the applicant applied for an order pursuant to s 25(1) of the *Civil Proceedings Act* 2011 (Qld) to transfer that proceeding to the Supreme Court – whether it was in the interests of justice that the proceeding is transferred – whether the amount sought to be recovered by the applicant in the proceedings exceeds the monetary jurisdiction of the District Court – whether, in determining whether the amount sought to be recovered by the applicant in the proceedings exceeds the monetary jurisdiction of the District Court, account is to be taken of a claim for interest allegedly payable under a deed

Acts Interpretation Act 1954 (Qld), s 14B
Civil Proceedings Act 2011 (Qld), s 13(2), s 25, s 27, s 30, s 33, s 58
Common Law Practice Act 1867 (Qld), s 72
Common Law Practice Act Amendment Act 1972 (Qld), s 5
Competition and Consumer Act 2010 (Cth), s 86
Constitution of Queensland 2001 (Qld), s 94
District Court Act 1973 (NSW), s 44(2)
District Court of Queensland Act 1967 (Qld), s 3, s 13, s 68, s 68(1)(a), s 68(3)(c), s 69, s 82, s 83, s 118, s 149
District Courts Act and Other Acts Amendment Act 1989 (Qld), s 6
District Courts Act of 1967 (Qld), s 66, s 67, s 68, s 83(1), s 92(1)(a)
District Courts and Magistrates Courts Jurisdiction Act 1976 (Qld), s 5
Insurance Contracts Act 1984 (Cth), s 57
Magistrates Courts Act 1921 (Qld), s 4
Property Law Act 1974 (Qld), s 329
Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 (Qld), s 3
Supreme Court Act 1995 (Qld), s 47
Uniform Civil Procedure Rules 1999 (Qld), r 78, r 375, 698

ANI Australia Pty Ltd v Hannay [1981] Qd R 598, cited
Campbell v Turner & Ors (No 2) [2007] QSC 362, discussed
Campbell v Turner & Ors (No 2) [2008] QCA 189, discussed
Contor v Commercial Union Assurance Company of Australia Limited [1996] 1 Qd R 604, distinguished
Dunning v The Commonwealth (1960) 104 CLR 517; [1960] HCA 83, cited
Johns v Johns [1988] 1 Qd R 138, discussed
Katter v Melham (2015) 90 NSWLR 164; [2015] NSWCA 213, cited
Kirby v Elms [1957] QWN 21, cited
Matelot Holdings Pty Ltd v Gold Coast City Council [1993] 2 Qd R 168, cited
Merrin v Cairns Port Authority [2005] QSC 229, cited
Ryan v Speedy (Unreported, Supreme Court of Queensland, No 258 of 1982, 28 July 1982), discussed
Shannon v Australia and New Zealand Banking Group Ltd (No 1) [1994] 2 Qd R 560, cited
Startune Pty Ltd v Ultra-Tune Systems (Aust) Pty Ltd [1991] 1 Qd R 192, cited
Turley v Saffin (1975) 10 SASR 463, cited
Van Riet v ACP Publishing Pty Ltd [2004] 1 Qd R 194; [2003] QCA 37, discussed
Westminster Bank Ltd v Riches [1945] 1 All ER 466, cited

COUNSEL: KA Gothard for the applicant
B Vass for the respondents

SOLICITORS: DSS Law for the applicant
Radcliff Taylor for the respondents

[1] This is an application to transfer to this court a proceeding that is currently pending in the District Court. It was brought pursuant to s 25 of the *Civil Proceedings Act* 2011 (Qld).

[2] The application raises two discrete issues: (1) the nature of the discretion conferred on the court by s 25(1) of the *Civil Proceedings Act*; and (2) whether contractual interest is to be taken into account when determining whether a claim is likely to exceed the monetary limit of the jurisdiction of the District Court.

Background

[3] The proceeding in question was commenced by the applicant in the District Court at Brisbane on 3 June 2016. By the claim and statement of claim, the applicant sues on a deed of compromise entered into with the respondents and others on 16 April 2015.

Under the deed, the respondents agreed to purchase the applicant's shareholding in two companies. The purchase price was $750,000, which sum was to be paid in instalments with the last instalment due on 16 November 2016. Relevantly, it was agreed that a failure to pay any of the instalments by the date on which it was due would "attract interest at the rate of 10% per month on the unpaid portion of that payment, accruing daily from the day following the date specified for payment until the date the payment is made in full": clause 3.4.

[4] According to the statement of claim, although the applicant transferred the shares in accordance with its obligations under the deed, the respondents only paid the first three instalments of the purchase price (in total, $183,333.33) and, despite demand, have refused to pay any more. The respondents on the other hand maintain by their defence that no money is owing under the deed. In particular, it is pleaded that the applicant by its director, Mr Evans, breached the express or implied terms of the deed in various ways, that this caused ongoing loss and damage to the third applicant, that the respondents thereby became entitled to suspend performance of their obligations under the deed and that clause 3.4 is, in any event, a penalty and, for that reason, unenforceable.

