



IN THE SUPREME COURT OF NAURU

CIVIL SUIT No.32/2015

BETWEEN

JULIE OLSSON

} PLAINTIFF

AND

SECRETARY FOR JUSTICE

} DEFENDANT

Before: Khan, J
Date of Hearing: 19 January 2016
Date of Ruling: 11 March 2016

CATCHWORDS: Interest- section 19 of Civil Procedure Act 1972- provides for payment of interest from the date of suit to date of judgment- and also for any period prior to the institution of proceedings.
Common Law- interest not payable on late payment of debt unless expressly provided for by agreement, statute or usage.

APPEARANCES

For the Plaintiff: Mr. V. Clodumar (Pleader)
For the Defendant: Mr. J. Rabuku

JUDGMENT

INTRODUCTION

1. The plaintiff was a member of a Superannuation Fund set up in 1966 pursuant to the provisions of the Superannuation Ordinance 1966 (Ordinance); and being a member she made contributions to the fund, as an employee of the Government of Nauru.
2. The Ordinance was repealed by the Superannuation (Repeal Act) 2012 (Repeal Act).
3. The funds accumulated under the Ordinance were invested and upon repeal of the Ordinance by the Repeal Act the assets was vested in the Republic.
4. Subsequently, the Republic decided to pay out the funds to its members including the plaintiff. Her entitlement was in the sum of \$17385.00. A condition of the payment out was that each member was required to sign a discharge in the following terms:

“ _____
Full Name

_____ *of Address*

DECLARES THAT:

1. *I was an officer or a Contributor, (or an heir of an officer or Contributor), to the Superannuation Fund (the Superannuation Fund) established under the Superannuation Act 1966 (Nauru) (the original*

Act), which Act was repealed by the Superannuation (Repeal) Act 2012 (Nauru) (Repeal Act).

- 2. I have never spoken to, asked or authorised Kinza Clodumar or anyone else to represent me, in relation to any rights or entitlements that I have or had in connection with the Superannuation Fund, the original Act or the Repeal Act. I do not give Kinza Clodumar or anyone else authority to act on my behalf.*
- 3. I have never asked or authorized Kinzar Clodumar or anyone else to represent me and I do not give him or anyone else authority to act on my behalf in relation to any legal proceedings in Nauru or Australia, and in particular, in relation to:*
 - (ii) Supreme Court of Nauru; Civil Case No. 24 of 2013 (the Nauru Civil Case); or*
 - (iii) Supreme Court of Victoria; Proceeding No. S CI 2013 03786 (the Victorian Proceeding).*
- 4. I do not want to participate in the Nauru Civil Case.*
- 5. I do not want to participate in the Victorian Proceeding.*
- 6. The Republic of Nauru has paid to me, a sum equivalent to any and all contributions by me or the ancestor or predecessor through whom I had any entitlement under the Superannuation Act 1966 prior to the Repeal Act, which was the 'A' Account representing contributions to the Superannuation Fund.*
- 7. I have no interest or entitlement in any asset or funds formerly held by the Superannuation Fund including in any surplus funds from the sale by Receiver of the Downtowner Hotel in Carlton Victoria. I agree that any such asset or funds would have vested in the Republic of Nauru.*

8. *I also believe I am not affected or aggrieved by the repeal of the Superannuation Fund or by any vesting of the assets of the Superannuation Fund in the Republic of Nauru by the Repeal Act. I consider that the Republic of Nauru has acted fairly and justly in paying from funds of the Republic, equivalent monies to the Fund A contributions paid to the Superannuation Fund.*”

5. The plaintiff refused to sign the discharge and requested that her contributions be paid out to her, whilst the defendant insisted that every member had to sign the discharge, and the plaintiff will have to do likewise before she can be paid out.
6. As a result of the positions taken by both parties there was a stale mate, and payment to the plaintiff was withheld.
7. The plaintiff made various representations to numerous government officials, including the Minister of the Superannuation Fund, Hon Mr Shadlog Bernicke (Minister). She wrote to him on 17 July 2014 complaining about the discharge form. She stated that she was entitled to be paid out and asked for immediate payment, and she also told him that she was under emotional and mental stress as she was planning to go to Sydney for studies within a week and needed the money.
8. She left for her studies and again wrote to the Minister on 8 January 2014 and requested that the funds be released to one of her siblings as she was in Sydney.
9. In September 2014, the plaintiff met the Minister of Finance Hon Mr David Adeang in Sydney, and raised with him about the payment of her superannuation fund. Following her meeting she sent him an email on 19 November 2014, as a follow up. The Minister of Finance responded to her email, and advised her that he had approved the payment subject to Cabinet's endorsement.

LEGAL PROCEEDINGS

10. The funds were not paid out so the plaintiff instituted legal proceedings on 12 March 2015 against the Secretary for Justice.
11. An appearance was entered on behalf of the defendant and the defence was not filed within 14 days, and the Mr Clodumar entered default judgment on 24 April 2015, which was subsequently set aside as being irregular for non-compliance of Order 50 r 8 of the Civil Procedure Rules 1972(CPA), in that the plaintiff entered default judgment without leave of the Registrar.
12. The defendant filed its statement of defence on 24 April 2015 after the default judgment was entered, which contained a bare denial of the matters averred to in the plaintiff's claim.
13. On the 5 May 2015, the defendant filed an application for setting aside of the entire proceedings under Orders 2 and 38 of CPA and written submissions were filed by both parties.
14. On 17 August 2015 the parties reached a settlement, under which a sum of \$17385 was agreed to be paid to the plaintiff in full and final settlement of her claim, and the only issues to be determined by the Court were:
 - (a) Interest payable on the judgment sum and if so at what rate;
 - (b) Whether the plaintiff is entitled to the payment of cost of the proceedings.

