

JERSEY / JUDGMENT

The Florida Foundation v Jeanne

[2019] JRC 252 (20 December 2019)

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judgment

the bailiff: 1. This is an application by the Florida Foundation ("the Plaintiff") for relief ancillary to its judgment against Roy Anthony Jeanne ("the First Defendant") and Joan Clare Jeanne, née Benest ("the Second Defendant") (collectively "the Defendants") of the 26 th April 2019. 2. The background can be simply stated. On the 16 th March, 2018, the Defendants entered into a loan agreement with the Plaintiff in the sum of £200,000 on certain terms and conditions. The sum was to be re-paid on the 17 th March, 2021. The sum has been secured on the Defendants' home by means of a hypothèque judiciaire . Both the Plaintiff and the Defendants were legally represented during the negotiation of the loan. 3. It is not disputed that interest payable on the sum was at the rate of 7% per annum and that the Defendants have paid that monthly when due and continue to do so. 4. On the 18 th October, 2018, the Attorney General obtained a Saisie Judiciaire against the First Defendant the effect of which, inter alia , was to vest the Defendants' house in the Viscount. The Saisie Judiciaire is continuing. 5. On the 16 th April, 2019, the Plaintiff issued a summons claiming breach of the loan agreement between it and the Defendants. On the 26 th April the Court gave judgment in favour of the Plaintiff in the sum of £200,000 against the Defendants jointly and severally. The judgment was given during the course of the Court's usual business on a Friday afternoon. The Defendants were represented by counsel and did not resist judgment. The Court adjourned the matter of costs and interest to a date to be fixed. It is the issue of costs and interest that is before us now. 6. The Plaintiff's summons by virtue of which it claimed the £200,000 was brought on the basis of the following clauses in the Acknowledgement and Bond ("the Bond") between it and the Defendants. (i) Clause 2(i) of the Bond provides that:- "... in the event of any default by the borrowers under the terms of this Bond the rate of interest stipulated at this clause shall increase forthwith from 7% per annum to 12% per annum, without prejudice to the rights of the lender under clause 2(10) hereof." (ii) Clause 2(ii) of the Bond provides, amongst other things, that the borrowers shall:- "... pay all fees and expenses incurred by the lender in connection with the recovery of any amount due under this Bond whether capital, interest, or otherwise." (iii) Clause 2(ix) of the Bond provides:- "If at any time the Borrowers shall fail to pay any sum or sums due by the Borrowers hereunder by way of capital or interest or otherwise on the date due for payment thereof or if the Borrowers shall break or fail to comply with any of the clauses, conditions or obligations on the part of the Borrowers herein or

hereafter contained or should either of the Borrowers be declared en désastre, commit any other act indicative of insolvency or inability to conduct and manage their respective affairs, permit any judgment to be taken or have any judgment taken against either of them in any court, compound with creditors or suffer their respective goods to be taken in execution, or should either of the Borrowers die then and in any such event notwithstanding anything herein contained or stipulated it shall be lawful for the Lender to demand the immediate repayment of the Capital Sum or any balance thereof then outstanding together with all other sums due under this Bond and the interest thereon from the date of the said demand until the date of total repayment of all sums due to the Lender at the rate of interest payable on the Capital Sum from time to time under the provisions of Clause 2(i) above." (iv) Clause 1 of the Bond provides that the Defendants may:- "... repay the capital sum prior to the expiration of 36 months from the date of this Bond subject to the payment of an additional 3 months interest at the rate stipulated in Clause 2(i) hereof at the time of repayment." 7. In the Plaintiff's summons, in addition to the capital sum of £200,000, (therein referred to as item a)), the Plaintiff seeks the following relief:- "Item b) interest on item

