

CANADA / JUDGMENT

Jacobs v. Yehia

2019 BCSC 2086

COURT

Supreme Court of British Columbia

DECIDED

4 December 2019

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2019 BCSC 2086 Jacobs v. Yehia IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jacobs v. Yehia, 2019 BCSC 2086 Date: 20191204 Docket: S106849 Registry: Vancouver Between: Paul Jacobs, 657947 B.C. Ltd. and Columbia Cottage Ltd. Plaintiffs And Sam Yehia, Cambie Malone's Corporation, Cambie Holdings (Vancouver) Corp., 494989 B.C. Ltd., Cambie Holdings (Nanaimo) Corp., 0828508 B.C. Ltd., Esquimalt Holdings Corp. and 0790012 B.C. Ltd. Defendants Corrected Judgment: The text of the judgment was corrected at paragraph 3 on May 22, 2020 Before: The Honourable Mr. Justice Kelleher Reasons for Judgment Counsel for the Plaintiffs: J.D. Vilvang, Q.C. J. Facchin Counsel for the Defendants, Sam Yehia: T. Goepel Counsel for the Defendants, Cambie Malone's Corporation: R.J. Lesperance Place and Date of Trial/Hearing: Vancouver, B.C. October 8 and 9, 2019 Place and Date of Judgment: Vancouver, B.C. December 4, 2019

- [1] On March 16, 2018, I published reasons for judgment on the damages portion of this claim: Jacobs v. Yehia, 2018 BCSC 420. The liability portion of the trial was decided by Madam Justice Dickson: Jacobs v. Yehia, 2014 BCSC 845.
- [2] The Court of Appeal allowed the defendants' liability appeal in part: Jacobs v. Yehia, 2016 BCCA 38. The defendants' application for leave to appeal to the Supreme Court of Canada was dismissed, [2016] S.C.C.A. No. 114.
- [3] This judgment addresses three issues arising from the March 16, 2018 decision. The parties have been unable to agree on:
1. The amount of interest owing to the plaintiff;
 2. The date when post-judgment interest should run from; and
 3. Costs.
- [4] These will be addressed in turn. Interest Owing
- [5] The judgment states that the interest is simple interest. It is at 12%. The judgment also stated that the "reinvestment principle" should apply.

- [6] That is, the defendant should receive credit for payments made in the course of a calendar year. In para. 73 of the judgment, I quoted the explanation of the reinvestment principle by the Alberta Court of Appeal in *Bank of Nova Scotia v. Dunphy Leasing Enterprises Ltd.*, 1991 ABCA 351:
- [119] Therefore, where the payment dates for interest are more frequent than the calculation dates stipulated in an agreement, a court would be entitled to conclude (in the absence of contrary contractual terms) that a stated rate per annum in a contract was intended by the parties to be an effective annual interest rate and not a nominal annual interest rate. In other words, the reinvestment principle would be properly imported into the contract. Otherwise, the lender, by receiving interest payments before interest was to be calculated, that is before it was due, would be securing a greater return than that contracted for in these circumstances. Whether one were to treat this as a case of interest being paid in advance of the due date or as a case of the lender compounding interest when not entitled to do so given the contractual terms, the end result would be the same. The reinvestment principle will be imported into the contract and any stated rate per annum will, in the absence of express contractual terms to the contrary, be treated as an effective annual interest rate.
- [7] Both the plaintiff and defendant engaged experts to assist the Court in determining the interest payable.
- [8] The plaintiff retained Neil Chicoine of West Coast Actuaries. The defendants engaged Kevin Turnbull, an economist.
- [9] Mr. Chicoine and the plaintiffs maintain there is a "tension" between the concept of simple interest and the "reinvestment principle". In Mr. Chicoine's view, the concept of reinvestment implies, from an interest rate theory perspective, compound interest. Thus he saw what amounted to a conflict between the concepts and decided to prioritize the reinvestment principle over simple interest.
- [10] Mr. Turnbull's report used simple interest. His report is based on my judgment.
- [11] Simply put, Mr. Chicoine's opinion is not based on my judgment. He conceded in cross-examination that he resolved what was to him a conflict between the reinvestment principle and simple interest by departing from simple interest.
- [12] I agree with counsel for the defendant Yehia who stated at paragraph 7 of his written argument: The concept for the "reinvestment princip[le]" is to benefit the borrower, it is not to benefit the lender. The princip[le] as explained in paragraph 73 of the reasons for judgment, and as explained by Mr. Turnbull, is it provides a lower rate of interest to account for payments made during the year as otherwise the lender would receive a benefit of payments being made each year. The reinvestment princip[le] is not a tool to backdoor a compound interest adjustment when that funding was specifically rejected by the court in its earlier reasons for judgment.

