

COMMONWEALTH OF THE BAHAMAS

2009/CLE/GEN/FP/00054

IN THE SUPREME COURT

Common Law and Equity Division

IN THE MATTER of the contract and addendum to contract dated the 14th July 2007 and the 16th August 2007 respectively and made Between (1) Zelee (Bahama) Development Limited and (2) OCL Investments Limited for the sale of freehold property known as Apartment No. 2 The Hamptons Condominium, Lot 4, Block 27, Bahamia Marina Subdivision, Freeport, Grand Bahama.

AND IN THE MATTER of Section 4 of the Conveyancing and Law of Property Act

BETWEEN

ZELEE (BAHAMA) DEVELOPMENT LIMITED

Plaintiff

AND

OCL INVESTMENTS LIMITED

Defendant

Before: The Honourable Justice Andrew Forbes

Hearing Date: 6th October 2022, 21st October 2022 and 2nd February 2023

Appearances: Mr. Dwight Ginton on behalf of the Plaintiff, Zelee (Bahama) Development Limited

Mr. Gregory Moss on behalf of the Defendant, OCL Investments Limited

FORBES, J.

INTRODUCTION

1. This is an application on behalf of the Defendant where by a Summons filed on the 14th November 2019 the Defendant seeks an Order fixing, determining, or otherwise settling the interest which is payable by the plaintiff to the defendant on the Judgement sums herein fixed by Order of Her Ladyship Mrs. Justice Estelle Gray-Evans filed on the 17th March, 2014. In support of the said application an Affidavit of Vanessa Russell was sworn and filed on the same date. The defendant relies on its Written Submissions filed on the 18th November, 2019 and the 8th December, 2022. The plaintiff relies on its Skeleton Argument dated the 20th October, 2022.

BACKGROUND

2. The Defendant's application arises from a Judgement given by then Madam Justice Estelle Gray-Evans on 29th July 2010 in the substantive action. The plaintiff had sought various items of relief resulting from a contract dated July 14, 2007 whereby the plaintiff agreed to sell and the defendant agreed to purchase Apartment 2, The Hamptons Condo located at Lot 4, Block 27, Bahamia Marina Subdivision, Freeport, Grand Bahama for the sum of \$350,000.00. The said agreement for sale was subject to various terms inclusive of payment of the deposit price and a subsequent letter from the defendant to the plaintiff with reference to immediate occupancy of the said property in anticipation of the agreement's closing date. The Court determined that there were two contracts between the parties, one for sale and purchase of the unit and the other where a periodic tenancy was created between the parties when the defendant was allowed into occupation of the said unit. Further, upon the lawful termination by the plaintiff of the contract for sale and purchase the defendant was entitled to the return of its deposit without deduction and the plaintiff was entitled to the premises. However, as the defendant was allowed into occupation under a periodic tenancy agreement, the defendant was entitled to reasonable notice to vacate, while the plaintiff was entitled to payment of a reasonable sum

for the defendant's continued use and occupation after the contract for sale had been terminated. At paragraph 60 of her Judgment, Justice Gray-Evans ordered:-

“(1) Except for a declaration that the vendor/plaintiff lawfully terminated the contract for sale and purchase of the aforesaid apartment on 20 February 2009, the remainder of the declarations sought by the plaintiff are refuse.

(2) Further, the defendant is entitled to the return of its deposit less any unpaid maintenance fee for the period of the defendant's occupancy ending 15 April 2009 and less any reasonable repair costs, fair wear and tear expected.

(3) The plaintiff is hereby ordered to pay to the defendant the sum of \$50,000.00 paid as a deposit under the aforesaid agreement for sale and purchase less any unpaid maintenance fees for the period of the defendant's occupancy ending 15 April 2009 and less any reasonable repair costs, fair wear and tear expected.”