- a) above at the contractual rate of 12% per annum from 10 October 2018 to date of complete repayment (the balance of which owing at the date of this Summons is £4,999.98 plus interest on such balance at 12% per annum) as per Schedule One hereto; Item c) the sum of £6,000.00 in respect of 3 months' additional interest pursuant to Clause 1 of the Bond; Item d) interest on Item c) above at the contractual rate of 12% per annum from the date of Judgment to the date of complete repayment pursuant to Clause 2(ix) of the Bond; Item e) the Plaintiff's administrative costs arising in connection with the enforcement of the Bond in the sum of £2,001.00 pursuant to Clauses 2(ii) and (ix) of the Bond; Item f) interest on Item e) above at the contractual rate of 12% per annum from the date of invoice (31 March 2019) to the date of complete repayment pursuant to Clause 2(ix) of the Bond; Item g) the costs of and incidental to this present action on a Fixed Cost, Standard Cost or on an Indemnity Cost basis as the Court deems just; and Item h) interest on Item g) above at the contractual rate of 12% per annum from the date of Judgment to the date of complete repayment pursuant to Clause 2(ix) of the Bond." 8. The Defendants claim that the Court should not give the relief claimed by the Plaintiff set out above or, at least, reduce the interest claimed. 9. Both parties rely on the principles set out in *Doorstop Limited v Gillman* and another

[2012] JRC 199 . We refer to the relevant extracts below. 10. On the matter of the maxim "la convention fait la loi des parties" and interest, the Court said:- "36. In our judgment, although the 1961 Law removed the cap on interest rates of 5%, it did not affect the laws on usury generally, and the position therefore remains broadly that the charging of interest at customary law must be moderate or reasonable. ... 38. How does this fit with the maxim that la convention fait la loi des parties? We are conscious of the strictures of *Bailhache, Bailiff, in Grove and Briscoe v Baker*

[2005] JLR 348 when at paragraph 10 the Court said:- "It is convenient to deal first with the submissions of Mr Baker which can indeed be disposed of shortly. The old maxim is *la convention fait la loi des parties*. The Court is not empowered to rewrite contracts into which parties capable of contracting have entered with their eyes open. If there is a defect of consent, the Court may of course treat the contract as null; additionally the Court may in certain circumstances imply certain terms into the contract and modify it in that way. But in general terms, the Court has no jurisdiction to remake contracts which the parties have made of their own free will." 39. We do not think the Court is rewriting the contract if it merely refuses to give a judgment the effect of which is to enforce the judgment in full. If a party pays interest, pursuant to a contract, at interest rates which the Court would not permit were there to be an application for judgment for a claim for interest or repayment of capital, that is a matter for him. The Court is not rewriting the contract to that extent. All that it is doing is refusing to approve - by giving judgment - an arrangement which is regarded as usurious on public policy grounds. It is the same approach as is taken when the Court does not enforce an agreed contractual assessment of what damages are payable in the event of a breach. ... 45. What then are the principles upon which the Royal Court is likely to review carefully a claim for interest, even in undefended cases? We add the latter qualification because the Court, when giving judgment, is not exercising an administrative or rubber stamping function which gives effect to the plaintiff's claim. In all cases, the Court is exercising a level of supervision over that claim, and if it appears to be unconscionable to give judgment, whether the claim is defended or not, it is right that the Court should refuse to give judgment. 46. As with other contractual matters, the first principle is that *la convention fait la loi des parties*. The fact that a party has agreed to pay interest at a particular rate is always likely to be a highly significant factor. Especially in relation to prejudgment contractual interest, it will often be the most significant factor. However it is not a conclusive factor for the reasons given above. 47. The second principle is that what is moderate or reasonable will vary according to the circumstances of each loan, including (but not exclusively):- (i) The level of risk for the lender; (ii) The prospect of gain for the borrower; (iii) Market rates and practice generally; (iv) The sophistication of the parties to the loan; (v) The strength of the relative bargaining positions of the parties. 48. All factors will be assessed having regard to the circumstances as they existed at the time of the loan, because the Court is looking at whether the agreed interest rate is moderate and reasonable at that time." 11. On the question of the periods in respect of which interest might be paid, the Court said:- "55. The Court agrees with the submissions of Advocate Heywood as to the different periods in respect of which interest falls to be considered, namely pre and post the loan becoming due for repayment. ... 57. Where there is a contract for a loan of a specific amount, bearing interest, and either with a stipulated date for repayment or an express or implied provision by which notice can be given for repayment, the contract in our view comes to an end when repayment is due. The fundamental basis of the contract no longer exists. The contract by which the loan was made is, as it were, notionally traded in by the creditor for the right to a judgment which can be enforced against the assets of the debtor, if repayment is not made. The

