SUPREME COURT OF QUEENSLAND

CITATION:	*Taylor v Company Solutions (Aust) Pty Ltd* [2012] QSC 309
PARTIES:	**DAVID JAMES TAYLOR, by his Litigation Guardian BELINDA LEE BURNS** (Plaintiff) v **COMPANY SOLUTIONS (AUST) PTY LTD (ABN 24 121 070 924)** (First Defendant) and **KALMAR EQUIPMENT (AUSTRALIA) PTY LTD (ABN 64 078 885 613)** (Second Defendant) and **PATRICK STEVEDORES OPERATIONS PTY LIMITED** (Third Defendant)
FILE NO/S:	12009 of 2010
DIVISION:	Trial Division
PROCEEDING:	Application
DELIVERED ON:	10 October 2012
DELIVERED AT:	Brisbane
HEARING DATE:	3 May 2012
JUDGE:	Douglas J
ORDER:	**Order in terms of paragraphs 1 and 2 of the draft order**
CATCHWORDS:	PROCEDURE – JUDGMENTS AND ORDERS – INTEREST ON JUDGMENTS – TIME FROM WHICH INTEREST RUNS – where the action for damages for personal injuries was compromised – where the court's sanction was required – where an order of the court was made requiring the defendants to pay the compromise sum within 21 days of the date of the hearing and determination of the application or of the defendants' receipt of the last of any statutory clearances or charges in relation to the damages whichever was the later to occur – where there were delays in notification of the statutory charges referable to the claim – where the second defendant's solicitors were notified of the last of the statutory charges referable to the claim on 19 January 2012 – where no agreement made in relation to interest between the parties – whether interest payable by the second and third defendants pursuant to s 48 of the *Supreme*

Court Act 1995 (Qld)

Supreme Court Act 1995 (Qld), s 48

Anthony v Tasmanian Alkaloids Pty Ltd [2005] TASSC 68, referred
Flinn v The Maryborough Sugar Factory Limited [2003] QDC 446, referred
Simmons v Colly Cotton Marketing Pty Limited [2007] NSWSC 1092, cited
Yun Hee Choi v City of Sydney Council [2007] NSWSC 65, referred

COUNSEL: M Grant-Taylor SC for the applicants

A P J Collins for the second and third respondents

SOLICITORS: Shine Lawyers for the applicants

Carter Newell Lawyers for the second respondent

Dibbs Barker for the third respondent

[1] This action for damages for personal injuries was compromised but required the Court's sanction because the plaintiff was a "person under a legal disability" within the meaning of s 59(1A) of the *Public Trustee Act 1978* (Qld). That sanction was given by me on 12 July 2011. Paragraph 7 of the order provided:

> "Within twenty-one (21) days of the date of the hearing and determination of this application or of the defendants' receipt of the last of any statutory clearances or charges in relation to the damages (whichever is the later to occur), the defendants pay the compromise sum as follows:
>
> (a) To any statutory body having a charge over the compromise sum - the amount necessary to satisfy the charge, the receipt of the statutory body concerned to be a sufficient discharge to the defendants in respect thereof;
>
> (b) To NAT - the balance, the receipt of NAT to be a sufficient discharge to the defendants in respect thereof."

[2] NAT referred to in the order was National Australia Trustees Limited which was appointed pursuant to s 12(1) of the *Guardianship and Administration Act 2000* (Qld) to receive and manage the damages payable to the plaintiff as a result of the compromise. The primary damages forming part of the compromise sum referred to included interest, which the parties agreed was a reference to interest up to judgment under s 47 of the *Supreme Court Act 1995* (Qld).[1]

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

[3] There were delays in notification of the statutory charges referable to the claim, the last to be notified being that of Centrelink, the second defendant's solicitors' receipt of which occurred on 19 January 2012. On 2 February 2012, the second defendant's solicitors paid settlement moneys of $909,367.48 to NAT. Then, on 15 March 2012, the third defendant's solicitors paid $187,500 to NAT, more than 21 days after the notification of the Centrelink statutory charge on 19 January 2012.