3. Following the Judgment of Justice Gray-Evans the defendant filed a Summons and Affidavit in Support on the 21st July, 2011 seeking an Order that the Court fix the Judgment sum made by the said Judgment on 27th July, 2010; an Order to restrain the Plaintiff and/or its agents from selling, disposing or transferring any property in The Bahamas without the leave of the Court pending payment of the Judgment sum due by the plaintiff to the defendant and the costs of the substantive action to be paid by the plaintiff to the defendant.
4. The Court on February 28, 2013 subsequently ordered and directed that:

“(1) The Judgment sum under the Judgment of Her Ladyship the Honourable Mrs. Justice Estelle Gray Evans dated 29th July, A.D., 2010 payable by the Plaintiff to the Defendant, is hereby fixed at the sum of Forty-eight Thousand Nine Hundred and Fifty Dollars (\$48,950.00) as at the said date of 29th July, A.D., 2010.”
5. The plaintiff filed a Summons on the 4th July, 2013 seeking to set aside the Order however, the Court on February 20, 2014 dismissed the said Summons and once again provided that the Judgment sum under the said

Judgment is fixed at the sum of Forty-eight Thousand Nine Hundred and Fifty Dollars (\$48,950.00) as at the date of the 29th July, 2010.

STATEMENT OF FACTS

6. The defendant relies on the Affidavit of Vanessa Russell filed on November 14, 2019 in support of its application. Her evidence for the most part exhibited the correspondence between Counsel for the plaintiff and defendant between March 2018 and November, 2019. In particular at paragraphs 4 and 5 of her Affidavit she avers:

“4. From a review of the file herein, I am able to confirm that by letter dated 15th March, 2018 from Mr. James R. Thompson (“Mr. Thompson”) Counsel for the Plaintiff to Mr. Gregory K. Moss (“Mr. Moss”) of our Firm, Mr. Thompson confirmed that the Judgement sum of \$48, 950.00 was paid by the Plaintiff “on or about the 3rd March 2015.

5. From a review of the file herein, I am able to confirm that by letter dated 25th October, 2019 from Mr. Moss to Mr. Thompson’s usual email address at jamesthompsonco@gmail.com. Mr. Moss invited Mr. Thompson to confirm the calculation of interest in that letter, or otherwise advise as to his calculations of such interest. That letter to Mr. Thompson also included the publication of the Central Bank entitled ‘Monetary Policy’ in the Bahamas settling out the various Prime Interest rates in the Bahamas over time. No response to that letter has ever been received from Mr. Thompson or any other party confirming Mr. Moss’s calculations of interest or other advising as to Mr. Thompson’s calculations of interest.”

7. The said letters were marked and exhibited to her Affidavit.

SUBMISSIONS

8. Counsel for the defendant notes that there is consensus between the defendant and the plaintiff and states that the Plaintiff acknowledges that interest is payable; that it is payable on the Judgement sum of \$48,950.00; that the sum was settled on the 2nd March 2015 and that it is payable at 6.75% per annum. The only difference between the parties is the date of when the interest was payable. The defendant contends that

interest should be applied from July 2010 and relied on the case **Thomas v. Bunn, Wilson v. Graham, Lea v. British Aerospace plc (1991) 1 AER 193** where Lord Akner stated the following and cited by the Defendant's accordingly in its submissions:

"All three appeals raise the same question, namely whether interest on the damages awarded pursuant to section 17 of the Judgments Act 1838 should run from the date of the order or judgment made or given on liability (the liability judgment) or from the date when the damages were agreed or assessed and final judgment entered for the resultant figure (the damages judgment)...."

9. The defendant further contends that the Orders filed on 23rd April 2013 and 17th March 2014 were mere corrections of the Judgement of Madam Justice Gray-Evans fixing the sum of the judgement at \$48,950.00 as the said date of the 29th July 2010. (Emphasis added).
10. Counsel for the plaintiff concedes that interest on the Judgement sum is payable. However, Counsel contends that interest ought to run from the date of the perfected Order and not from the date that the Judgement on Liability was handed down in the action. Counsel suggests based on the Monetary Policy of the Central Bank of the Bahamas exhibited in the Affidavit of Vanessa Russell the prime rate during 2014 and 2015 was 4.75% percent. Therefore, as to Counsel's calculation the interest rate would be at 6.75% percent and the total interest payable at Three Thousand One Hundred and Eighty One Dollars and Seventy Five Cents (\$3, 181.75).

ISSUE(S)

11. The substance of this application is whether interest is payable on the Judgement sum from the 29th July, 2010 and if it is so payable at what rate and from what starting and ending points?

LAW

12. The applicable law as it relates to the application before the Court can be found in the Civil Procedure (Award of Interest) Act.
13. Section 2 of the Civil Procedure (Award of Interest) Act states as follows:

“2. (1) Every judgment debt shall carry interest at such rate as shall be prescribed by rules of court made by the Rules Committee constituted by section 75 of the Supreme Court Act, and such interest may be levied under a writ of execution on such judgment:

Provided that nothing in this section shall apply in relation to any judgment debt upon which interest is payable as of right, whether by virtue of an agreement or otherwise.