debtor is no longer entitled to the benefit of the loan. It has fallen due for repayment. 58. There are at least two consequences of this conclusion. The first is that, at least theoretically, failure to make repayment on the due date might result in the creditor claiming damages for breach of contract. If so, the usual rules for the assessment of damages would apply. The loss which the creditor has suffered from being out of his money may be more than a question of mere interest, in circumstances where the debtor was aware of a particular use to which the loan monies were intended to be put, had repayment been made. 59. In the majority of circumstances however, the damages to the creditor for being out of his money will be properly fixed by a calculation of interest. It may be that the parties have agreed in advance what that loss will be, and the note of hand or bond which has been subscribed by the debtor may contain provisions for a calculation of that interest if the capital is not repaid when due. If they have made that agreement, the Court can be requested by the debtor to construe the provisions which had been agreed for the payment of an interest rate as effectively a penalty which should be reduced. The Court may decide of its own motion to treat a provision in a contract which contains an increased rate of interest for failure to make repayment on the due date as a penalty. It may particularly be concerned to do so in circumstances where the claim for additional interest as part of the contract but after the conclusion of the contract period includes a provision for compound interest." 12. And on the matter of whether or not damages claimed might be excessive:- "63. The approach taken by Pothier was followed in *Her Majesty's Viscount v Treano* r

[1969] JJ 1243 where, at page 1245, *Le Masurier*, Bailiff, said this:- "If, as we believe him to be, Pothier is a surer guide to the Jersey law of contract than are the English authorities, then we have no need to consider whether the conventional sum stated in the quoted stipulation represents a penalty or liquidated damages. Our task is only to determine whether the sum is or is not excessive. It can be inferred from what Pothier says later in Article 346 that the penalty will not be considered excessive unless it exceeds the maximum damages which the obligee could have suffered as a result of the breach of the principal obligation." ... 68. In the circumstances, after a debt has fallen due for repayment, the Court may give judgment for the interest at the rate agreed in the contract until the date of repayment, or may reduce that rate of interest if the agreed rate is considered to be excessive; or if there is no contractually agreed rate may award damages for breach of contract in failing to make the loan repayment on the due date in such amount as is reflected by a rate of interest which the Court thinks appropriate. In all these instances, the Court is giving judgment for damages for failure to repay the loan on the due date. If the Court does not give damages, then it may be open to it to make an award of interest under the 1996 Law - it would seem unlikely that there will be circumstances when the Court could give interest under the 1996 Law in addition to its assessment of damages for breach of contract, because this would in most if not all cases amount to giving interest upon interest." 13. Further, on the matter of compound interest, the Court at paragraph 75 referred to the case of *Sempra Metals Limited* (formerly *Metallgesellschaft*