[5] One of the terms of the deed that the respondents allege was breached by the applicant provided that the parties to it would "not disparage or communicate in any way to any other person disparaging or derogatory remarks or comments about each other": clause 17. In particular, the respondents allege that:

> "[As] set out in proceedings commenced by the third [applicant] against Evans in the Supreme Court of Queensland (No 6843/15), from on or about 19 to 23 June 2015, Evans sent or caused to be sent millions of unsolicited commercial electronic messages which purported to be from the third [applicant] and to be about the third [applicant's] business, thereby causing the third [applicant] loss and damage which is ongoing."[1]

[6] At the time the proceeding was commenced in the District Court, the applicant claimed $366,666.63 as a debt due under the deed together with $173,333.32 for interest.[2] The

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1 Defence filed on 11 July 2016, par 5(d).

2 It is relevant to what is later discussed to note that the following relief is sought in the claim:

> "1. The [respondents] pay the [applicant] $366,666.63 as a debt due and owing;
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> 2. The [respondents] pay interest to the [applicant] up to and including 16 April 2016 in the sum of $173,333.32 and thereafter, interest calculated in accordance with clause 3.4 of the Deed;
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> 3. Alternatively to paragraph 2, the [respondents] pay interest to the [applicant] pursuant to section 58 of the *Civil Proceedings Act* 2011 from the date each payment became due and payable up to and including the date of judgment or payment has been received in full, plus costs;
>
> 4. Costs."

debt was comprised of the instalments of the purchase price that had not, to the date of filing, been paid and the interest was claimed pursuant to clause 3.4 of the deed. However, by the time the subject application was brought, on the applicant's case at least, all outstanding instalments had become due – a total of $566,666.67 – and the interest under the deed had climbed to $1,019,999.69. Thus, the applicant contended that because both amounts were "due and payable pursuant to the deed" and the aggregate ($1,586,666.36) exceeded the monetary jurisdiction of the District Court, it was necessary for application to be made for a transfer order pursuant to s 25(1) of the *Civil Proceedings Act*. In addition, leave was sought pursuant to r 375 of the *Uniform Civil Procedure Rules* 1999 (Qld) to amend the claim and statement of claim to "increase the amount claimed and add an alternative claim for damages for breach of contract".

The transfer power

[7] Before the passing into law of the *Civil Proceedings Act*, ss 82 and 83 of the *District Court of Queensland Act* 1967 (Qld) governed the transfer of proceedings from the District Court to this court.[3] Under s 82, a *plaintiff* could apply to the court for a transfer order where there was "reasonable ground for supposing that the relief or remedy sought [was] not available in the District Court" and such an order was required to be made if the court was satisfied about that.[4] Section 83 allowed a *defendant* to apply for a transfer order but the court was required to refuse any such application unless satisfied that "some important question of law or fact [was] likely to arise".[5]

[8] Section 25 of the *Civil Proceedings Act* is in these terms:

> "**25 Transfer by Supreme Court—general**
>
> (1) The Supreme Court may order that a proceeding pending in the District Court or a Magistrates Court be transferred to the Supreme Court.
>
> (2) The Supreme Court may order that a proceeding pending in the Supreme Court for which the District Court, or a Magistrates Court, has jurisdiction be transferred to a court having jurisdiction."

[9] What governs this application is of course s 25(1). In contrast to its immediate statutory predecessors,[6] the discretion conferred on the court by that provision is unfettered. No longer is the exercise of the power dependent on the making of an application by one of

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3 Sections 82 and 83 were repealed when the *Civil Proceedings Act* commenced in operation on 1 September 2012: Act 45 of 2011, s 136.

4 See *Merrin v Cairns Port Authority* [2005] QSC 229, [5]-[7].

5 See *Shannon v Australia and New Zealand Banking Group Ltd (No 1)* [1994] 2 Qd R 560.

6 Sections 82 and 83 of the *District Court of Queensland Act*.

the parties; the court can act on its own initiative.[7] Nor is the power confined to cases where a plaintiff was able to establish that the relief or remedy sought was not available in the District Court or, in the case of a defendant, where some important question of law or fact was likely to arise. The only requirement under s 25(1) is that there is a proceeding pending in, relevantly, the District Court. The discretion is therefore a broad one, unconstrained by any other express limitation.

[10] That of course is not to say that the favourable exercise of the discretion is simply there for the asking. To the contrary, the discretion must be exercised judicially and, for that reason, the onus will be on an applicant for a transfer order to demonstrate to the satisfaction of the court that it is in the interests of justice that the proceeding is transferred. That will usually be so where the whole or part of the claim is not within the jurisdiction of the District Court, but it may also be so where the whole or part of the relief sought cannot be granted by that court because it is beyond power.[8] Another circumstance may be where, as here, there is a related proceeding in this court. In such a case, a sufficient coincidence of the legal or factual issues in the two proceedings may, depending on the nature and extent of the overlap, be such as to warrant the making of an order to allow the proceedings to be heard together.[9] These are just some of the circumstances that might lead to the conclusion that it is just in all the circumstances to transfer the proceeding to this court.[10]

[11] For the sake of clarity, mention should be made of s 27 of the *Civil Proceedings Act*. That provision applies to a plaintiff or applicant in a proceeding who wants to "amend the relief claimed to, or to include, relief not within the jurisdiction of the court in which the proceeding is pending".[11] In either circumstance, the party may "apply to a court that would have jurisdiction if the amendment were made" for leave to amend and an order that the proceeding be transferred to that court.[12] As such, if the only basis for an application to transfer is a proposed amendment to the claim and statement of claim, the effect of which would be to amend the relief claimed to relief not within the jurisdiction

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7 See s 13(2) which makes clear that the "court may make [such an] order on its own initiative or on an application made to it …".

