

JERSEY / JUDGMENT

Pell Frischmann v Bow Valley

[2007] JRC 155A (09 August 2007)

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Judgment

having been given in favour of Pell Frischmann in the principal sum of £500,000 and interest in respect of the confidential information element of its claim, the question arises as to the period for which, and the rate at which, interest should be awarded. In this further judgment the Court gives its reasons for the ruling that it made on this matter on 17th July 2007. 2. The power to award interest in this Court is contained in article 2(1) of the Interest on Debts and Damages (Jersey) Law 1996 :- "Subject to paragraph (4) [which is of no application here], in any proceedings, whenever instituted, for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given simple interest at such rate as it thinks fit on the whole or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for the whole or any part of the period between the date on which the cause of action arose and - (a) in the case of any sum paid before judgment, the date of the payment; and (b) in the case of a sum for which judgment is given, the date of the judgment." 3. Mr. Speck submits that interest should run from July 1997 when Bow Valley and Bakrie were awarded the Balal Service Contract at the rate of Base Rate plus 2%, relying, as regards the latter point, on the terms of Practice Direction RC 05/6 which is headed "Rate of Interest on Judgment Debts" and provides:- "The Court rate for interest on judgment debts shall mean 2% above the UK selected retail banks short term money rates (base rate) from time to time during the period for which interest shall run, calculated on a daily basis." He also points out that on occasion this court has awarded interest at a rate higher than 2% in a claim of this kind. 4. Mr. Speck also submits that, the nature of the judgment being, in truth, an award of equitable compensation, it falls outside that ambit of the Interest on Debts and Damages (Jersey) Law 1996 . He accepts, however, that on the current state of authority and the facts found by this court it would be difficult to argue for an award of compound, rather than simple, interest, and is content to limit his client's claim to simple interest for the purposes of the present hearing, while keeping the point open for possible argument in a higher court. 5. Mr. Santos Costa, for his part, suggests that it would be wrong to award any interest prior to a point one year from the date on which the proceedings were started and that the appropriate rate would be Base Rate plus 1%. 6. It is trite law that the purpose of awarding interest is not to punish the paying party but to compensate the other party for having been kept out of his money since the date when it

was due to him and that the starting date for an award of interest will, therefore, ordinarily be the date when the cause of action arose. A convenient statement of this and other principles relevant to the exercise of the court's discretion, as applied in the English Courts, is to be found in the judgment of Langley J. in *Kuwait Airways Corp. & Anor. v. Kuwait Insurance Co. SAK & Ors.*

[2000] 1 AER 972, [2000] Lloyd's Rep IR 678 (being insurance case, some of the principles are couched in terms appropriate to that particular topic, but are also of more general relevance). The fifth principle listed by Langley J. was expressed as follows:- "Where a claimant assured has been guilty of excessive delay, whether in making the original claim or in pursuing it, then the starting point (or on occasion the rate of interest) may be adjusted adversely to him.. The rationale for such an approach has sometimes been expressed as a form of sanction for the delay but can, I think, equally and more consistently with principle, be expressed in terms that in such a case it is wrong to view the claimant as kept out of deprived of the use of money payment of which he has delayed in seeking. A more striking illustration would be circumstances in which a claimant consciously and for his own reasons chose not to pursue a claim immediately and notified the potential defendant to that effect. It is not, I think, sensible to regard a party who positively chooses not to make a claim when first available to him as one who is deprived of or kept out of his money" 7. Mr. Costa's argument is that these observations are wholly appropriate to the circumstance of the present case: it would be quite wrong to describe Pell Frischmann as having been kept out of its money since July 1997. As is recounted more fully in our main judgment on liability, the proceedings were not started until January 2004; no claim was made in correspondence at any time prior to that point; and the explanation given by Pell Frischmann for the delay was far from satisfactory. Also, says Mr. Costa, between July 1997 and July 2007 the pound sterling/US\$ exchange rate moved significantly to the disadvantage of Bow Valley, in that US dollar amount required to satisfy the sterling award of £500,000 in 2007 was greater than would have been the case had a claim limited to the confidential information component been more promptly made. Furthermore, the only reason that the proceedings were so protracted was, once again, that they were rendered unnecessarily complicated by Pell Frischmann's pursuit of the conspiracy and other related claims that were found to be untenable. 8. These submissions are not without force. On the other hand, the possibility of legal action of some kind by Pell Frischmann was recognised by Bow Valley, and in all probability also by Bakrie, at the time that they made the decision to bid for the Balal Contract in July 1997 making use, in the furtherance of that bid, of the information in question. More importantly, there can be no doubt that the Pell Frischmann confidential information in question was of significant and immediate value to Bow Valley at that time. Pell Frischmann being an English company, there was, moreover, always the likelihood that the value of that material would be assessed in pounds sterling, a risk that could have been easily hedged. 9. As regards the rate of interest, Mr. Costa points out, quite rightly, that Practice Direction RC 05/6 applies, on its face, only to judgment debts and not to pre-judgment interest. He also submits that Base Rate plus 2% is uncommercial in that it

contains a "penal" element reflecting the Royal Court's policy that court judgments are expected to be settled promptly (and is higher than the rate for pre-judgment interest that would ordinarily be ordered by an English court in a commercial matter). There was, however, no unanimity between Mr. Costa and Mr. Speck as to the normal practice in this Court so far as the award of pre-judgment interest. Mr. Speck contends that the rate is usually the same as that for post-judgment debts - a suggestion that accords with our own inquiries within the Judicial Greffe. 10. All in all, we consider that the right and fair award is that Pell Frischmann should receive interest on the principal sum awarded from the point when Bow Valley and Bakrie first enjoyed the benefit of it, which we define as 28th July 1997, but that, having regard to the long interval of time before proceedings were started, the rate of interest should not be more than Base Rate plus 1%. This, at least, is our award in the case of the Second Defendant, Bow Valley Energy Limited and the Third Defendant, PT Bakrie Interinvestindo. Whether the starting date should be any later in the case of either or both of the First and Fourth Defendants, against whom judgment is also given, is reserved for further discussion and (it is hoped) agreement between counsel and failing that further argument. Authorities Debts and Damages (Jersey) Law 1996. Kuwait Airways Corp. & Anor. v. Kuwait Insurance Co. SAK & Ors. [2000] 1 AER 972, [2000] Lloyd's Rep IR 678. Page Last Updated: 26 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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