Limited) v Inland Revenue Commissioners and Another

- [2008] 1 AC 561 and then, after quoting from that judgment, at paragraph 79, concluded:- "... What is relevant, however, is the acceptance in the House of Lords in that case that in assessing a proper measure in compensation, the Court should apply a restitutionary principle - which also underlies the way in which the Courts assess claims for damages so as to put the plaintiff back in the position he would have been in had the contract been performed - and awards of compound interest as a mechanism for assessing the loss which should be reflected in an award of damages may be entirely appropriate. That indeed reflects the commercial reality for lenders and borrowers alike. Accordingly a lender may be able to say that if this particular borrower had not been in breach of contract, monies would have been repaid and could be re-lent in the market at compound interest; and a particular borrower may be in the position of saying that he was unable to obtain a loan in the market place other than at compound interest with periodic rests in accordance with current market practice. There is a powerful argument for saying that the Courts should have regard to market practice when assessing loss on restitutionary principles. However, such a principle naturally remains subject to the principles which would lead the Court to disallow a claim for interest which was immoderate or unreasonable, because if it would be disallowed by the Court notwithstanding a contractual obligation, the market practice of charging it could not be a proper basis for assessing the appropriate compensatory sum." 14. *Hard Rock Limited and another v HRCKY Limited*
- [2013] JRC 244B was cited to us by the Plaintiff as illustration of the fact that the Court, in that case the Master, had awarded 12% interest and accordingly, so it was submitted, the Court could take that to be a reasonable rate in the circumstances. 15. There were also submissions made before us relating to cancellation of a Jersey contract and whilst we do not in this judgment explore that question at length we note that in the case of *Grove and Briscoe v Baker*
- [2005] JLR 348 at para 14, the Court said:- "In *Hamon v. Webster* , the court determined that a contract could be terminated (*résolu*) without an application to the court. It did not decide that the right to treat a contract as terminated followed the English model or was to be considered in accordance with English law. In fact, the law relating to *résolution* is not dissimilar to the English remedy of rescission. Nonetheless, there is at least one important distinction, in that the remedy of *résolution* in Jersey law is available at the discretion of the court wherever the failure to comply with an obligation can be said to be sufficiently serious to justify a cancellation of the contract. A trivial or insignificant failure to comply with an obligation would not be sufficient. The failure must go "to the root of the contract" (*Hamon v. Webster and New Guar. Trust Fin. Ltd. v. Birbeck* (1977 J. J. at 83)), or involve "a breach of a fundamental condition" (*Hanby v. Moss*) or be "sufficiently serious to justify the termination of a contract" (*Hotel de France (Jersey) Ltd.*

- v. Chartered Institute of Bankers). These are the principles to be applied to the first submission of counsel for the plaintiffs that the failure to pay interest at the due time was a fundamental breach of the contract of loan which entitled the plaintiffs to terminate the contract." The Plaintiff's argument 16. The Plaintiff's argument can be expressed in quite simple terms. The Plaintiff relies on the "extremely strong principle" so described in Doorstop of "la convention fait la loi des parties". 17. Furthermore, so the Plaintiff argues, in Doorstop the Court acknowledged that an agreement between a creditor and a debtor could provide for compound interest which the Court would assess having regard to, as set out in Doorstop at paragraph 47 of that judgment (see para 10 above). 18. As already mentioned above, both the Plaintiff and the Defendants were legally represented at the time they entered into the Bond. It might be said that they were commercially sophisticated and there is no reason to suppose that their bargaining positions were other than even. Accordingly, so the Plaintiff argues, there is nothing in principle wrong with the Plaintiff's claim for compound interest and the Plaintiff relies on *Sempre Metals Limited* also referred to in Doorstop above. 19. Furthermore. under Item (c) of the summons set out in paragraph 7 above, the Plaintiff submits that such a sum is due under Clause 1 of the Bond which expressly applies, so it is argued, to a scenario where the capital sum is due and owing due to an event of default. 20. The Plaintiff also relies on the quote from *Her Majesty's Viscount v Treanor* cited in Doorstop above. It is argued that clauses such as Clause 1 of the Bond are not uncommon in loan agreements and it is further argued that early repayment has in effect denied the Plaintiff the benefit of its bargain. 21. In its skeleton argument, the Plaintiff says that if the Court does not see fit to grant the claim for three months' interest at the rate of 12% per annum which is claimed, the Court is invited to grant such a claim in the original contract rate of 7% per annum. 22. In essence the Plaintiff acknowledges that the Court has a discretion with regard to interest, but submits that 12% is not unreasonable. The Plaintiff argues that of the periods that might be considered, the date of default to the date of the judgment should quite clearly be 12% although the period running from the date of judgment to payment, whilst it should be at 12%, falls more within the discretion of the Court. The Defendants' argument 23. The main theme of the Defendants' argument is that the contract has become "frustrated" through no fault of the Defendants. The *saisie judiciaire* obtained by the Attorney General rendered the repayment of the loan impossible. Further, so the Defendants argue, the sums claimed by the Plaintiff by way of interest are subject to the Court's exercise of discretion and the Court should treat that claim as excessive and not allow it. The costs claim is an attempt by the Plaintiff to "trump" this Court's jurisdiction and discretion on the matter of costs. 24. The Defendants argue that authority in Jersey is sparse on the subject of frustration but cited the *Hotel de France (Jersey) Ltd v The Chartered Institute of Bankers* 21st December 1995 Jersey Judgments at page 256 which was a case involving a fire at the Hotel de France which was described by the Court as a "cas fortuit" which created a position where it was not possible to perform the contract in a particular room at the Hotel. The case, to the extent to which it explored the legal position, cites a text book, the *French Law of Contract* by Mr Barry Nicholas and *Lawrence v Lawrence Colour Laboratories Limited*

