

CANADA / JUDGMENT

GEA Refrigeration Canada v. Chang

2022 BCSC 2367

COURT

Supreme Court of British Columbia

DECIDED

8 March 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 2367 GEA Refrigeration Canada v. Chang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

GEA Refrigeration Canada v. Chang,

2022 BCSC 2367

Date: 20220308

Docket: S125293

Registry: Vancouver

Between:

GEA Refrigeration Canada Inc.

Plaintiff

And

Kin Hung (Jeffrey) Chang, Aihua (Alex) Chen, Chen Yoiet (Andrew) Chu,

Justin Lai, Josephine Leung, Xiao Fan Qu, Cam Man Wong, Xiao (Mary) Hua, Guang Hao (Frank) Xu, and FPS Food Process Solutions Corporation

Defendants

Before: The Honourable Justice Giaschi

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff:

M.C. Stacey

B.G. Clarke

Counsel for the Defendants:

J.R. Shewfelt

Place and Date of Hearing:

Vancouver, B.C.

March 8, 2022

Place and Date of Judgment:

Vancouver, B.C.

March 8, 2022

[1] THE COURT: This application concerns entitlement to post-judgment interest which the plaintiff says is now in the amount of \$532,827.52. The facts are not in dispute. On January 8, 2018, following a trial of 57 days, reasons for judgment were rendered in which the plaintiff was awarded in excess of \$7 million dollars in damages against the defendants.

[2] On January 25, 2018, counsel for the defendants proposed terms for a consent stay of execution of the judgment pending appeal. The letter provided:

"The proposal in this letter regarding a consent stay of execution pending appeal revokes and replaces the proposal in our letter and emails dated January 12, 2018."

We ask that you seek instructions from the Plaintiff to agree to the following:

- (a) the defendant, FPS food Process Solutions ("FPS") shall make payment toward the Judgment in the amount of \$7,287,037.00 by certified trust cheque from Miller Thomson LLP payable to "Singleton Urquhart Reynolds Vogel LLP, in trust" for the Plaintiff (the "Payment");
- (b) the Plaintiff shall agree to return the Payment to FPS in the event that the Judgment is reversed on appeal, or such lesser amount of the Payment as may be applicable in the event that the amount of the Judgment is reduced on appeal, together with interest at the prejudgment interest rate prescribed by the Registrar under the Court Order Interest Act;
- (c) in addition to the Plaintiffs agreement under paragraph (b) above, the solicitors for the Plaintiff shall provide a solicitor's undertaking promising to return the Payment to FPS in the event that the Judgment is reversed on appeal, or such lesser amount of the Payment as may be applicable in the event that the amount of the Judgment is reduced on appeal, together with interest at the prejudgment interest rate prescribed by the Registrar under the Court Order Interest Act;

- (d) the Payment is not a release and is made without prejudice to the Plaintiffs right to collect any further amounts owing under the Judgment but only after all avenues of appeal have been exhausted;
 - (e) in exchange for the Payment, the Plaintiff shall take no steps to execute or collect upon the Judgment, including against any of the Defendants until all avenues of appeal have been exhausted, including an appeal to the Supreme Court of Canada.
- [3] On June 7, 2018, the plaintiff accepted the terms. The \$7,287,037 was paid to the plaintiff's solicitor in trust on June 28, 2018, as required by clause (a) of the agreement. The next day those funds were deposited into an interest-bearing trust account where they remained until paid out later.
- [4] Meanwhile, on February 5, 2018, an appeal was commenced. The appeal was heard in November 2018 and was dismissed on December 14, 2020. An application for leave to appeal to the Supreme Court of Canada was later filed and was dismissed on August 12, 2021. Following dismissal of the leave application, the funds held in trust, plus accumulated interest, were disbursed to the plaintiff.
- [5] On August 23, 2021, the plaintiff demanded payment of outstanding post-judgment interest in an amount in excess of \$640,000. The demand was rejected, although a payment of \$121,411.50 was made by the defendants on account of interest that accrued between the date of the judgment and the date the \$7,287,037 was paid to the plaintiff's solicitor, in trust.
- [6] The plaintiff submits that it is entitled to post-judgment interest for the entire period from the date of the judgment. The defendants submit that the plaintiff is not entitled to post-judgment interest except to the extent paid, being the \$121,411.50. They say that the plaintiff misapprehended the terms of the settlement. More specifically, they say the terms of the settlement did not require that the funds be held in trust. Moreover, they submit that even if the settlement terms had required the funds to be held in trust throughout, there would still be no entitlement to post-judgment interest.
- [7] I will address first whether the agreement in the January 25, 2018, letter required that the payment of \$7,287,037 be held in trust. The defendants say that the interpretation must be grounded in the text of the contract so as to avoid creating a new contract between the parties. I agree that this is so but even more relevant is that contractual interpretation involves an objective assessment of the intention of the parties grounded in the words used and the entirety of the contract.
- [8] In my view, the agreement contained in the January 25, 2018, letter did require that the funds be held in trust. I am of this view for several reasons.
- [9] First, the payment of \$7,287,037 was to the solicitor's in trust;