[4] Accordingly, satisfaction of the total settlement sum of $1,391,325 was achieved as follows:

From Carter Newell to NAB Private Wealth on 02.02.12	$909,367.48
From Dibbs Barker to NAB Private Wealth on 15.03.12	$187,500.00
WorkCover charge	$274,272.51
Medicare Australia charge	$981.70
DEEWR charge	$7,480.00
Centrelink charge	$11,723.31
TOTAL:	$1,391,325.00

[5] The plaintiff's contention is that the second and third defendants are obliged to pay interest pursuant to s 48 of the *Supreme Court Act 1995* (Qld) which provides as follows:[2]

> **"48 Interest on debt under judgment or order**
>
> (1) Where judgment is given or an order is made by a court of record for the payment of money in a cause of action that arose after the commencement of the *Common Law Practice Act Amendment Act 1972*, interest shall, unless the court otherwise orders, be payable at the rate prescribed under a regulation from the date of the judgment or order on so much of the money as is from time to time unpaid.
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> (2) Notwithstanding anything contained in subsection (1) –
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> (a) where the court directs the entry of judgment for damages and the damages are paid within 21 days after the date of the direction – interest on the damages shall not be payable unless the court otherwise orders;
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> (b) where the court makes an order for the payment of costs and the costs are paid within 21 days after the ascertainment thereof by taxation or otherwise – interest on the costs shall not be payable unless the court otherwise orders."

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2 See now s 59 of the *Civil Proceedings Act 2011* (Qld).

[6] Mr Grant-Taylor SC for the plaintiff stressed the language of the section providing that the interest "shall …be payable" "unless the court otherwise orders". He also relied on a useful analysis of the history of the section by Judge McGill QC in *Flinn v The Maryborough Sugar Factory Limited (omitting footnotes)*:[3]

> "[5] This section was formerly s 73 of the *Common Law Practice Act* 1867. It was inserted into that Act by the *Common Law Practice Act Amendment Act* 1972 (No 34 of 1972) s 5; s 4 of that Act inserted a new s 72 which provided for interest up to judgment, a provision which now appears in s 47 of the *Supreme Court Act* 1995. The sections obviously compliment (sic) each other; s 47 applies up to the date of the judgment, and s 48 runs from the date of the judgment.
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> [6] Section 72 was taken from the *English Law Reform (Miscellaneous Provisions) Act*, and in *Callinan v Borovina* [1977] Qd R 366 the Full Court at p.369 adopted what was said by Denning MR in *Jefford v Gee* [1972] QB 130, the leading English authority on the English equivalent, at p.144: "The basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly." The decision of the Full Court was confirmed on appeal to the High Court: *Fire & All Risks Insurance Co Ltd v Callinan* (1978) 140 CLR 427.
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> [7] The operation of the then s 73 was considered to some extent by the High Court in *Gould v Vaggelas* (1985) 157 CLR 215, from 271. The Court said at p.275: "Clearly, an award of interest is necessary to preserve to the appellants the full benefit of their judgment. Where interest is allowed, it should be allowed at ordinary commercial rates: *Cullen v Trappell* (1980) 146 CLR 1 at 21, per Gibbs J." In that case it was held that the Court had a discretion under the section, which would be preserved by the wording of s 48(1), to vary the rate of interest, and ordered that interest be paid at 12 percent rather than the statutory rate. Reference to Cullen was to a passage where his Honour was discussing the correct approach to the award of interest under the equivalent of s 47, and the applicability of that authority in the context of an exercise of discretion under the equivalent of s 48 is consistent with the Court's regarding the two sections as being complementary.
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> [8] Unless interest or something like it is payable in respect of a judgment sum, the plaintiff will not receive proper compensation. Almost invariably a money judgment reflects a pre-existing obligation to pay the judgment sum at an earlier date, or is the crystallisation of an obligation

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[3] [2003] QDC 446 at [5]-[10].