- (1968) JJ 1045 which appeared to us to touch upon the need to apply to the Court to cancel a contract in such circumstances. The suggestion that such a step was necessary, which was contained in an obiter comment by the Court, proved to be controversial and was clarified in subsequent jurisprudence. It is not, however, of assistance in connection with the question of frustration. The Defendant also cited the case of Mobil Sales and Supply Corporation v Trans Oil (Jersey) Limited
- [1981] JJ 143, which although of interest, does not appear to us to assist the Defendants in their arguments on the matter of frustration. 25. It appears that the Plaintiff in this case took judgment on the basis of Clause 2(ix) of the Bond set out above on the basis that by permitting the saisie judiciaire to be imposed upon them the Defendants had permitted a judgment to be taken which entitled the Plaintiff to apply for immediate repayment of the loan. 26. The Defendants appear to be arguing that the saisie judiciaire has frustrated the contract and made it impossible to perform. We find it curious, therefore, that the Defendants acceded to judgment for the capital sum on the basis apparently advanced by the Plaintiff because, following the logic of the Defendants' argument, if the position of the saisie judiciaire made the contract impossible to perform, there may not have been a basis for the Plaintiff to seek judgment as it did. 27. This point has not been argued before us, however, and we proceed on the basis that the Defendants acknowledge that the sum is due and payable at the point that the judgment was pronounced. 28. We also, in those circumstances, proceed on the basis that the Defendants accept that the imposition of a saisie judiciaire infringed Clause 2(ix) and entitled the Plaintiff to take judgment. 29. We can see that it may indeed be the case that the imposition of a saisie judiciaire, although it is more akin to an interim freezing order in a civil case rather than a judgment on the merits giving rise to a liability, might on a proper analysis be a judgment that falls within Clause 2(ix). We can see, also, that an argument might be advanced that of its nature it is not such a judgment and therefore the provisions of Clause 2(ix) were not engaged. It may be that there is no material distinction between a judgment taken in a civil claim caused as a result of mismanagement by Defendants of their financial affairs or an application made in a criminal case as a result of the actions or defaults on the part of one of the Defendants. We do not, however, express any settled view on that argument and have not been addressed on it. 30. It is urged on us by the Defendants that the saisie judiciaire should be considered as an event outside of the Defendants' control and that it has rendered impossible the completion of one part of the contract although the Defendants continue to pay interest at the contractual rate and, but for the judgment taken, the contract could continue to its term if nothing else occurred in the meanwhile. 31. In submissions before us the Defendants, through counsel, suggested that the imposition of a saisie judiciaire could not be construed as an act of default for the purposes of enforcement but, as we have indicated above, judgment was taken and there has been no application to set that judgment aside. 32. In support of their argument, the Defendants cite a further excerpt from the French Law of Contract by Mr Barry Nicholls (2nd edition) which is in the following terms:- "C Limits of contractual obligation - effect of supervening