8 See, for example, *Startune Pty Ltd v Ultra-Tune Systems (Aust) Pty Ltd* [1991] 1 Qd R 192, where it was held that the power of the District Court to grant relief in the form of an injunction pursuant to what is now s 69 of the *District Court of Queensland Act* depends on the proceeding being otherwise within the jurisdiction of that court. And see to similar effect, *Matelot Holdings Pty Ltd v Gold Coast City Council* [1993] 2 Qd R 168.

9 And thereby avoid the prospect, if the District Court proceeding is determined first, that a *res judicata* on the issues in common may operate to prevent this court from determining those issues: *Kirby v Elms* [1957] QWN 21; *Shannon v Australia and New Zealand Banking Group Ltd*, supra, 562.

10 It should be noted that, even if one of those circumstances is made out, there may also be factors present in any given case that make it unjust to transfer the proceeding such as delay in bringing the transfer application. Clearly, an application brought on the eve of the trial of the proceeding in the lower court will be looked on less favourably than one that is promptly brought after the circumstance relied on to justify the transfer comes to light.

11 Section 27(1).

12 Section 27(2).

of the District Court, it should be brought pursuant to the specific provision (s 27) rather than under the general provision (s 25). However, where another basis for the transfer is advanced such as the existence of a related proceeding in this court, it is appropriate to proceed under s 25. As such, s 25 may be called in aid when one of the bases for the application is that an amendment to take the claim outside the jurisdiction (or beyond the power) of the District Court has been proposed.

The monetary limit and contractual interest

[12] Section 68 of the *District Court of Queensland Act* confers civil jurisdiction on the District Court.[13] It provides as follows:

> "**68 Civil jurisdiction**
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> (1) The District Court has jurisdiction to hear and determine—
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> (a) all personal actions, where the amount, value or damage sought to be recovered does not exceed the monetary limit including the following—
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> (i) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated;
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> (ii) any claim for detention of chattels;
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> (iii) any claim for rent or mesne profits;
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> (iv) any claim for any debt, damages or compensation arising under any Act; and
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> (b) the following actions and matters—
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> (i) for enforcing by delivery of possession any mortgage, encumbrance, charge or lien, where the amount owing in respect thereof does not exceed the monetary limit;
>
> (ii) for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the monetary limit;
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> (iii) for specific performance of an agreement for the sale or other disposition of land or an interest in land or of any other property, where the value of the land or interest or property does not exceed the monetary limit, or in lieu of or in addition to specific performance, damages not exceeding the monetary limit;
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> (iv) for rectifying, delivering up or cancelling any agreement,

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[13] Of course, it is not the only provision to do so. See, for example, the *Property Law Act* 1974 (Qld), s 329 and the *Competition and Consumer Act* 2010 (Cth), s 86.

where the amount in dispute or the value of the property affected does not exceed the monetary limit;

(v) for a declaration of partnership or dissolution or winding up of, or otherwise relating to, any partnership, where the property of the partnership does not exceed in amount or value the monetary limit;

(vi) for the sale or partition or division of property pursuant to the *Property Law Act* 1974, section 38 or 41, where the property does not exceed in amount or value the monetary limit;

(vii) for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the monetary limit;

(viii) for the execution of a trust or a declaration that a trust subsists, where the estate or fund subject or alleged to be subject to the trust does not exceed in amount or value the monetary limit;

(ix) relating to the custody, maintenance or advancement of an infant including the appointment of a guardian to the property or person of an infant but not so as to authorise any order under this provision affecting assets or property of an infant exceeding in amount or value the monetary limit;

(x) or family provision pursuant to the Succe*ssion Act* 1981, sections 40 to 43, but so that any provision resulting from an order made by the court shall not exceed in amount or value the monetary limit;

(xi) to recover possession of any land, where the value of the land does not exceed the monetary limit;

(xii) to restrain, whether by injunction or otherwise, any actual, threatened or apprehended trespass or nuisance to land, where the value of that land does not exceed the monetary limit, or, in lieu of or in addition to such an injunction, damages not exceeding the monetary limit;

(xiii) for the determination of any question of construction arising under a deed, will or other written instrument, and for a declaration of the rights of the persons interested where the sum or the property in respect of which the declaration is sought does not exceed in amount or value the monetary limit;

(xiv) for the appointment under the *Public Trustee Act* 1978,

> section 104 of the public trustee as administrator of any unclaimed property, where the gross value of the property does not exceed in amount or value the monetary limit.
>
> (2) In this section—
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> **monetary limit** means $750,000.
>
> (3) "For the purpose of determining whether or not the District Court has jurisdiction under this part—
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> (a) in the case of proceedings falling within subsection (1)(a)(ii)—the amount claimed for detention of goods is the amount claimed for the value of the goods together with the amount (if any) claimed for damages for the detention of the goods; and
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> (b) the value of land shall be the most recent valuation, current at the time of instituting the proceedings, made by the valuer-general under the *Land Valuation Act* 2010, or, if there is no such valuation in respect of the land, the current market value at that time of the land exclusive of improvements thereto; and
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> (c) in any case where it is necessary to determine whether the monetary limit is exceeded—no account shall be taken of any amount awarded or liable to be awarded in the action by way of interest on any amount."
>
> (4) Where any question arises as to the amount or value for the purpose of jurisdiction under this part the decision of the District Court shall be conclusive as to that matter."