- [13] As it turns out, there were no regular monthly interest payments. The defendants did not benefit from the reinvestment principle.
- [14] But the defendant Yehia's approach is the proper one.
- [15] The interest owing is \$659,197.35 as of March 16, 2018 and \$113.19 per day thereafter.
- [16] It was common ground that the \$45,000 deduction for overpayment should be set off against the interest rather than the principal. When does post-judgment interest commence?
- [17] The prejudgment interest rate is 12%. That is substantially higher than the post-judgment interest rate.
- [18] The defendants argue that the prejudgment interest rate is only payable until March 16, 2018, the date of the damages reasons. The plaintiff's position is that it is payable until the date of this judgment.
- [19] The Court Order Interest Act, R.S.B.C. 1996, c. 79, s. 7 provides:
- (2) A pecuniary judgment bears simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment.
- [20] In *Boutsakis v. Alexis House Café Limited*, 2014 BCSC 221, the court stated the general principle that no money is "payable under the judgment" until the amount of the judgment is crystallized or determined. That means that all substantial matters must be determined before the judgment is deemed to be rendered: see *Uram v. Uram* (1985), 66 B.C.L.R. 236 (S.C.). Similar reasoning is found in *Emil Anderson Construction Co. v. British Columbia Railway Co.*, 31 B.C.L.R. (2d) 223 (S.C.).
- [21] The same approach was taken by Justice Ross in *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2019 BCSC 83. She said at para. 30: There is authority for the proposition that post-judgment interest does not begin to run until the amount of the judgment has been crystallized to the point when the amount is known or determined. The amount is not crystallized if there is a substantial matter left to be determined: *0679372 B.C. Ltd. v. The Winking Judge Pub Ltd.*, 2011 BCSC 633 at paras. 16-19.
- [22] However, in the latter case there was no dispute about the amount of unpaid base rent that was awarded. Thus there was a pecuniary judgment in a crystallized amount. Justice Ross held that in those circumstances post-judgment interest ran from the date of the judgment.
- [23] In the case before me the amount of prejudgment interest is a substantial matter.
- [24] Post-judgment interest will run from the date of this judgment, not from 2018. Costs
- [25] The issue of costs pertains only to the proceedings before me. The Court of Appeal ruled that each party shall bear its own costs of the appeal and of the trial before Justice Dickson.
- [26] The main issues at the damages trial were:

- (a) the fair market value of Mr. Jacobs services;
 - (b) Mr. Yehia's claim of set-off for ineligible expenses;
 - (c) Mr. Yehia's claim for damages due to the certificate of pending litigation; and
 - (d) The simple versus compound interest.
- [27] Mr. Yehia's claims in respect of the set-off for ineligible expenses and for damages due to the certificate of pending litigation were dismissed.
- [28] The interest issue was determined closer to Mr. Yehia's position.
- [29] The fair market value of Mr. Jacobs' services was determined to be substantially higher than the defendant's position but substantially below the plaintiff's position.
- [30] Considering the damages trial as a whole I conclude that success was mixed. Each party shall bear its own costs. "Kelleher J."
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Prepared on 29 October 2026 · Esheria