

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. H150/82

BETWEEN (i) Hazen-Trane Service Agency Plaintiff
A N D Barbara's Limited Defendant

SUIT NO. C.L. L114/82

BETWEEN (ii) L.W. Lambourn & Co. Ltd. Plaintiff
A N D Pullen's Manufacturing Co. Ltd. Defendant

Douglas Brandon instructed by Livingston, Alexander & Levy for the Plaintiff
in each matter.

Heard on: March 10, 1983 and May 24, 1983.

The Defendant in each Suit is a Limited Liability Company, and did not appear
nor was represented.

Service on each Defendant was proved.

McKAIN J.

These matters first went before the Registrar for entry of judgment
in default of appearance, and each sought a grant of interest of 12½% from the
date when the debt became due.

In the first matter the Affidavit in Proof of Debt reads:

" I Robert Douglas Hazen being duly sworn make oath and say

1. That my true place of abode is at
1330 Blue Road
Coral Gables FL 33146
and my postal address is 4665 Ponce DeLeon Boulevard,
Coral Gables Post Office, Florida in the United States
of America and I am a Director of the Plaintiff Company,
same being a Company duly incorporated under the Laws
of Florida in the United States of America. I am
conversant with the matters giving rise to the claim in
this action.
2. The Plaintiff's claim is against the Defendant for the
sum of US\$4,236.10 being the amount due for repairs done
in Jamaica at the request of the Defendant over the
period October, 1981 to November, 1981.

The Plaintiff also claims interest in the above sum until
judgment (the sum of \$423.61 having accrued thereon up to
31st August, 1982 at 12% and a further \$42.30 for the
period 1st September, 1982 to 30th November, 1982 to be
\$4,702.01).

3. I verily believe that the Defendant has no defence to this action, the above sum still being bona fide due and owing by the Defendant to the Plaintiff Company. The above sum of US\$4,702.01 is equivalent to J\$8,369.37 at the present rate of exchange of US\$1 to J\$1.78.

Sworn to at Florida in the United States of America. "

The right to the interest as claimed in paragraph 2 of the above Affidavit is the vexing question set before me for my consideration and ruling.

On the 14th January, 1983 the Registrar informed the Plaintiff's Attorneys, and here I quote the note on the records:

' In the absence of an agreement for interest at the higher rate interest will be allowed at 6%. '

Thereafter a lively correspondence began to take place between the Registrar and the Attorneys ending with two letters dated 31st January, 1983 from the Registrar dealing with the matters, the one respecting this Suit reading:

" Your letter of 17th January, 1983 refers. I have seen the case of Alex Lawrie Factors Ltd. v. Modern Injection Moulds Ltd (1981) 3 A.E.R. 659 and I have also taken instructions in this matter. As at present advised I will not enter default judgment including interest at the rate claimed in the absence of an agreement, either express or implied. "

The Plaintiff Company is foregin based. The director who seeks judgment based solely on his Affidavit of debt resides outside the jurisdiction.

The Plaintiff's business appears to be operated outside Jamaica and the nature of its operation is not stated. The Plaintiff Company has given itself the right to sue in our Courts but has neglected or is unable to name the agent or other person or persons who would undertake the pay the Defendant's Costs in the event of his action not being upheld against the Defendant.

While the Statement of Claim is in order, it is indeed tersely put.. It is not clear what are the "repairs" done by the Plaintiff at the request of the Defendant, and how it came within this jurisdiction.

Was there a contract between the parties? If so what are the terms, and when was the agreement made and under what circumstances?

It may be there is in existence such an agreement in writing, if so, what were the terms specified? If it was an oral agreement what is the nature of the agreement?

The Statement of Claim refers to the debt as "balance owing." Where, when and under what circumstances did the Defendant make payment of a part of the original sum due? Did the transaction between the parties breach or contravene the Foreign Exchange Control Act?

The Court must be seized of all the facts relevant to the claim if the Plaintiff sues the Court to exercise its discretion with respect to the grant of 'interest on the sum claimed before filing of Suit.'

Under Section 3 of the Law Reform (Miscellaneous Provisions) Act

" The Court may if it thinks fit" order interest - - - - - " at such rate as it thinks fit " - - between the date when the action arose and the date of the judgment.

There is a difference between the power to grant interest on a judgment and the exercise of a discretion in a given case. (The underline is mine) Nothing has been disclosed in the "pleadings" to justify the exercise of the Court's discretion. It may be that if some light is thrown on the questions posed earlier on consideration may be given to the Plaintiff's request.