[13] The question for determination here is whether the interest claimed by the applicant pursuant to clause 3.4 of the deed – that is to say, contractual interest – should be taken into account in determining whether "the amount, value or damage sought to be recovered" (s 68(1)(a)) by the applicant is likely to exceed the monetary limit. That, in turn, will depend on the proper construction of s 68(3)(c), providing as it does that "no account shall be taken of any amount awarded or liable to be awarded in the action by way of interest on any amount". At first glance, s 68(3)(c) might be thought to provide a ready answer to the effect that, because the reference to "interest" is unqualified, contractual interest, like any form of interest, must be disregarded but, for the reasons that follow, I do not think that is correct.

[14] It is useful to commence with the history of the provision in question.

[15] When the *District Court of Queensland Act* was originally passed in 1967,[14] it was known by another name[15] and conferred civil jurisdiction on the District Court by dint

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[14] Act No 42 of 1967.

[15] *The District Courts Act of* 1967. It was named the *District Court of Queensland Act* 1967 by the

of three separate sections.[16] In the case of personal actions such as the proceeding at hand, the court was given jurisdiction to hear and determine such proceedings "where the amount, value or damage sought to be recovered is not more than" a specified amount.[17] The Act was silent regarding whether interest was to be taken into account in determining whether a particular action exceeded the specified amount but that is unsurprising because it was not until the passing of the *Common Law Practice Act Amendment Act* 1972 (Qld) that the District Court was given power to award interest.[18] Nonetheless, it was not until 1989 that express provision was made as to the relevance of interest to the monetary limit.[19]

[16] However, before any express provision was made, in *Ryan v Speedy*,[20] Master Lee QC had before him an application brought by a defendant to transfer a proceeding pending in the District Court at Cunnamulla to this court.[21] In holding that pre-judgment interest pursuant s 72 of the *Common Law Practice Act* 1867 (Qld)[22] was not to be taken into account when assessing whether the claim was likely to exceed the monetary jurisdiction of the court below, it was observed that the award of such interest was discretionary and not part of the debt sued upon.[23] Specifically, the Master concluded that discretionary interest under statute could not be part of the "amount, value or damage sought to be recovered" but, rather, was something "in addition to the amount which [might] otherwise [be] recovered by the plaintiff on his substantive cause of action".

Constitution of Queensland 2001 (Act No 80 of 2001), s 94 and Sch 2.

16 Sections 66 (personal actions), 67 (partnership, intestacy and legacy) and 68 (equitable claims).

17 Section 66; under which the amount specified was $10,000 for any case arising out of a motor vehicle accident and $6,000 for all other cases. The distinction was removed in 1976 when the monetary jurisdiction of the District Court was increased to $15,000: *District Courts and Magistrates Courts Jurisdiction Act* 1976 (Qld), s 5.

18 Section 5.

19 *District Courts Act and Other Acts Amendment Act* 1989 (Qld), s 6.

20 Unreported, Supreme Court of Queensland, No 258 of 1982, 28 July 1982.

21 The application was brought pursuant to s 83(1) of the *District Courts Act*, as it was then named.

22 See, now, s 58 of the *Civil Proceedings Act* 2011 (Qld).

23 Following *ANI Australia Pty Ltd v Hannay* [1981] Qd R 598. For this point, Master Lee QC also relied on the following statement by Evershed J in *Westminster Bank Ltd v Riches* [1945] 1 All ER 466, 473:

> "There is, no doubt, a valid distinction between interest on a debt, which is part of a debt, and interest awarded in respect of a debt, which is not part of a debt; and the distinction may (though not necessarily must) correspond with the distinction between the conception of interest as a reward for the use of money and the conception of interest as compensation for the deprivation of money".

[17] Support for this conclusion was found by Master Lee QC in the decision of the Full Court of the Supreme Court of South Australia in *Turley v Saffin*.[24] There, the Full Court dismissed an appeal from a judgment given in a personal injuries case which included an amount for statutory discretionary interest that resulted in the judgment being given for a total in excess of the monetary limit of that court. Bray CJ (with whom Walters and Wells JJ agreed) made these observations:

> "The question of interest is a very important one. I cannot myself believe that it was the intention of Parliament when it amended the *Local and District Criminal Courts Act* in 1972 by conferring on the Court the power to award interest (s 35g) to render the jurisdiction of the Court more uncertain than it otherwise would have been, or to lower the ceiling on the Court's jurisdiction to award damages up to $10,000 whenever the plaintiff is also entitled to interest. If Mr. Rowell [for the appellant] is right, every plaintiff will have to calculate before suing in the Local Court whether the assessment plus the interest which is likely to be awarded will exceed the jurisdictional limit. The award of interest is discretionary and the plaintiff can never be sure what interest he is going to get. Rather I think the intention was that the interest should be in addition to the amount of the damages and that the jurisdiction should be determined by the amount claimed, as indeed ss 31 and 32a make it so dependent.
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> In my view the analogy which has been drawn by the learned Judge and by counsel for the respondent between interest and costs is a sound one. The nature of the new statutory right to interest was examined by the Full Court in *Sager v. Morten and Morrison* and *Honey v. Keyhoe*. Both interest and costs are procedural matters and not matters of substantive law. In neither case is it necessary to make a specific claim in the particulars of claim. In both cases the award rests in the discretion of the court, whereas once the plaintiff has proved that he has suffered some damage as a result of a tort the court has no discretion to refuse him any damages at all, though, of course, the amount of the damages rests within the bounds of a judicial discretion.
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> The contrast I draw is between the absolute right to damages on proof of tort and damage and the discretionary right to interest and to costs."[25] [Citations omitted]

[18] Subsequently, in *Johns v Johns*,[26] the Full Court of this court reached a similar conclusion, although in the context of a different section of the statute.[27] Under that provision, leave was necessary for an appeal to the Full Court from a judgment "in an

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24 (1975) 10 SASR 463.