- [10] Second, the plaintiff was required to return the "Payment", a defined term in the agreement, meaning the \$7,287,037. The plaintiff was required to return the "Payment" if the appeal was successful. I note that the plaintiff was not required to pay the equivalent sum but was required to return the "Payment".
- [11] Third, and even more significant than the above two factors, the plaintiff's solicitors were required to undertake that the "Payment" would be returned if the appeal was successful. I note that this could only happen if the funds were held in trust.
- [12] Fourth, the payment was without prejudice to the rights of the plaintiff to collect any further amounts owing. By this clause, the right to collect interest was thereby reserved.
- [13] I appreciate that there are no express words in the agreement that the "Payment" must be held in trust throughout. However, taken together, the various clauses of the agreement, especially clause (c), required that the funds remain in the trust account. Indeed, had the plaintiff's solicitors not held the funds in trust they would be in breach of their undertaking as they would not have been able to return the "Payment".
- [14] I now address whether the deposit of the funds into the trust account put an end to the obligation to pay post-judgment interest as the defendants submit. They rely on *First Majestic Silver Corp. v. Davila*, 2013 BCSC 1126 [First Majestic], at paras. 4-11:
- [4] In July 2009, Mr. Davila applied for summary judgment on the unpaid amount of the share purchase price. At the hearing in front of Pitfield J., First Majestic consented to judgment against it in the amount of \$14,881,911.
- [5] The terms of the order provided that a portion of the judgment amount, \$14,258,332 was to be held in trust. A further portion - \$227,427.20 - was released to First Majestic, leaving \$623,579 unsecured.
- [6] Paragraph 3 of the order provided that the amount in trust was held "in partial satisfaction of the Judgment, but subject to the terms set out in this Order" (emphasis in original).
- [7] Paragraph 8 of the order provided Mr. Davila the ability to pursue post-judgment interest at a later point in time. It has no substantive effect on the issues.
- [8] Paragraph 10 of the order imposed a stay of execution for the unsecured amount, pending release of the trust funds.
- [9] Mr. Davila argues that he is entitled to receive compound post-judgment interest either at the rate specified in the promissory note or at some other rate set by the Court on both the secured and unsecured amounts of the judgment. First Majestic argues that no post-judgment interest is payable on the amount put into trust, and that the unsecured portion should be non-compounded at the standard Court Order interest rates.