(2) Interest under this section shall run —

(a) if the judgment has been obtained in the Supreme Court, from the time of entering it up; and

(b) if the judgment has been obtained in a Magistrate’s Court, from the date when it was pronounced in open court, and in either case until the same is satisfied.”

ANLAYSIS AND DISCUSSION

14. It is evident that the issue as to whether interest is payable on the said Judgment sum is not disputed between the parties. It is also not disputed between the parties that the interest so payable is on the Judgment sum of Forty-eight Thousand, Nine Hundred and Fifty Dollars (\$48,950.00). However, where the parties do not agree is to when that interest so payable is to run from. The defendant submits that interest is to run from the date the Judgment was made by Justice Gray Evans on the 29th July, 2010 to the 3rd March, 2015 when the said sum was paid. The plaintiff however submits that interest is to run from the date when the Judgment was perfected on the 17th March, 2014 to the 3rd March, 2015 when the said sum was paid.

15. The Court refers to the Court of Appeal decision of **Wallace I. Rolle & Krystal D. Rolle v. The Town Court Management Company SCCivApp. No 75 of 2022** and notes paragraph 21 for these purposes which reads as follows:

“21. We observe the appellants made no claim for interest of a specific rate or for a specific period only for us to "award such interest as the Court deemed just". Second, it is trite law that the award of interest is discretionary and the fact that the judge did not award interest not claimed is not an error of the judge. Here, the fact that the judge did

not award interest as a separate category, does not prevent the appellants from claiming interest at the statutory rate from judgment.

See White Book 1985 O.42 r1. “

16. The Court also makes reference to the Rules of Supreme Court (RSC) 1978 and notes that the application of these rules have been replaced by the current Civil Procedure Rules 2022 (CPR) and Practice Guide 2023. However, given that this matter commenced and was completed before the coming into force of the current Rules the Court will refer to the previous English Rules to reflect the sentiments as to Judgements and interest payable therein.
17. The commentary at 42/1/12 on page 715 in Volume 1 of the Supreme Court Practice, 1997 (“The White Book”) under the heading “**Interest on judgment debts**” states:

“Every Judgement debts carries interest at the statutory rate from time of entering up the judgement and such interest may be levied under a writ of execution.”
18. The Court also refers to the commentary at 42/1/16 on page 717 in the White Book under the heading “**Mistakes in judgments or orders**” which states:

“After a judgement or order is passed and entered, it cannot be corrected without an application under O.20, r. 11, or otherwise.”
19. Additionally, Order 20, Rule 11 in the White Book provides that “*Clerical mistakes in judgements or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.*”
20. The commentary at 20/11/2 on pages 372-373 in the White Book under the heading “**Application of rule**” states “*that the error or omission must be an error in expressing the manifest intention of the Court; the Court cannot correct a mistake of its own in law or otherwise, even though apparent on the face of the order such as a mistake due to a misunderstanding of a rule or statute.*”
21. Bearing in mind the consensus between the parties that interest is payable on the Judgment sum, the Court is of the view that the Orders made by the Court on the 28th February, 2013 and the 20th February, 2014 respectively, were merely corrective Orders which reconfirmed the

substance of the Judgement of the Court made on the 29th July 2010 and seemingly was for the purpose of confirming the actual sums owed pursuant to the said Judgement.

DISPOSITION

22. Thus, the Court accepts the submissions made by Counsel for the defendant that interest ought to be payable from the date of the Judgement the 29th July 2010 and that interest ought to be reflective of the interest rates payable between July, 2010 and March, 2015.
23. Further, as Counsel for the plaintiff has already accepted portions of the defendant's affidavit in support of this application outlining the relative interest rates between July 2010 and March 2015, the Court will likewise accept those calculations as accurate.
24. Therefore, the Court finds that the interest payable on the Judgment sum is from the date on which the Judgment was rendered on the 29th July, 2010 and that the sum of interest to be paid between the 29th July, 2010 to the 3rd March, 2015 is Fifteen Thousand Three Hundred and Eighteen Dollars and Sixty Six cents (\$15,318.66).
25. The court exercises its discretion and awards cost to the defendant to be taxed if not agreed.



Justice Andrew Forbes

Dated the 5th day of May 2023