

SUPREME COURT OF QUEENSLAND

CITATION: *Bankier v HAP2 Pty Ltd (No 4)* [2019] QSC 198

PARTIES: **MICHELLE ANN BANKIER**
(plaintiff)
v
HAP2 PTY LTD
ACN 005 806 744
(defendant)

FILE NO: BS No 2715 of 2016

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 15 August 2019

DELIVERED AT: Brisbane

HEARING DATE: Written submissions

JUDGE: Martin J

ORDER: **1. The defendant pay to the plaintiff the amount of \$1,139,178.45 including interest of \$419,744.45 to 15 August 2019 and grossing up for tax in the sum of \$81,926.**

2. The defendant pay the plaintiff's costs of the proceeding on the indemnity basis.

CATCHWORDS: INTEREST – RATE OF INTEREST AND COMPOUND INTEREST – where interest has accrued on an award of damages from 30 June 2010 to 15 August 2019 – where Practice Direction number 22 of 2012 directs that, when computing interest for the purpose of r 283 of the *Uniform Civil Procedure Rules*, the Registrar will adopt the rate of ten per centum per annum – where Practice Direction number 7 of 2013 varied the rate of interest to be applied by the Registrar – where the defendant contends that the latter rate is to be applied to the award of damages from the date at which interest accrued – where the plaintiff contends that it only applies from the date of the practice direction – whether interest should be awarded in accordance with the regime prescribed by PD 7/2013 for the whole period during which interest accrued

Civil Proceedings Act 2011, s 58

Australian Education Union v General Manager of Fair Work Australia And Others (2012) 246 CLR 117, cited

Keeley & Ors v Horton & Anor [2016] QCA 253, cited

Serisier Investments Pty Limited v English [1989] 1 Qd R 678, cited

COUNSEL: B Hall for the plaintiff
S Eggins for the defendant

SOLICITORS: Shine Lawyers for the plaintiff
Moray & Agnew Lawyers for the defendant

- [1] There have been three decisions given in this matter.¹ In the second of those decisions, I held that the plaintiff was entitled to interest on the award of damages from 30 June 2010. This decision relates to the rate which should be applied and at what times.

Statutory background

- [2] Section 58 of the *Civil Proceedings Act 2011* (CPA) provides:

“58 Interest up to judgment

(1) This section applies in relation to a proceeding in a court for the payment of money, including a proceeding for debt, damages or the value of goods.

(2) This section does not apply in relation to—

(a) a proceeding for a cause of action arising before 21 December 1972;
or

(b) a proceeding for the payment of money on which interest is payable as of right whether because of an agreement or otherwise.

Editor’s note—

The *Common Law Practice Act Amendment Act 1972* commenced on 21 December 1972.

(3) The court may order that there be included in the amount for which judgment is given interest at the rate the court considers appropriate for all or part of the amount and for all or part of the period between the date when the cause of action arose and the date of judgment.

(4) This section does not—

(a) authorise the giving of interest on interest; or

(b) affect damages recoverable for the dishonour of a bill of exchange.”

- [3] Section 59 of the CPA provides:

¹ [2019] QSC 101; [2019] QSC 180; [2019] QSC 186.

“59 Interest after money order

(1) This section does not apply in relation to a proceeding for a cause of action arising before 21 December 1972.

(2) Interest is payable from the date of a money order on the money order debt unless the court otherwise orders.

(3) The interest is payable at the rate prescribed under a practice direction made under the *Supreme Court of Queensland Act 1991* unless the court otherwise orders.

(4) However—

(a) if the money order includes an amount for damages and the damages are paid within 21 days of the date of the order, interest on the damages is not payable unless the court otherwise orders; and

(b) if the money order includes an amount for costs and the costs are paid within 21 days after assessment, interest on the costs is not payable unless the court otherwise orders.”

[4] The relevant practice directions are PD 22/2012 and PD 7/2013. PD 22/2012 provides that it is a direction given for the purposes of s 58 of the CPA and directs that, when computing interest for the purpose of r 283 of the *Uniform Civil Procedure Rules*, “the Registrar will adopt the rate of ten per centum per annum from the first day of September 2012, and for all periods thenceforth until any variation in the rate effected by further Practice Direction.”

[5] PD 7/2013 varied the rate of interest to be applied by the Registrar when entering default judgment under r 283 and is made for the purposes of s 58 of the CPA. It also applies to a money order debt for the purposes of s 59(3) of the CPA. The practice direction notes that it is made to implement an agreement made by representatives of all Australian jurisdictions to establish nationally uniform rates.