25 (1975) 10 SASR 463, 474.

26 [1988] 1 Qd R 138.

27 Section 92(1)(a) of the *District Courts Act*, as it was then named. The provision can now be found in an expanded form in s 118 of the *District Court of Queensland Act*.

action or matter in which the sum sued for" did not exceed $5,000. In the course of deciding that discretionary interest was not to be taken into account in determining whether "the sum sued for" exceeded $5,000, Williams J (Connolly and Shepherdson JJ agreeing) said this:

> "In my view, for purposes of s.92(1)(a) one must ignore the claim for interest pursuant to s.72 of the *Common Law Practice Act* 1867–1978. The legislature obviously carefully used the expression 'the sum sued for' in contrast to the expression 'amount involved' which is used in s 11 of the *Magistrates Courts Act* 1921–1982. The distinction was referred to in this Court in *Beggs v. Mellor* [1969] Q.W.N. 44 and *Rains v. Frost Enterprises Pty Limited* [1975] Qd. R. 287; in each of those decisions the Court distinguished *Graham v. Roberts* [1956] St.R.Qd. 459 which was concerned with the expression used in the *Magistrates Courts Act*. A reading of s.72 of the *Common Law Practice Act* indicates that the interest, although it has been described as being of the nature of damages: *Leisure and Allied Industries (1973) Pty Ltd v. Browning* [1978] Qd. R. 24, is something additional to or superimposed on the sum for which judgment is being given, and does not form part of 'the sum sued for' which postulates an identifiable amount. Though it is advisable to include in the relevant pleading a claim for interest under s.72 it is not necessary that that be done (cf. *Callinan v. Borovina & F.A.I.* [1977] Qd. R. 366, 378), and often such interest is allowed where it is claimed only in a letter and that is produced to the Court at the time judgment is given. The Full Court of South Australia has held that the addition of interest to the amount awarded in a judgment of a local court under the *Local and District Criminal Courts Act* 1926–1974 does not result in the judgment being given for a sum in excess of the $10,000 limit provided for by that legislation. In the view of that Court the jurisdiction is determined by the amount claimed. (*Turley v. Saffin* (1975) 10 S.A.S.R. 463). I note that Wylie D.C.J. has reached a similar conclusion in *Leydon v. Trigil Insurance Brokers Pty Ltd* (District Court Brisbane, Appeal 145 of 1985; 16 June 1986, unreported). In my view it is important to remember that the awarding of interest is within the discretion of the trial judge. Prior to the amendment of s.72 in 1972 neither the District Court nor the Magistrates Court could award interest, and the discretionary power to do so which was then conferred could hardly be taken to have substantially altered the jurisdiction of those courts by reducing the quantum of claims which could be brought therein. Thus it follows that at all material times this was an action in which the sum sued for was less than $5000 and therefore leave to appeal to this Court is necessary."[28]

[19] The reasoning in *Turley v Saffin*, embraced as it was *Ryan v Speedy* and *Johns v Johns*, has been followed, and to the same conclusion, in a number of subsequent cases.

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[28] *Johns v Johns*, supra, 140-141.

[20] For example, in *Van Riet v ACP Publishing Pty Ltd*,[29] the Court of Appeal was concerned with a later iteration of the provision in question in *Johns v Johns* – s 118 of the *District Court of Queensland Act*. The damages in question were awarded in an amount which was under the Magistrates Court jurisdictional limit, but with pre-judgment interest and costs added, exceeded that limit. Under s 118(2), the appellant had a right of appeal if the judgment was given "for an amount equal to or more than the Magistrates Court jurisdictional limit". If the judgment was for less than the limit, leave to appeal was required: s 118(3). In the joint judgment of McMurdo P and Jerrard JA, the following appears:

> "In *Johns v. Johns* the Queensland Full Court considered a provision similar to s. 118 and determined that interest was not to be taken into account in deciding whether the sum sued for exceeded the jurisdictional limit, referring with approval to *Turley v. Saffin*; jurisdiction is determined by the amount claimed, whilst interest is something additional and does not result in the judgment being given for a sum in excess of the legislative limit. Subject to what is said later in these reasons, a similar observation may be made as to costs.
>
> Consistent with the approach in *Johns v. Johns*, the civil monetary jurisdiction of Magistrates Courts is $50,000 exclusive of interest and costs. The judgment given in favour of the first respondent of $48,000 plus interest and costs was therefore within the jurisdictional limit of the Magistrates Court. …"[30] [Citations omitted]

[21] Their Honours accordingly held that leave to appeal was required. The other member of the Court, Davies JA, agreed. In a separate judgment, his Honour said:

> "The phrase 'Magistrates Courts jurisdictional limit' is defined in s. 118(10) of the *District Court of Queensland Act* 1967 ('District Court Act') to mean the amount of the jurisdictional limit in the Magistrates Courts for personal actions stated in the *Magistrates Courts Act* 1921 s. 4(a). That is, personal actions in which the amount claimed is not more than $50,000. That seems to imply that a claim may be made in the Magistrates Court for $50,000 damages and judgment given for that sum together with interest and costs. Consequently it would follow that the judgment for $48,000 together with interest and costs was not a judgment given for an amount equal to or more than the Magistrates Courts jurisdictional limit."[31] [Citations omitted]

[22] In *Campbell v Turner & Ors (No 2)*,[32] the reasoning in *Turley v Saffin* was applied by Margaret Wilson J when determining a costs order. The plaintiffs had obtained a

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29 [2004] 1 Qd R 194.