> which arose at an earlier time. Section 47 is directed to remedying the injustice which would otherwise occur to the plaintiff because the amount payable was not paid at the time when the cause of action arose. Between that time and the time when judgment is given, to the extent that the plaintiff has been kept out of his money he will have suffered loss, and conversely the defendant will have had the benefit of retaining the money. The statute assumes, reasonably enough, that this benefit may be reflected in the value of the interest which such amount could earn.
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> [9] Presumably once an appropriate order has been made under s 47 justice has been done between the plaintiff and defendant, but necessarily on the assumption that the judgment is satisfied on the date of judgment. Commonly that will not occur, if only because of practical considerations. Section 48 was therefore intended to remedy the similar injustice which would otherwise arise after the date of judgment. It operates from the date of judgment, although there are two concessions in subsection (2), in paragraph (a) in respect of a judgment for damages, and in paragraph (b) in respect of an order for costs. Note that in each case if the party liable for the damages or costs does not take advantage of the concession interest runs under subsection (1) from the date of judgment or order. The concession period in paragraph (a) also runs from that date.
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> [10] At common law a judgment did not carry interest, but from 1838 by statute in England interest at an amount stated in the statute ran from the time of entering up the judgment until satisfaction. This was referred to in the judgment of Griffith CJ in *Reis v Carling* (1908) 5 CLR 673, where his Honour traced the subsequent development of the law in relation to interest in England and in Queensland. For a long time, therefore, it has been recognised that ordinarily a judgment will carry interest from the date of the judgment."

[7] It is significant for the defendants' argument in this case that that decision was one arising after a judgment where, they submit, the order here arose after a compromise and, therefore, has a different effect. The submission of Mr Collins for the defendants was that the obligation to pay the compromise sum did not arise until the receipt of the last of any statutory clearances or charges and that the money made payable by my order, which required that the defendants pay the plaintiff damages in the sum of $1,100,000 and administration damages in the sum of $252,333 together with costs fixed at $100,000, was not "unpaid", to use the language of s 48(1), until that condition was fulfilled. He distinguished the effect of a judgment because moneys become due and payable upon it being issued.

[8] Another way to characterise this situation is, however, that the moneys are due upon the compromise being reached but not payable until the time when the last of the statutory clearances or charges is received. That does not mean, in my view, that the obligation to pay the money has disappeared. It remains unpaid, and in some cases cannot be paid until the discharge is received pursuant, for example, to Commonwealth legislation such as the *Health and Other Services (Compensation) Act 1995* (Cth) and the *Social Security Act 1991* (Cth). Mr Grant-Taylor argued that the order provided for no more than a postponement of the point in time at which the defendants would be obliged to pay the judgment moneys and likened the situation to a stay of a judgment which did not change the date from which it took effect.[4]

[9] He relied, in particular, on a decision of the Supreme Court of Tasmania in *Anthony v Tasmanian Alkaloids Pty Ltd (No 2)*.[5] There, Blow J said of their equivalent to s 48:

> "4 The predecessor of s165 was the Interest on *Judgments Act* 1872, s1. It expressly provided that a judgment was to carry interest 'until the same shall be satisfied'. There is no reason to think that Parliament, when it enacted s165, intended that interest should cease to accrue on a judgment debt at any time other than the date that the judgment was satisfied. Plainly the intention of s165 was that, in the event of a delay in the satisfaction of a judgment, the judgment creditor should be compensated for the loss of the use of the judgment monies, and the judgment debtor should be encouraged to pay the judgment debt by the imposition of a high rate of interest.
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> 5 It follows that s165 requires the payment of interest on a judgment sum until the judgment is satisfied, unless an order is made that has a contrary effect. If, for example, a stay of execution is ordered pending the determination of an appeal, the stay may be granted upon terms, and those terms might include an order as to interest. There might be an order that no interest is to accrue, or an order that interest is to accrue at some rate other than that prescribed under s165. Alternatively, an order might be made which, without expressly referring to interest, has the effect of discharging the liability of the judgment debtor to pay interest under s165.
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> 6 Counsel for the defendant, Mr Murray, relied on *Morse v Muir* [1939] 2 KB 106. In that case a judgment creditor had issued a judgment summons, upon the return of which an order had been made for the judgment debtor to pay the judgment debt by instalments. After the principal debt had been fully paid by instalments, the judgment creditor brought an action to recover interest on the judgment debt. Goddard LJ (as he then was) held that, as a result of the making of the order for payment by instalments, the original

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4 See *Simmons v Colly Cotton Marketing Pty Limited* [2007] NSWSC 1092 at [10].