obstacle to performance 1 General In the traditional Common law view, as we have remarked already, contractual liability is in principle absolute: a party is bound to perform what he has promised. The fact that performance was impossible when the agreement was made or has subsequently become impossible is in principle irrelevant. The rigidity of this approach is of course mitigated by the courts' power to construe the contract and by the growth of implied terms, and in particular by the development via the device of the implied term of the doctrine of frustration, but the starting point remains. The starting point of French law, on the other hand, as of all Civil law systems, is the principle that a promise of the impossible is null (*impossibilium nulla obligatio*). The principle is not indeed expressly stated in the Code civil, but is implicit in a number of articles and is universally accepted. If performance is impossible from the beginning, the objet is impossible and therefore, as we have seen, there can be no contract. In the case of supervening impossibility a contract has of course come into existence, but the debtor is freed from his obligation to perform. French law, however, distinguishes between performance (and its enforcement) and the payment of damages in substitution for performance. The debtor cannot be required to perform the impossible, but the question of damages is distinct and is separately provided for in article 1147 C.civ. ... We should note that what is in question is the non-performance of an obligation, whereas the Common law thinks of impossibility of performance (or frustration) of a contract. Most commonly, of course, the two will coincide, in that the obligation (or obligations) which the debtor has not performed will be substantially the whole of those created by the contract, but it may be otherwise. An exporter who has sold goods may have undertaken to pack them in a certain type of plastic container, the export of which has subsequently been forbidden. The main part of the contract is still capable of performance, other containers being substituted, and the seller will not be liable for his failure to use those specified. ... The Common law, on the other hand, has allowed impossibility of performance to be absorbed into the category of frustration, and in consequence it thinks only of the whole contract and attributes to impossibility the single catastrophic consequence of termination of the contract. It therefore has difficulty in knowing how to deal with partial or temporary impossibility. This can be seen in the English textbooks, which either do not discuss the question or (whilst recognising that this is a faulty analysis) treat it tentatively as an aspect of frustration." 33. The Defendants argued that they are still capable of paying the contractual rate of interest and have continued to do so. At the end of the contractual term the Plaintiff will have the right to repayment of the money and accordingly the Plaintiff will get what the Plaintiff has bargained for. 34. The Defendants allege, in effect, that the Plaintiff is merely seeking an enhanced profit by means of penalty interest and is behaving in effect in an unconscionable way by taking advantage of the Defendants' misfortune where the Plaintiffs' interests have not been adversely affected. We are asked to declare that the performance of certain parts of the contract frustrated, although others continue, and as necessary to exercise our discretion to prevent an unduly heavy claim by way of interest being levied against the Defendants.

Conclusion

35. This is, to the Court's mind, an unusual case. The Defendants have been subject to a *saisie judiciaire*. This is a provisional order akin to a Mareva or freezing injunction and does not until ultimate confirmation do other than preserve assets in the hands of the Viscount against an eventual confiscation order if that is made. 36. As indicated above, we express no view as to whether it would, on that basis, have been open to the Defendants to resist

judgment.