30 Ibid, [18]-[19].

31 Ibid, [45].

32 [2007] QSC 362.

judgment after a trial for $30,000 plus pre-judgment interest.[33] Rule 698 UCPR was potentially at play, providing as it does that the plaintiff's costs must be assessed as if the proceeding had been started in the Magistrates Court if the relief obtained could have been given in that court. Her Honour decided that this was so, for these reasons:

> "The plaintiffs properly conceded that the substantive relief they have obtained has at all material times been within the jurisdiction of the Magistrates Courts. The Magistrates Courts have jurisdiction to decide 'every personal action in which the amount claimed is not more than $50,000'.[34] The amount of interest awarded should be disregarded when assessing whether a particular monetary limit on jurisdiction has been reached. In *Turley v Saffin*[35] it was held that, if interest were to be included when assessing jurisdiction to award damages, it would render the court's jurisdiction uncertain, and would 'lower the ceiling on the Court's jurisdiction' whenever a plaintiff is entitled to interest; that could not have been Parliament's intent.[36] In *Johns v Johns*[37] Williams J adopted that reasoning, albeit in a different context.[38] In each case the language of the jurisdictional limit was important: 'the sum sued for'[39] and 'the sum claimed'[40] did not include the amount of interest awarded. Similar language is used in s 4 of the *Magistrates Courts Act* 1921. See also *Contor v Commercial Union Assurance Company of Australia Limited*[41] and *Leydon v Trigil Insurance Broker Pty Ltd*.[42] Inferior courts have considered the matter settled.[43]"[44]

[23] On appeal, the costs orders made by Wilson J were varied after the appeal was allowed and more substantial damages were awarded.[45] However, the reasoning of her Honour

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33 Pursuant to s 47 of the *Supreme Court Act* 1995 (Qld) (see now s 58 of the *Civil Proceedings Act*).

34 *Magistrates Courts Act* 1921 (Qld), s 4.

35 (1975) 10 SASR 463.

36 (1975) 10 SASR 463, 474.

37 [1988] 1 Qd R 138.

38 [1988] 1 Qd R 138, 141.

39 *Johns v Johns*, supra, 140.

40 *Turley v Saffin*, supra, 475.

41 [1996] 1 Qd R 604, 606.

42 Unreported, Queensland District Court, Wylie DCJ, 3 June 1986.

43 *Cripps v State of Queensland* (1994) 16 Qld Lawyer Reps 25; *Commissioner of State Taxation v Mark Chew Holdings Pty Ltd* (1987) SR (WA) 129. See also 'District Court Practice and Procedure' (1996) 17 *Queensland Lawyer* 56.

44 *Campbell v Turner & Ors (No 2)*, supra, [9].

45 *Campbell v Turner & Ors (No 2)* [2008] QCA 189.

extracted in the preceding paragraph was expressly approved by Fraser JA (with whom de Jersey CJ and Douglas J agreed).[46]

[24] In each of the cases to which I have referred, the court considered whether interest pursuant to what is now provided for in s 58 of the *Civil Proceedings Act* was to be taken into account when determining whether a particular monetary amount under statute was, or was likely to be, exceeded. In each case, the court decided that such pre-judgment, discretionary interest was not to be taken into account, but none considered whether contractual interest should similarly be ignored.

[25] However, one case where a different species of interest was considered, albeit not contractual interest, was the *ex tempore* decision of Dowsett J in *Contor v Commercial Union Assurance Company of Australia Limited*.[47] Like this case, it concerned an application to transfer a proceeding from the District Court to this court as well as the proper construction of s 68(3)(c).[48] The plaintiff had sued under an insurance policy for moneys due and payable under an insurance policy over a house and contents which were destroyed by fire. As part of that claim, the plaintiff sought interest pursuant to s 57 of the *Insurance Contracts Act* 1984 (Cth). By the terms of that provision as it stood at the time, insurers were made liable to pay interest on unpaid claims where it was found that the policy should have answered the claim. The amount claimed by the plaintiff for s 57 interest would, if added to the other amounts sought by way of claim, take the proceeding out of the jurisdiction of the District Court. After referring to *Johns v Johns*, Dowsett J said this:

> "Resolution of the problem depends upon the proper construction of [s 68(3)(c)]. I must determine whether or not a claim for interest under the *Insurance Contracts Act* is a claim for an amount liable to be awarded by way of interest. Section 57 of the *Insurance Contracts Act* says that, 'the insurer is also liable to pay interest on the amount … in accordance with this section'. I can see no reason whatsoever for characterising a claim to such interest as other than a claim for interest of the kind contemplated by [s 68(3)(c)]. I consider that this claim for interest is therefore not to be taken into account in considering questions of jurisdiction in connection with the monetary jurisdictional limit of the District Court."[49]

[26] It may be difficult to reconcile this decision with the reasoning in *Turley v Saffin*, as applied in *Johns v Johns*. Those cases were concerned with discretionary interest under statute whereas *Condor* was concerned with a statutory right to interest. Of course, his Honour may have considered that s 57(1) of the *Insurance Contracts Act* involved some discretionary considerations but, in any event, there does not appear to have been any argument directed to his Honour as to the importance to the construction question of the

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46 Ibid, [6]-[8].