[6] It provides:

“3. The following is the rate to be applied by the Registrar when entering default judgment:

(a) in respect of the period from 1 January to 30 June in any year, a rate four percent above the cash rate last published by the Reserve Bank of Australia before that period commenced; and

(b) in respect of the period from 1 July to 31 December in any year, a rate four percent above the cash rate last published by the Reserve Bank of Australia before that period commenced.

4. The following is the rate applicable to a money order debt:

(a) in respect of the period from 1 January to 30 June in any year, a rate six percent above the cash rate last published by the Reserve Bank of Australia before that period commenced; and

- (b) in respect of the period from 1 July to 31 December in any year, a rate six percent above the cash rate last published by the Reserve Bank of Australia before that period commenced.”

What rate should apply? And for what period?

- [7] Each party provided their own calculations of interest. The plaintiff applied the rate of ten percent from 30 June 2010 until 19 April 2013 (PD 22/2012) and then applied a rate which equated to an amount of four percent above the relevant cash rate at various times (PD 7/2013). The defendant contends that the rates referred to in [3] of PD 7/2013 should apply from 30 June 2010.
- [8] In *Keeley & Ors v Horton & Anor*² Burns J (with whom Holmes CJ and P Lyons J agreed) said:
- “[13] ... In the absence of contrary evidence, the prescribed rates are generally accepted as satisfying the need for economic loss to be compensated by an award of interest on the principal debt at ordinary commercial rates. They should therefore be applied to the damages awarded in the first appellants’ favour as varied by this Court.”
- [9] That is consistent with the analysis of the practice of courts in awarding interest which was undertaken by Thomas J³ in *Serisier Investments Pty Limited v English*⁴ when referring to a number of High Court of Australian decisions that interest should be assessed at ordinary commercial rates but that such rates have been left at large by the courts.
- [10] Thomas J concluded:
- “It seems to me that from time to time the courts will adopt a median figure which represents a perception of commercial rates, and that that figure will continue to be applied as a matter of practice until the rates change. When there is a substantial enough change in the community to produce a test case, or a series of them, then some other figure obviously becomes appropriate.”
- [11] The defendant submitted that to comply with the general principle applicable to the award of statutory interest that requires interest to be assessed “at ordinary commercial rates”, interest should be awarded in accordance with the regime prescribed by PD 7/2013 rather than the earlier practice direction which prescribed an arbitrary ten percent rate. In support of that contention, the defendant also pointed to the words in [3] of PD 7/2013 “in any year” and contended that those words should be construed so that the prescription of the interest rate calculation was not restricted to periods of time after PD 7/2013 commenced.
- [12] The defendant’s submissions should not be accepted for the following reasons.

² [2016] QCA 253.

³ With whom Kneipp and Derrington JJ agreed.

⁴ [1989] 1 Qd R 678 at 680-681.

- [13] First, while the statement in *Keeley v Horton* correctly expresses the general practice it should not be interpreted as placing some fetter on the discretion afforded by s 58 of the CLA. As Burns J said: “ ... the prescribed rates are generally accepted ...”. Section 58 gives a discretion to order (or not) that interest may be included in the judgment for all or part of the amount and for all and part of the period between the date when the cause of action arose and the date of judgment.
- [14] Secondly, even if the court were bound by the interest rate referred to in PD 7/2013, it is not to be applied retrospectively in the sense that a rate of four percent above the cash rate should be applied to periods before the commencement of that practice direction.
- [15] The term “in any year” does not support an argument that the provisions were meant to apply to any period before the practice direction. There are at least two reasons for rejecting that contention.
- [16] First, the term is there to identify the necessary connection between a particular six month period and the relevant “cash rate last published”. It is not to be construed as intending to apply to all six month periods whenever they occurred.
- [17] Secondly, the presumption against retrospectivity which applies generally to legislation⁵ should also be applied to practice directions unless there is some clear statement of intention for a provision to take effect earlier than the date of the practice direction.
- [18] The defendant is to pay interest on the damages awarded at the rate of ten percent per annum from 30 June 2010 until 19 April 2013. From that time onwards the rate to be applied is the sum of four percent and the Reserve Bank of Australia cash rate. The calculation by the plaintiff is correct.

Orders

- [19] The defendant pay to the plaintiff the amount of \$1,139,178.45 including interest of \$419,744.45 to 15 August 2019 and grossing up for tax in the sum of \$81,926.
- [20] The defendant pay the plaintiff’s costs of the proceeding on the indemnity basis.

⁵ *Australian Education Union v General Manager of Fair Work Australia And Others* (2012) 246 CLR 117 at [31].