

# SUPREME COURT OF QUEENSLAND

CITATION: *Investors Exchange Limited v Australian Financial  
Complaints Authority Limited & Anor (No 2)* [2020] QSC 83

PARTIES: **INVESTORS EXCHANGE LIMITED**  
ACN 116 489 420  
(applicant)  
v  
**AUSTRALIAN FINANCIAL COMPLAINTS  
AUTHORITY LIMITED**  
ACN 620 494 340  
(first respondent)  
and  
**LORNETTE PTY LTD ATF LORNETTE  
SUPERANNUATION FUND**  
ACN 133 435 275  
(second respondent)

FILE NO/S: 10366 of 2019

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 21 April 2020

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Applegarth J

- ORDERS:
- 1. The application filed 24 September 2019 is dismissed.**
  - 2. The applicant specifically perform the determination dated 24 May 2019 to pay the second respondent \$66,115, together with interest calculated at 1.5 per cent per annum (compounding annually) from 24 November 2015 to the date of payment, by paying to the second respondent on or before 23 April 2020 the sum of \$70,606.31.**
  - 3. The applicant pay the first respondent's costs and the second respondent's costs of and incidental to the proceeding, including the application filed 14 November 2019, to be assessed on the standard basis.**

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – SPECIFIC PERFORMANCE – DECREE OR JUDGMENT – FORM – where there were competing submissions as to the form of order, and a tiny difference in the calculation of interest payable under an order to specifically enforce a determination

COUNSEL: H L Alexander, with C Upton, for the applicant  
M W Wise QC, with A F Solomon-Bridge, for the first respondent

SOLICITORS: Creagh Weightman for the applicant  
Arslan Lawyers for the first respondent  
The second respondent by its director Mr Wamsteker appeared on its own behalf

- [1] On 9 April 2020 I decided that the contract between the parties should be specifically enforced and that, within 14 days, the applicant pay the second respondent \$66,115 together with interest calculated at 1.5 per cent per annum (compounding annually) from 24 November 2015 to the date of payment.<sup>1</sup> I invited submissions as to the form of order which would require the applicant to pay the second respondent this amount.
- [2] The first respondent calculated interest according to an appropriate formula and arrived at a total amount of \$70,567.13 as at 9 April 2020. It calculated that for every day from 9 April 2020 pre-judgment interest accrued at the rate of \$2.88378 per day. It submitted that the final judgment should fix the total sum to avoid further unnecessary dispute about the calculation of interest.
- [3] The second respondent supports the submissions of the first respondent.
- [4] The applicant submits that the form of order should state that it is an order for specific performance of the determination dated 24 May 2019. I agree.
- [5] The applicant has calculated a slightly different amount for interest. The difference is \$1.08 as at 9 April 2020 and almost one cent a day thereafter. This is because the current annual period includes a “leap day”.
- [6] I am sorry that the applicant’s lawyers went to the trouble and expense (and five paragraphs of written submissions to me) to identify this tiny difference.
- [7] They calculate the total amount payable as at 9 April 2020 as \$70,566.05 (rounded to two decimal places), not \$70,567.13. According to their calculations, which I accept, interest accrues this leap year at \$2.875904 per day, not \$2.88387 per day.
- [8] I calculate that the further interest which will accrue for the further 14 days after 9 April 2020 and including 23 April 2020 is \$40.26 ( $\$2.875904 \times 14 = \$40.262656$ ). The total amount payable as at 23 April 2020 is \$70,606.31.

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<sup>1</sup> *Investors Exchange Limited v Australian Financial Complaints Authority Limited & Anor* [2020] QSC 74.

[9] The orders will be:

1. The application filed 24 September 2019 is dismissed.
2. The applicant specifically perform the determination dated 24 May 2019 to pay the second respondent \$66,115, together with interest calculated at 1.5 per cent per annum (compounding annually) from 24 November 2015 to the date of payment, by paying to the second respondent on or before 23 April 2020 the sum of \$70,606.31.
3. The applicant pay the first respondent's costs and the second respondent's costs of and incidental to the proceeding, including the application filed 14 November 2019, to be assessed on the standard basis.