47 [1996] 1 Qd R 604.

48 At the time *Contor* was decided, the provision was in identical terms but differently numbered; s 66(3)(c).

49 *Contor v Commercial Union Assurance Company of Australia Limited*, supra, 606.

difference between "as of right" and discretionary interest, let alone to the extrinsic material I shall refer to shortly.[50]

[27] But, the decision in *Contor* aside, the position is clear so far as statutory discretionary interest is concerned; it is to be disregarded when assessing whether a particular monetary limit on jurisdiction has been reached. Indeed, even without a provision such as s 68(3)(c) of the *District Court of Queensland Act*, that proposition must be taken as settled.

[28] So, what then is the position regarding contractual interest?

[29] As earlier mentioned, the Act was amended in 1989 to make express provision regarding interest.[51] The amendments also served to consolidate (and expand) the three provisions to which reference was earlier made (at [15]).[52] The consolidated provision – s 66 – was in substantially the same terms as the current provision save that it has since been renumbered as s 68 and the monetary limit has increased from $200,000 to $750,000. Examination of the consolidated provision in the terms in which it now appears in s 68 of the *District Court of Queensland Act* reveals that:

(a) jurisdiction in the case of personal actions, that is to say, proceedings founded in tort or contract,[53] is conferred in terms that are identical to the original enactment – the District Court is given jurisdiction to hear and determine "all personal actions where the amount, value or damage sought to be recovered does not exceed the monetary limit": s 68(1)(a);

(b) the reference to "actions" has been retained, but other provisions of the Act make clear that these references are to civil proceedings commenced by claim;[54]

(c) the monetary limit is separately defined: s 68(2); and

(d) the question of interest is specifically dealt with – "in any case where it is necessary to determine whether the monetary limit is exceeded—no account shall be taken of any amount awarded or liable to be awarded in the action by way of interest on any amount": s 68(3)(c).

[30] Without s 68(3)(c), there could be little room for doubt that a claim for agreed interest should be taken into account because it constitutes part of the debt sued upon. So, like

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50 At [32]-[34].

51 *District Courts Act and Other Acts Amendment Act* 1989 (Qld), s 6.

52 Sections 66 to 69 were repealed and, in their place, ss 66 to 68 were substituted.

53 The expression, "personal actions", has this technical legal meaning and was retained for that reason. See the discussion at page 11 of the report noted below (at footnote 60). The expression probably also has the extended meaning discussed by reference to authority in *Civil Procedure, Queensland*, LexisNexis, [310,900.10]. As such, it would include, for example, proceedings for moneys had and received and for moneys due under a statute.

54 *District Court of Queensland Act*, ss 3 and 149.

the principal sum allegedly due under the deed, the claim for interest under the deed is part of the "amount, value or damage sought to be recovered" within the meaning of s 68(1)(a). There is nothing about such a claim that can be regarded as additional to, or superimposed on, the amount that might otherwise be recovered by the applicant on its substantive cause of action, and certainly nothing that depends on the discretion of the court. Simply, if clause 3.4 is found to be enforceable and the other pleaded defences failed, the applicant has a right to judgment in the amount reflected by the parties' bargain, and that amount includes interest under the deed that recorded that bargain.[55]

[31] As for s 68(3)(c), it is true that it does not by its terms distinguish between discretionary and contractual interest or, for that matter, provide any direct assistance as to what is meant by the term, "interest". That may be contrasted with the position in New South Wales where, under a similar provision,[56] the term is defined as interest under a specified statute which the court could order "be included in the amount for which it could give judgment".[57] In other words, the NSW provision makes it clear that it is only pre-judgment interest under statute which is to be disregarded. However, although the term is not defined in s 68 or elsewhere in the *District Court of Queensland Act*, the language of s 68(3)(c) is such as to suggest, at least, that the "interest" about which that provision was intended to be concerned was interest that has been, or is liable to be, "awarded in the action" by the court. To my mind, that connotes the awarding of interest by the court in the exercise of its discretion and not interest forming part of the substantive cause of action.

[32] Further, recourse to such extrinsic material as exists in relation to the 1989 amendments confirms that s 68(3)(c) was only directed to pre-judgment discretionary interest.[58] No mention was made of the relevant part of the amendments in the reading speeches of the then Attorney-General in Parliament,[59] but the insertion of s 68(3)(c) can be traced to a report of the Queensland Law Reform Commission on a Bill to alter the civil jurisdiction of the District Court[60] and, not only that, its essential terms were drafted by the Commission.

[33] On 6 December 1984, the Commission was asked by the Attorney-General to consider, and make recommendations with respect to the Bill, the purpose of which was said to be

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55 See *Dunning v The Commonwealth* (1960) 104 CLR 517, 526.