A. Is post-judgment interest payable on the amount in trust?

- [10] The first question is whether post-judgment interest is payable at all on the \$14,258,332 held in trust. Based on the wording of paragraph 3 of the order which I quoted above, I agree with First Majestic that the \$14,258,332 in trust is to be considered as having been paid in partial satisfaction of the judgment. This is enforced by the fact that the Mr. Davila will, in the result, have the benefit of the interest earned in the trust account.
- [11] I conclude that no post-judgment interest is payable.
- [15] I do not consider that First Majestic is of much assistance. First, it did not concern a stay of execution pending appeal. Second, it concerned a court order, not an agreement, and the order specifically provided that the payment into trust was in partial satisfaction of the judgment. Here there was a payment made by agreement of the parties and it simply said "toward" the judgment.
- [16] The defendants also rely on and refer me to *Steenblok v. Funk*, 1990 Carswell BC 1440 [Steenblok], where the Court held that interest should only run to the date when, by agreement, the funds were paid into an interest-bearing trust account. Frankly, I find the Steenblok decision to be confusing, and I doubt that any principle of general application can or should be drawn from it.
- [17] In contrast, the plaintiff refers me to *B.A.J. v. V.L.*, 2012 BCSC 560, at para. 15 where it is said that a stay of execution, which is essentially what we have here, does not stay the accrual of interest:
- [15] In terms of the effect of a stay of execution on the accrual of post-judgment interest, the stay does not itself stay the accrual of interest unless the order specifically so states. In this case, there is no such term. However, the question of the rate or date of commencement are matters that are still open for determination.
- [18] The plaintiff also refers me to *Soleil Hospitality Inc. v. Louie*, 2017 BCSC 1390, at para. 153, where the Court noted that post-judgment interest is as of right to a party pursuant to s. 8 of the Court Order Interest Act.
- [153] Section 8 of the Court Order Interest Act permits the court to either vary the date from which post-judgment interest is payable or to vary the rate of post-judgment interest. An order under s.8 is discretionary. However, there is no discretion to deprive post-judgment interest to a party entirely. The court should be slow to make exceptions to s. 8. The purpose of post-judgment interest is to compensate a judgment creditor who does not receive his money when it is due: *B.A.J. v. V.L.*, 2012 BCSC 560 at para. 14; *Gillis v. Kralj*, [1992] B.C.J. No. 2464 (S.C.); *Misley v. 420746 B.C. Ltd.*, [1996] B.C.W.L.D. 1174 (S.C.) at para. 11; *Misley v. 420746 B.C. Ltd.* (1997), 1997 CanLII 4034 (BC CA), 46 B.C.L.R. (3d) 166 (C.A.), at paras. 22-23

- [19] Finally, the plaintiff refers me to *Kim v. Choi*, 2020 BCSC 1790, at paras. 25-28, where the Court stated entitlement to post-judgment interest is included in the judgment and that a stay of execution does not stop post-judgment interest.
- [25] The issue of post-judgment interest does not arise until the judgment is paid because it is only then that the calculation can be made. Entitlement to post-judgment interest is deemed to be included in a judgment: the Act, s. 9(1). As such, it is not necessary to include it in an order: *Hockin v. Bank of British Columbia*, (1996), 73 B.C.A.C. 234 at paras. 8-12.
- [26] Ms. Choi argues that an award of post-judgment interest would be prejudicial because she:
- a) was unaware that interest would be sought when she entered into the terms of the stay of execution agreement;
 - b) did not have the benefit of the value of the funds placed into her lawyer's trust account under the stay of execution agreement; and
 - c) promptly paid the judgment following the dismissal of her appeal.
- [27] The stay of execution agreement was a convenient vehicle for Ms. Choi to protect her assets from Ms. Kim who was entitled to the fruits of her judgment. Ms. Kim also received the benefit of the agreement because she was assured of having access to funds in the event Ms. Choi's appeal was dismissed. It may have been prudent to have placed the funds in an interest-bearing account for the credit of the parties pending the appeal.
- [28] I do not consider any of the factors urged by Ms. Choi to be prejudicial. If she had not entered into the stay of execution agreement, it was open to Ms. Kim to realize on her judgment. Promptly paying the judgment after an unsuccessful appeal is not a reason to ignore the provisions of the Act. Therefore, I have no hesitation in concluding that post-judgment interest must be paid.
- [20] Considering the authorities and given the terms of the January 25, 2018, agreement, I am of the view that the plaintiff is entitled to post-judgment interest for the entire period. I have not had an opportunity to vet the plaintiff's calculations.
- [21] If the parties cannot agree on the amount, the issue is to be referred to the registrar.
- [22] The plaintiff shall have their costs of this application.

"Giaschi J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/23/2022BCSC2367.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/gea-refrigeration-canada-v-chang-2022>

Prepared on 29 October 2026 · Esheria