They have not done so and have accepted judgment in the capital sum. It seems to the Court therefore, in those circumstances, that the provision of interest in accordance with the terms of the contract, freely entered into, should apply save where the Court should intervene because the claim does not accord with restitutionary principles and in the circumstances are excessive. 37. Leaving aside whether the actions of the First Defendant have brought these proceedings on himself in determining what the appropriate interest is, we bear in mind that in this case the *saisie judiciaire* is, as we have said, a provisional order and in reality it does not to us appear likely that the Plaintiff is going to be out of pocket. The Plaintiff will be entitled to claim repayment of its money out of the assets subject to the *saisie judiciaire* and the Defendants are continuing to make payment in accordance with the terms of the bond, specifically payment of interest at 7%. It seems likely that the Plaintiff will receive what it has bargained for. 38. Although not directed to it by counsel, we note that pursuant to Article 16(5) of the Proceeds of Crime (Jersey) Law 1999 the Plaintiff's rights in a matter such as this are protected. Article 16(5) states:- "Any property vesting in the Viscount pursuant to paragraph (4)(a) shall so vest subject to all hypothecs and security interest with which such property was burdened prior to the vesting." 39. We have considered whether or not it is appropriate to disallow payment at 12% between the date of default and the date of judgment but, the Defendants having accepted judgment it seems to us the Defendants must thereby have accepted that the debt falls due and payable by reason of the fact of the *saisie judiciaire*. In our judgment, therefore, the contractual terms apply, there is nothing inherently or intrinsically unacceptable in an interest rate of 12% in the current circumstances and this was the rate in the event of a default to which the Defendants specifically contractually agreed. 40. Applying the principles set out above, interest should be paid at the contractual rate of 12% per annum to the date of

judgment.

Thereafter, in the circumstances of the case, the Court does not agree that it is appropriate to apply that interest rate. This is a matter that falls within the Court's discretion and the Court does not think it appropriate to award interest of more than 7% per annum until the date of repayment. It does not seem to us to be equitable to award higher interest when the Defendants have continued to meet their interest repayment obligations in the unusual circumstances of this case. 41. Moreover, the Court does not agree that it is appropriate to award a three month penalty, in effect in the sum of £6000, and does not make that order. 42. The amount of £2001 claimed

purportedly pursuant to clauses 2(ii) and (ix) of the bond is also not allowed. The Court has seen no evidence to suggest that this amount is properly quantified or payable and does not make an order in those terms. Nor, consequently, is an order made in the terms of (f) which is interest on that sum. 43. In summary, therefore, the Court's findings and orders with regard to the elements of the Plaintiff's claim set out in paragraph 7 above, are as follows:- (i) Item b

- The Plaintiff should receive interest at the contractual rate of 12% per annum from the date of the acknowledged act of default until the date of judgment but thereafter interest to be paid at 7%, the normal non-default contractual rate, until the date of repayment; (ii) Item c - The sum claimed in respect of additional interest is disallowed; (iii) Item d - Interest on that sum is accordingly inapplicable and is disallowed; (iv) Item e - The Plaintiffs' claim for administrative cost is disallowed; (v) Item f - Accordingly the claim for interest on that sum is disallowed; (vi) Item g - Costs will be dealt with briefly hereunder; (vii) Item h - Interest on costs will be dealt with hereunder 44. On the question of costs it seems to us that the Plaintiff should be entitled to its costs on first principles until the date of judgment for repayment of the capital sum. Thereafter, and the larger part of the argument, has been concerned with what the Plaintiff is entitled to claim by way on ancillary relief and what it is not. The decision of the Court has not gone all one way and to a significant extent, whilst not prevailing on substantial parts of their arguments, the Defendants have been successful. In our judgment the correct order is that each party bears their own costs of dealing with the arguments concerning matters ancillary to the judgment. We do not award interest on costs. Authorities Doorstop Limited v Gillman and another

[2012] JRC 199 . Sempra Metals Limited (formerly Metallgesellschaft Limited) v Inland Revenue Commissioners and Another

[2008] 1 AC 561 Hard Rock Limited and another v HRCKY Limited

[2013] JRC 244B Grove and Briscoe v Baker

[2005] JLR 348 Hotel de France (Jersey) Ltd v The Chartered Institute of Bankers 1995/256 French Law of Contract by Mr Barry Nicholas (2 nd Edition) Lawrence v Lawrence Colour Laboratories Limited

[1968] JJ 1045 Mobil Sales and Supply Corporation v Trans Oil (Jersey) Limited

[1981] JJ 143 Proceeds of Crime (Jersey) Law 1999 Page Last Updated: 13 Jan 2020 BAILII:
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