56 Section 44(2) of the *District Court Act* 1973 (NSW).

57 The text of the NSW provision is set out in the judgment of JC Campbell AJA in *Katter v Melham* (2015) 90 NSWLR 164, 187.

58 Consideration may of course be given to extrinsic material to assist in the interpretation of a provision pursuant to s 14B of the *Acts Interpretation Act* 1954 (Qld). This includes a report of a law reform commission: s 14B(3)(b).

59 Queensland Hansard, Record of Proceedings, 4 April 1989, pp 4031-4033 and 4693.

60 *Report of the Queensland Law Reform Commission on a Bill to alter the Civil Jurisdiction of the District Court of Queensland*, Report No 36, 20 December 1985. The Commission was then constituted by the Hon Mr Justice McPherson, the Hon Mr Justice Williams, Mr RE Cooper QC, Mr FJ Gaffy QC, Sir John Rowell and Mr JR Nosworthy.

to adjust the "limits of jurisdiction between the Supreme and District Courts".[61] In the Commission's report of 20 December 1985, the following relevantly appears:

> "**Interest**
>
> The Bar Association has proposed that the jurisdiction of District Courts to include interest on amounts awarded should be exercisable irrespective of whether the resulting judgment in money terms goes beyond the monetary limit. There is some authority suggesting that this is the position at present: see *Turley v Saffin* (1975) 10 SASR 463. We agree that the matter should be clarified to place it beyond doubt and have therefore made appropriate provision in cl. 66(3)(c)."[62]

[34] The reference to making "appropriate provision in cl. 66(3)(c)" was to part of a draft that accompanied the Commission's report. It was in these terms:

> "(3) For the purpose of –
>
> …
>
> (c) determining whether the monetary limit is exceeded no account shall be taken of any amount awarded or liable to be awarded in the action by way of interest on any amount."[63]

[35] It will be seen that these terms are identical to the operative part of what now appears in s 68(3)(c) of the *District Court of Queensland Act*. It will also be seen from what the Commission said about the purpose of the amendment in the part of their report extracted above (at [33]) that it was to address the type of interest discussed in *Turley v Saffin*, that is to say, pre-judgment discretionary interest. No other type of interest was contemplated. To the point, it cannot be said that the amendment was intended to exclude from consideration any portion of the substantive cause of action, and s 68(3)(c) should be construed accordingly. Such a construction does not lower the monetary ceiling of the District Court because the interest that must be taken into account is part of the debt sued upon. Nor does it make the jurisdiction uncertain; the need to transfer the proceeding is a direct consequence of the way in which the parties structured their agreement, providing as it does for the payment of very high rates of interest at monthly rests.

[36] It follows that, in determining whether the monetary limit is exceeded, account is to be taken of any claim for contractual interest. That is part of the "amount, value or damage sought to be recovered" by the applicant in this case and, presently, it is claimed in an amount that is already in excess of the monetary limit. That is a sufficient reason on its own to order the transfer of the proceeding to this court.

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61 Ibid, p 1.

62 Ibid, p 49.

63 Ibid, Sch (pp 4-5). This provision did not appear in the draft provided with the working paper circulated by the Commission in advance of its report. See *Working Paper on a Bill to alter the Civil Jurisdiction of the District Court of Queensland*, Queensland Law Reform Commission Working Paper 29, 1985.

Consolidation

[37] Rule 78 UCPR empowers the court to order that two or more proceedings be consolidated if the same or substantially the same question is involved in all of the proceedings or the decision in one proceeding will decide or affect the other proceeding or proceedings. However, r 78 does not contemplate the consolidation of a proceeding in this court with a proceeding in another court; the proceedings to be consolidated must already be pending in this court. That cannot be said until the applicant, as plaintiff, has taken a step in the proceeding after it has been transferred.[64] Nonetheless, the discretion under s 25(1) of the *Civil Proceedings Act* to transfer the proceeding may still be exercised to enable such a step to be taken and, once taken, to apply for the consolidation of that proceeding with the related proceeding in this court.[65]

[38] Given the apparent commonality of factual and legal issues in the two proceedings, and the desirability that there be only one adjudication of those issues, it is appropriate to allow this to occur. That is also a sufficient reason on its own to order the transfer of the proceeding to this court. The question whether a consolidation order should actually be made will obviously need to await the hearing of the application for that order.

Leave to amend

[39] The respondents did not oppose the granting of leave to the applicant to amend its claim and statement of claim to increase the amount claimed and add a claim for damages for breach of contract, and rightly so. There will be a grant of leave.

Conclusion

[40] For these reasons, it will be ordered that the proceeding currently pending in the District Court be transferred to this court,[66] but the application will be adjourned to allow the parties to apply for a consolidation order under r 78 UCPR.

[41] Leave will also be granted to amend the claim and statement of claim.

[42] The costs of and incidental to this application shall be each party's costs in the transferred proceeding.[67]

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64 *Shannon v Australia and New Zealand Banking Group Ltd (No 1)*, supra, 562.

65 Proceeding No BS6843 of 2015.

66 When a transfer order is made, the registrar of the court to which the proceeding is transferred is required to give the registrar of the other court a copy of the order together with all filed documents: *Civil Proceedings Act*, s 30. Accordingly, no further orders need to be made to facilitate the transfer.

67 This application aside, the costs incurred in the court below will fall to be assessed in accordance with the District Court scale of costs unless this court subsequently makes a different order: *Civil Proceedings Act*, s 33.