It is quite clear that Section 3 of the Law Reform (Miscellaneous Provisions) Act impliedly requires:

- (a) Some facts on which the exercise of discretion should be based.
- (b) More than a "naked" statement that a foreign Plaintiff did "repairs" within the jurisdiction for the benefit of the Defendant, or at the request of the Defendant.

The same comments apply, and questions remain to be answered with respect to the second claim mentioned above, which is also under review. In this latter case the relevant Affidavit of debt reads:

" I Earl St. Aubyn Crooks being duly sworn make oath and say

- 1. That my true place of abode is at 27 Millsborough Crescent, in the Parish of Saint Andrew, my postal address is 27 Millsborough Crescent, Kingston 6 Post Office and I am a Company Director.
- 2. That I am the representative of the Plaintiff Company in Jamaica and duly authorized by them to make this Affidavit. I am personally acquainted with the subject matter of this Suit.

3. The Plaintiff Company sold and delivered goods on the 25th June, 1980 to the Defendant Company for four thousand, eight hundred and fourteen pounds and ninety-three pence (the Jamaican dollar equivalent thereof being J\$15,215.78).

The Defendant has not paid the above sum and is indebted to the Plaintiff for same as well as interest thereon at 12% per annum being £1,347.92 (J\$4,259.42) for 28 months to the 31st October, 1982

On this Suit the Registrar commented:

" Your letter of the 17th January refers. In the absence of an agreement for interest at the rate claimed, interest cannot be allowed except on an application to the Court. "

It is all very well for Mr. Crooks to say that the Plaintiff has empowered him to make the Affidavit, that I neither doubt nor question. It may well be that is the extent of his powers as far as the debt is concerned I do not know, I do not wish to guess. I must not guess. He is well acquainted with the subject matter. He has however, neglected to acquaint the Court with it. I do not know what is his legal standing as far as the recovery of damages against the Company is concerned should such a situation arise. He has not said, done, nor shown anything that would justify the award of the interest he claims, nor for that matter as to whether or not he may get any judgment whatsoever.

The questions to be answered here are:

- (a) What are the goods?
- (b) Where were they supplied?
- (c) Was there a contract, if so what are the terms?
- (d) How would the terms of the contract affect the Exchange Control Act as far as the Company's operating in Jamaica is concerned?
- (e) Who are the representatives against whom damages would be recovered if the Defendant's were to be the successful party in the Suit?
- (f) Under what conditions does the Company operate in Jamaica, if it does, so as to empower it to ~~sue~~ in these Courts?

Mr. Brandon in urging me to order that the Plaintiff be at liberty to enter judgment for the amount of interest claimed in the writ and judgment filed in each case directed for my consideration, the case of Alex Lawrie Factors Limited v. Modern Injection Moulds Limited (1981) 3 A.E.R. page 658. In this action the Plaintiff claimed a liquidated sum for goods sold and delivered and also claimed interest pursuant to Section 3(1) of the Law Reform Miscellaneous Provisions Act 1934. The Defendant failed to enter appearance whereupon the Plaintiff obtained final judgment against him for a liquidated amount in default of appearance which was entered in the Court records by the appropriate Court Officer. The Plaintiff claimed he was entitled to interest under the Act from the date the debt became payable to the date of the default judgment; while the Defendant contended there was no jurisdiction under Section 3(1) to award interest prior to the date of judgment. The matter was referred to a Master, who upheld the Plaintiff's claim and awarded interest accordingly. The Defendant appealed on the ground that proceedings ending with entry of a default judgment were not "proceedings tried in any Court of record" within Section 3(1) of the Act. The Plaintiff submitted the Court had jurisdiction under its inherent equitable jurisdiction.

The Queens Bench Division before which it went held the Court had jurisdiction to award interest because the word "tried" in the Act meant "determined" and covered any situation on which proceedings in a Court of record have been started by writ or other originating process and ended by a judgment, irrespective of how the judgment is arrived at, and I so rule.

I am of the view the above case is of no help in the present circumstances and does not take the matter any further, as there is no contention before me with respect to interpretation as to what constitutes a trial court.

I hold that the decision of the Registrar as stated in her letters of the 31st January, 1983 is the correct and proper one.

For myself, until the questions I have posed above have been answered I am not in a position to make any further ruling in these matters.