

IN THE HIGH COURT OF KIRIBATI)
CIVIL JURISDICTION)
HELD AT BETIO)
RÉPUBLIC OF KIRIBATI)

HIGH COURT CIVIL CASE 67 OF 2012

BETWEEN: SUNDAJEE BROS (AUST) PTY LTD PLAINTIFF

AND: BOBOTIN KIRIBATI LTD DEFENDANT

FOR PLAINTIFF: KIATA KABURE

FOR DEFENDANT: ERETA BRUCE

Date of Hearing: 12 April 2013

JUDGMENT ON INTEREST

This is a claim for interest after a Consent Order was issued on the 26 September 2011. The principal amount on the Order is \$1,383,836.25 exclusive of interest which is to be charged at 20% per annum. The defendant made its first payment of \$25,000 to the plaintiff on the 19 April 2012. On the 12 September 2012 the defendant made its final payment on the principal sum in the amount of \$1,133,836.25. What is left to be argued is the unpaid interest and cost. This is the Court's decision on interest only, the issue of cost is to be decided later.

ISSUE

The issue before this Court is whether interest is to be charged from the due date of each invoice or from the date of the Consent Order.

PLAINTIFF'S ARGUMENT

The plaintiff submitted that the Consent Order simply fixes the rate which is 20% per annum but not the commencement date. Counsel for the plaintiff strongly argued that the interest

should start from the due date of each invoice. It was submitted that though the Consent Order was not specific on this but the surrounding facts supported this argument which are as follows:

- That it was stated in clause 3 of the parties' Agreement dated 13 September 2011 that *'Interest and bank charges shall be calculated on each invoice as when such invoice is settled in full..'*
- That it was specifically pleaded in the plaintiff's claim against the defendant in paragraph 6 that *'...if there was default in payment in accordance with the terms of the Agreement the defendant would be liable ...for interests on the amount of each outstanding invoices at 20% per annum calculated from the due date of each invoice..'*
- That in the defendant's defence paragraph 6 is admitted, and
- That Government has agreed to indemnify BKL and in particular paragraph 6 of the Secretary to Cabinet's affidavit dated the 20th December 2011 which stated that *'...Government is well aware of the interest incurred in delaying payment but will pay the principal sum and interest once approved by Parliament'*.

THE DEFENDANT'S ARGUMENT

On the other hand, the defendant contended that the Consent Order was very clear and precise, that the interest of 20% per annum is to be calculated from the date of the Consent Order, 26 September 2011 to the date of full payment, 12 September 2012. They further argued that the interest is to be calculated not over the principal sum (\$1,333,836.25) but over the balance after repayment of \$25,000.00 has been deducted, which is \$1,133,876.25, since the plaintiff had agreed and accepted the 25k. In this regard, the defendant, through Counsel, had offered or agreed to pay interest in the amount of \$218,698.32.

DISCUSSION AND DECISION

The sole issue in this case is how interest should be calculated, that is, whether a judgment creditor is entitled to a claim of interest from the due date of each invoice, or from the date of the Consent Order to the date of payment of the principal sum or in whatever manner the Court thinks fit and fair to both parties.

The most relevant law in relation to a claim of pre-judgment interest was that stated in section 3(1) of the *UK Law Reform (Miscellaneous Provisions) Act 1934*, which continues in force in Kiribati pursuant to section 7 of the *Laws of Kiribati Act 1989*. Section 3(1) state as follows:

" In any proceedings tried in any Court of record 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, interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section –

(a) shall authorise the giving of interest upon interest; or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange."

It is very clear from the above provision that the issue of judgment interest lies in the discretion of the Court.

The Consent Order states as follows

"By consent, judgment is entered against the defendant in the sum of \$1,383,836.25, in full satisfaction of the claim, exclusive of interest which is to be charged at 20% per annum."

After depths consideration of both Counsels' submissions and pursuant to the above provision and the Consent Order itself, in my opinion the Court had not specifically indicated the period in which the interest is to be charged. Pursuant to the above provision, I feel that the plaintiff should be fairly compensated by awarding it 20% interest of the principal sum of \$1,383,836.25, from the date of the writ, 30 May 2011, to the date of full payment of the principal sum, 12 September 2012. I disagree with the defendant that 25k should be deducted first from the principal sum as the 25k had just been paid after the Consent Order.

Order accordingly.

Dated 7th May 2013



TETIRO M SEMILOTA

COMMISSIONER OF THE HIGH COURT