5 [2005] TASSC 68 at [4]-[7] (emphasis added).

> judgment debt had gone, and been replaced by a debt payable by instalments. The action therefore failed. The proposition that the order for the payment of instalments replaced the original judgment debt was derived from the English Court of Appeal's decision in *Woodham Smith v Edwards* [1908] 2 KB 899, which had nothing to do with interest. Goddard LJ also referred to comments made in *Aman v Southern Railway Co* [1926] 1 KB 59. For example, Scrutton LJ said, at 73, 'It appears to me that if the tree falls the fruit falls with it, and if the judgment is gone the incidents of the judgment are equally gone, including statutory interest.' However that case referred to the effect of legislation concerning the amalgamation of railway companies which provided that the allocation of certain stock was to be 'in satisfaction of all claims ... including any arrears of interest'.
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> 7 In the present case, no order was made or sought as to what was to become of the invested monies following the determination of the appeal to the Full Court, nor as to the rights of the parties in respect of interest. **The judgment debt remained owing to the plaintiff. The fact that an order had been made temporarily preventing execution, and the fact that sums sufficient to satisfy the judgment had been invested pursuant to an order intended to operate temporarily, did not extinguish the judgment debt. When the parties agreed to the consent orders of 6 December, they made no agreement in relation to interest. Since no order was made as to interest, no order was made discharging the judgment debt, and no contractual arrangement was made as to interest, the judgment debt continued to 'carry interest' pursuant to s165.**"

[10] Mr Grant-Taylor emphasised, in particular, the fact that the parties had made no agreement in relation to interest in this case either so that the consequence was that interest under s 48 applied because of the mandatory use of the words "shall, unless the court otherwise orders …" be payable. He argued, that if the defendants wished to be relieved of the obligation to pay interest under the section they should have included an express provision to that effect such as is to be found in the order in *Yun Hee Choi v City of Sydney Council*[6] providing that interest is not to run until a particular period after the defendant has received relevant clearances.

[11] He also relied upon the decision in *Flinn v The Maryborough Sugar Factory Limited* to argue that the fact that Commonwealth legislation may relieve a "compensation payer" from an obligation to pay an injured plaintiff his judgment moneys until some time after the Commonwealth's charge has been satisfied, and made it an offence to pay any part of the "compensation" until then, was not a circumstance which enlivened a discretion to relieve a judgment debtor from an

[6] [2007] NSWSC 65.

obligation to pay s 48 interest. He also relied upon that decision to argue that there was no operational inconsistency between s 48 and the relevant Commonwealth legislation. No party sought to argue that there was any such inconsistency pursuant to s 109 of the *Constitution*.

[12] Mr Collins pointed out that circumstances may conspire to make it difficult for defendants to pay damages awards as soon as may be expected because of delays in receiving discharges or releases. Mr Grant-Taylor's response to that was, however, that significant delays, particularly where there have been large awards of damages, should not go unpenalised and could affect any decision whether to sanction the settlement.

[13] The issue seems to me to turn principally on the statutory language which does mandate the payment of interest on so much of the money as is from time to time unpaid. The fact that the terms of the compromise did not make the sum payable until 21 days after the receipt of the statutory clearances or charges does not change the character of the order being one for the payment of money which is unpaid.

[14] Mr Collins submitted that, if I were against his principal argument, I should exercise my discretion to order otherwise and remove the obligation to pay interest. There was no particular reason obvious to me, however, why the plaintiff should be deprived of the interest that the section provides should be paid to him.

[15] Had I been against Mr Grant-Taylor's principal submissions, he submitted that I should have found in his client's favour in respect of the late payment by the third defendant. Because I have accepted his principal submissions that issue need not be considered.

Conclusion

[16] The consequence is that the plaintiff is entitled to payment of the interest he seeks, which was said to be $64,062.93.

Order

[17] I shall order, therefore, in terms of paragraphs 1 and 2 of the draft order subject to any further submissions about the form of that order and the amount of the interest said to be owing at the date of this decision and costs.