

SUPREME COURT OF QUEENSLAND

CITATION: *McGrath Corporation Pty Ltd v Global Construction Management (Qld) Pty Ltd & Anor (No. 2)* [2011] QSC 284

PARTIES: **McGRATH CORPORATION PTY LTD**
ACN 010 829 491
(plaintiff)
v
GLOBAL CONSTRUCTION MANAGEMENT (QLD) PTY LTD
ACN 085 856 882
(first defendant)
and
IAN VINCENT TAYLOR
(second defendant)

FILE NO: BS 1199 of 2007

DIVISION: Trial Division

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 22 September 2011

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Daubney J

ORDERS: **1. The judgment for the plaintiff in this proceeding shall include an order for interest on the judgment sum calculated at the rate of 9 per cent from 27 October 2007 to the date of judgment, being \$234,310;**

2. The first defendant shall pay 95 per cent of the plaintiff's costs of and incidental to this proceeding.

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where the court has discretion as to costs – where the first defendant seeks costs in respect of parts of the proceeding in which the plaintiff has been less than completely successful – where, in the alternative, the first defendant seeks that the plaintiff receive part of its costs – whether discretion under rule 684 of the *Uniform Civil Procedure Rules 1999* (Qld) should be exercised – whether there should be a reduction in the award of costs to the plaintiff

INTEREST – RATE OF INTEREST AND COMPOUND INTEREST – RATE IN OTHER CASES – where the plaintiff seeks interest on damages to the date of judgment – whether the rate of interest should be 10 per cent per annum

Uniform Civil Procedure Rules 1999 (Qld), r 386, r 684

Batchelor v Burke (1981) 148 CLR 448, cited

Riches v Westminster Bank Ltd [1947] AC 390, cited

COUNSEL: C Wilson for the plaintiff
G I Thomson for the first defendant

SOLICITORS: Herbert Geer for the plaintiff
HWL Ebsworth for the first defendant

- [1] When judgment was delivered in this matter¹ I gave the parties liberty to make submissions on interest and costs. Those submissions have now been received.

Interest

- [2] On the question of the appropriate rate of interest to the date of judgment, the plaintiff submitted that the interest should be calculated at the rate of 10 per cent, that being the rate prescribed for default judgments pursuant to Practice Direction 6 of 2007.
- [3] The first defendant submitted, however, that the rate of 10 per cent under the Practice Direction is inappropriate in the present case because the plaintiff's own submissions asserted that the plaintiff financed the ongoing construction using funds borrowed from Westpac at a rate of about nine per cent.² The first defendant contended that the appropriate rate for interest to the date of judgment is nine per cent.
- [4] The primary objective of an award of pre-judgment interest is to compensate a plaintiff for the loss suffered as a consequence of being deprived of the damages.³ As Gibbs CJ said in *Batchelor v Burke*:⁴

“The interest is awarded to compensate the plaintiff for the detriment that he has suffered by being kept out of his money, and not to punish the defendant for having been dilatory in settling the plaintiff's claim.”

- [5] In the present case, proper compensation to the plaintiff would see it reimbursed at the same rate of interest as it was charged by the bank. Adopting, therefore, the rate of nine per cent, the interest recoverable by the plaintiff for the period 27 October 2007 to 20 June 2011 amounts to \$234,310.

Costs

- [6] The first defendant submitted that because the plaintiff had not been completely successful in the proceeding, and had in fact lost on some of the issues it took to

¹ *McGrath Corporation Pty Ltd v Global Construction Management (Qld) Pty Ltd & Anor* [2011] QSC 178.

² See the evidence of Steven McGrath referred to in the principal judgment at [182].

³ *Riches v Westminster Bank Ltd* [1947] AC 390, per Lord Wright at 400.

⁴ (1981) 148 CLR 448 at 455.

trial, the costs order should be adjusted in the first defendant's favour. It was submitted that:

- (a) The Court should exercise its discretion under *Uniform Civil Procedure Rules* 1999 (Qld) ("UCPR") r 684 to award the first defendant its costs in respect of those parts of the proceeding in which the plaintiff had been less than completely successful;
- (b) Alternatively, the Court should reflect this lack of complete success by only awarding the plaintiff part of its costs – it was submitted that an appropriate reduction would be 20 per cent.

[7] The first defendant pointed to a number of matters.

[8] First it was said that the plaintiff failed in its claim for "termination costs" – see paras [169] – [171] of the principal judgment. Whilst the quantum of this element of the claim was significant, this issue did not contribute greatly to the preparation for or duration of the trial.

[9] The first defendant next pointed to the claim for directors' salaries, which was abandoned in the course of the plaintiff's opening. This issue did not occupy any time at trial, and was only briefly adverted to by the experts in their reports.

[10] The first defendant then relied on the fact that the plaintiff's claim that proportionate liability under the *Civil Liability Act* 2003 (Qld) should be apportioned 100 per cent against the first defendant had been rejected and a finding of 50 per cent proportionate liability was made. Even counsel for the first defendant conceded in the submissions on costs, however, that the issue occupied some (relatively small) amount of time both in preparation and at the trial. In truth, as was noted in the course of the principal judgment, much of the background factual evidence was not in issue between the parties. The fact that the plaintiff argued for 100 per cent proportionate liability on the part of the first defendant did not significantly contribute to the length of the trial or the costs incurred.

[11] The next matter pointed to was the plaintiff's persistence in pursuing the claim for 155 days of delay. This was a significant issue at trial, and the task of the first defendant in resisting that claim was made demonstrably more difficult by the fact that there was an unexplained failure on the part of the plaintiff to make proper disclosure of documents which were relevant to the question of delay – see para [158] of the principal judgment. I am inclined to accept the first defendant's submission that much effort and cost was devoted to the issue of the period of delay and, in the end result, the position positively advanced by the first defendant was the one which prevailed in the outcome.

[12] The first defendant pointed to a number of other minor matters, including its entitlement pursuant to r 386 of the UCPR to costs related to amendments to the pleadings, and a contention that the first defendant should not have to pay the costs of the plaintiff's application to join the second defendant in the proceeding. None of these matters, however, ultimately impact on the question which I am now to determine.

[13] I do not think this is an appropriate case in which to exercise the discretion conferred by r 684. The circumstances of this case are not particularly exceptional. It is inappropriate, and contrary to long-established practice, to conduct the sort of

minute dissection of issues which the first defendant contends would lead to an order under r 684 being made in its favour.

- [14] That being said, I do think there is merit in making a small reduction in the award of costs to be made in favour of the plaintiff to reflect the fact that the plaintiff not only failed to establish the case it pursued in respect of 155 days delay, it contributed to unnecessary cost at trial by the unexplained late disclosure of documents which were clearly relevant to that issue and which contributed to finding against the plaintiff in respect of that part of the claim.
- [15] In the circumstances, I consider it appropriate to order that the first defendant pay 95 per cent of the plaintiff's costs of and incidental to the proceeding.

Conclusion

- [16] There will be the following orders:
1. The judgment for the plaintiff in this proceeding shall include an order for interest on the judgment sum calculated at the rate of 9 per cent from 27 October 2007 to the date of judgment, being \$234,310;
 2. The first defendant shall pay 95 per cent of the plaintiff's costs of and incidental to this proceeding.