CLAIM FOR INTEREST

15. The plaintiff's claim for interest is at the rate of 1% on the sum of \$17385 from 28 February 2014 to March 2015, a making a total of \$2433.90.
16. On 18 August 2015 I entered judgment by consent against the defendant and I ordered both parties to file written submissions and adjourned the matter to the 23 November 2015. The parties did not file written submissions and I made

further orders for written submissions. In the defendant's submission, issues was taken that the plaintiff did not call any evidence, and therefore it was further adjourned to 19 January 2016 to enable parties to call their witnesses.

EVIDENCE

17. The plaintiff's evidence was that she tried to obtain release of her funds, but was not successful in doing so, despite making numerous representations to various government officials. She stated that the funds were only released to her after the settlement on 17 August 2015. Her witness Fay Itaia stated that she was also a member of the superannuation fund like the plaintiff and she withdrew her funds without signing the discharge form.

18. The defendant did not call any evidence.

WRITTEN SUBMISSIONS

19. Both parties filed written submissions. Mr. Clodumar submits that it was always the plaintiff's contention that she should be paid without signing the discharge form and the settlement has effectively vindicated her. He also submits that she is entitled to interests on the late payment and costs.

20. Mr. Rabuku in his submissions has stated that the court is precluded from determining the issue of interests and costs as the parties have settled this matter. He further submits that if the plaintiff was going to claim interest then she should have rejected the offer to settle and proceeded to trial.

21. I must say that I find Mr. Rabuku's submission to be very strange. I say that because there was never any dispute that the plaintiff was entitled to the funds, and the only reason it was not paid out, was that she refused to sign the discharge. So even if the matter had proceeded to trial, the only issue for determination would have been the lawfulness or otherwise of the discharge. I hold that notwithstanding the consent judgment for the principal sum I am still entitled to determine the issue of interests and costs.

22. The defendant's statement of defence did not aver that the plaintiff was required to sign the discharge form prior to the payment being made. It contained bare denials of the matters pleaded in the plaintiff's statement of claim, however, in its written submissions that the defendant stated that all members were required to sign the discharge before being paid out. If that was the case, then the defendant should have pleaded that in its defence and, if it had done so, then the onus would have been on the defendant to prove that the plaintiff was not entitled to the payment of her fund until she signed the discharge. As of defence contained a complete denial, the onus remained on the plaintiff to prove that she was under no obligation to sign the discharge document.

PLAINTIFF'S EVIDENCE

23. The settlement in itself supports the plaintiff's contention that she was under no obligation to execute the discharge before she was paid.

24. Further, the plaintiff's witness Fay Itai'a's evidence confirms the plaintiff's contention that she was under no obligation to sign the discharge before being paid. Her evidence was unchallenged.

25. I am satisfied that the plaintiff has proved that there was no need for her to sign the discharge prior to the payments of her entitlements, and I am further satisfied that her fund became due and payable on or about 28 January 2014.

ISSUES FOR DETERMINATION

26. The Ordinance did not make any provision for payment of interest.

SECTION 19 OF CIVIL PROCEDURE ACT 1972

27. The only statutory provision relating to payment of interest is section 19 of the Civil Procedure Act 1972 which reads as follows:

- (1) *“Where, and in so far as, the judgment of any Court is for the payment of money, the Court may, in the judgment, order interest at such rate as the Court thinks reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the judgment, in addition, if the Court thinks fit, to any interest adjudged on that principal sum or any period prior to the institution of the suit, with further interest at such rate as the Court thinks reasonable on the aggregate sum so adjudged from the date of the judgment to the date of payment or to such earlier date the Court thinks fit.*
- (2) *Where a judgment is silent with respect to the payment of further interest on the aggregate sum referred to in the last preceding subsection from the date of the judgment to the date of payment or other earlier date, the Court shall be deemed to have ordered interest at the rate of 8 per cent per annum.”*

Section 19 does not help the plaintiff as it talks about “*Order interest at such rate as the Court may think reasonable to be paid on principal sum adjudged...*”. I did not make any pronouncement or adjudged the principal sum so therefore Section 19 does not apply to the plaintiff.

DOES THE COMMON LAW APPLY

28. Section 4 of the Custom and Adopted Laws Act 1971 provides for adoption of common laws and statutes of general application which were in force in England in 1968.

29. Mr. Rabuku in his submission has relied on the case of **Naqova v Blue Shield (Pacific) Insurance Ltd [2002] FJHC 287**, a decision of Fautiaki J where he

discusses the House of Lords decision of **London, Chatham & Dover Railway Co. v South Eastern Railway (1893) A.C. 429 (Dover)** and **President of India v La Pintada Compania Navigation SA (1985)1 A.C.104** where it was stated:

“The general common law approach is that interest is not payable for the late penalty of a debt unless expressly provided for by agreement, statute or by usage. The plaintiff does not come within this ambit.”

30. Under the common law principle the plaintiff is not entitled to claim interest for the late penalty of the superannuation funds so her claim for interest fails.

COSTS

31. The defendant is not opposed to the payment of cost and submits that it should be paid on a party- party basis, whereas the plaintiff is seeking for cost on indemnity basis in the sum of \$2048. Considering the number of appearances in this matter and the submissions filed, I think that the claim for cost in the sum of \$2048.00 is quite reasonable and I award cost to the plaintiff in the sum of \$2048 .00 against the defendant.

Dated this day of 11 March, 2016



Mohammed Shafiullah Khan

Judge

