

SUPREME COURT OF QUEENSLAND

CITATION: *Ward & Ors v HCOA Operations (Australia) Pty Ltd & Anor*
[2013] QSC 92

PARTIES: **STEVEN JOHN WARD**
(first plaintiff)
SIMONE WARD
(second plaintiff)
ZAC WARD
(third plaintiff)
v
ROBERT JAMES WATSON
(first defendant)
HCOA OPERATIONS (AUSTRALIA) PTY LTD,
TRADING AS NORTH WEST BRISBANE PRIVATE
HOSPITAL
(second defendant)

FILE NO/S: SC No 4772 of 2007

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED EX
TEMPORE ON: 26 March 2013

DELIVERED AT: Brisbane

HEARING DATE: 26 March 2013

JUDGE: Chief Justice

ORDERS:

- 1. Declaration sought by second defendant refused.**
- 2. Applications filed 15 February 2013 (by first defendant) and 19 February 2013 (by second defendant) dismissed.**
- 3. Costs to be assessed, as necessary, on the standard basis.**

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – INTEREST ON JUDGMENTS – TIME FROM WHICH INTEREST RUNS – the court sanctioned the settlement of an infant’s damages claim – a court order was made, requiring the defendants to pay the compromise sum within 21 days of the order, or within 21 days of the defendants’ receipt of the last of any statutory clearances or charges in relation to the damages, whichever was the later to occur – the compromise sum was not paid immediately but was paid within the timeframe required by the order – the parties did not exclude an entitlement to interest in the settlement agreement – the

third plaintiff sought interest from the date of the order until payment of the compromise sum occurred – whether the sanction order was a “money order” within the meaning of the Civil Proceedings Act 2011 – whether interest was payable by the second defendant pursuant to s 59 of the *Civil Proceedings Act 2011*

Civil Proceedings Act 2011 (Qld), s59, s 108
Supreme Court Act 1995 (Qld), s 48

Fowler v Gray [1982] Qd R 334, cited
Lawes v The Nominal Defendant [2007] QSC 103, cited
Taylor v Company Solutions Australia Pty Ltd [2012] QSC 309, considered

COUNSEL: No appearance for the first or second plaintiffs
 M Grant-Taylor for the third plaintiff
 EW Diehm for the first and second defendants

SOLICITORS: No appearance for the first or second plaintiffs
 Shine Lawyers for the third plaintiff
 K&L Gates for the first defendant
 Minter Ellison for the second defendant

[1] **CHIEF JUSTICE:** On the 8th of April 2011 I sanctioned a settlement of an infant's damages claim. I did so under s 59(1) of the *Public Trustee Act 1978*. The sanctioned settlement obliged the second defendant to pay to the third plaintiff \$6.44 million for damages, including management fees, and in addition the plaintiffs' costs of the proceeding.

[2] Clause 6 of the order then provided:

"Within 21 days of this order or of the defendant's receipt of the last of any statutory clearances or charges in relation to the compromised sum, whichever is the later to occur, the defendant pay the compromised sum as follows:

(a) *To any statutory body having a charge over the compromised sum the amount necessary to satisfy the charge;*

(b) *To pay the third plaintiff a sum of \$245,000 for out-of-pocket expenses incurred on behalf of the third plaintiff and for past personal care and assistance given to the third plaintiff;*

(c) *To the trustee the balance."*

[3] The moneys were not paid over immediately, but within the time frame prescribed by the order. On 10th October 2012 Justice Douglas gave judgment in *Taylor v Company Solutions Australia Pty Ltd* [2012] QSC 309 (*Taylor's case*). His Honour held that under such an order s 48 of the *Supreme Court Act 1995* entitles a plaintiff to interest from the date of the order until payment of the principal sum.

- [4] On 7 January 2013, having become aware of that decision, the solicitors for the third plaintiff sought payment of interest amounting to \$168,794.15. The correct amount of interest, if due, is, I am informed, \$167,452.18. The second defendant now claims a declaration that no interest is payable.
- [5] Mr Grant-Taylor queried the validity of this claim in circumstances where the parties had discontinued the proceeding last year. I would not accede to that objection. The current claim could be regarded, if necessary, as a separate new proceeding.
- [6] I must first identify the applicable provision. Section 48 of the *Supreme Court Act* 1995, to which Justice Douglas referred, was by the *Civil Proceedings Act* 2011 replaced by s 59 of the latter Act. The transitional provision, s 108, means that one looks now to s 59. It provides in subsection 2:
- "Interest is payable from the date of a money order on the money order debt unless the Court otherwise orders."*
- [7] Unlike that provision, s 48 of the *Supreme Court Act* 1995 provided for interest on money, "From time to time unpaid."
- [8] The next question is whether the order made on 8 April was a "money order". The term "money order" is defined in the *Civil Proceedings Act* as, "An order of the Court or part of an order of the Court for the payment of money." Mr Deihm, who appeared for the applicant, the second defendant, submitted that a sanction order is not an order for the payment of money, and he referred to the analysis in *Fowler v Gray* [1982] QR 334-343 and the terms of s 59(1) of the *Public Trustee Act*, which he submitted are concerned only with the destination of the sums to be paid.
- [9] A sanction order could probably be confined to the sanction itself with the parties then left to implement the compromise, but the usual order goes beyond that. In this case paragraph 6 of the order obliged the defendant to make the payments there specified. Notwithstanding Mr Deihm's careful submission, I consider that means this order should be characterised as a money order.
- [10] Section 59(2) therefore operates with interest payable from the date of the order, 8 April 2011, unless the Court otherwise orders. *Taylor's case* alerted the profession to an interest entitlement which had probably not previously been recognised. It may well be that the parties in settling this claim as they did would if asked have said that no interest would be payable provided the principal amounts were paid on time, as did occur.
- [11] Those considerations should not, however, deny the plaintiffs the interest now if allowing interest would be consistent with the statutory scheme. The language of s 59(2) establishes what Mr Grant-Taylor termed a "presumptive entitlement" to interest, drawing on the language of Justice Byrne in *Lawes v The Nominal Defendant* [2007] QSC 103, page 5. Had the parties wanted to exclude an entitlement to interest they could have said so in the settlement agreement, which would then have justified the Court as necessary in excluding interest under the concluding words of s 59(2).
- [12] In the absence of such an express exclusion it would be wrong to deny the plaintiff his presumptive entitlement on the basis of speculation that the parties may not have

intended that it be payable. Compromising parties would be well advised to record in their settlement agreement a confirmation that they do not intend that interest accrue providing the payment is made by the due date, if that is indeed the case.

[13] The defendant could have paid the moneys or a substantial portion of them at any time within the 21 day period specified in paragraph 6 of the order without risking the satisfaction of the charges, et cetera. Allowing for the statutory provision there is no reason why the plaintiff should be denied interest where on the other hand the defendant will otherwise have benefited because of delay by not paying any of the substantial amount necessary due to the trustee until late in the day.

[14] I consider that the third plaintiff, who is the present respondent, is entitled to interest under s 59(2) of the *Civil Proceedings Act* 2011. Accordingly, I should refuse the declaration sought by the second defendant, being the present applicant, and order that the application filed on the 19th of February 2013 be dismissed with costs.

...

[15] **CHIEF JUSTICE:** Both applications are dismissed with costs, including any reserved costs, to be assessed as necessary on the standard basis.