

11/11/06 ✓

IN THE SUPREME OF JUDICATURE OF JAMAICA

Suit No. C.L. M 325 of 1997

BETWEEN	HERALD MANBORDE	CLAIMANT
	(Executor of the Estate of Edward Manborde, deceased)	
AND	GEORGE ROBINSON	FIRST DEFENDANT
AND	CHRISTOPHER CAMPBELL	SECOND DEFENDANT
AND	MORRAINE THOMPSON	THIRD DEFENDANT

Miss Daniella Gentles & Mrs. Susan Ridsen-Foster instructed by Livingston Alexander & Levy for Claimant.

Miss Gillian Mullings instructed by Patrick Bailey & Company for 3rd defendant

Heard on the 28th February & 13th April 2006

Sinclair-Haynes J

On the 26th April 2005 Mr. Herald Manborde and Mr. Morraine Thompson consented that judgment in the sum of \$3.4 M should be entered against Mr. Morraine Thompson with interest at the rate of 12% per annum until payment. Mr. Thompson was given 2 ½ years in which to make payments. The court is now asked to determine how interest on the judgment sum is to be computed.

Miss Daniella Gentles contends that interest of 12% is to be added to the principal of \$3.4 million which amounts to a total of \$4,420,000.00 The sum of \$4,420,000.00 is to be apportioned by installments over the period of 2 ½ years. Each payment is to be deducted from the \$4,420,000.00

Miss Gillian Millings however contends that interest is to be paid on a reducing balance basis. She contends that interest is to be calculated on the principal balance which remains after each installment. As a result the Judgment Debtor is to pay less interest with each successive payment. The employment of this method will result in the debtor paying \$576,712.30 less interest than that suggested by Miss Gentles.

Miss Gentles submits that neither the bailiff nor the Registrar of the Supreme Court applies the reducing balance method as put forward by Miss Mullings. According to her the method employed by the bailiff is as follows:

Interest is calculated by using the principal and multiplying the same by a rate of 12%. The sum arrived at is divided by 365 days to get the daily rate. In the instant case it would be \$3.4 M multiplied by 12 % and divided by 365 days which would result in a daily rate of \$1,117.80. Subsequently, with each payment, interest is calculated on the number of days since the last payment which is multiplied by the daily rate. The difference between payment and interest is used to reduce the principal so that the daily rate remains fixed and does not change.

This method is different from the reducing balance method as the reducing balance method results in interest being calculated on the principal balance which remains. As a result, less interest is paid on each successive payment.

She submits that the method used by the Registrar of the Supreme Court is as follows:

Interest is first added to the judgment sum on a simple interest basis. The installments are worked out based on the principal added to the total interest.

I have considered the various methods used and I am of the view that the practice adopted by the bailiff is more just and equitable in all circumstances and is fair as between the parties.

A consideration which exercised my mind in arriving at the decision to apply the bailiff's method rather than the reducing balance method was the question of fairness. The accident occurred on the 19th November 1996. Proceedings were instituted on 19th February 2, 1999 and the consent judgment was obtained on the 26th April 2005. The judgment debtor has been given 2 ½ years over which to make judgments.

Miss Gillings Mullings has not advanced any just reason why in the circumstances I should deviate from the method used by the bailiff.

In the circumstances I hereby hold that the bailiff's method of calculation as reflected in exhibit SRF3 and paragraph 8 of the affidavit of Mrs. Susan Risdén-Foster sworn to on the 24th April 2006 is to be followed.

Leave to appeal granted to the 3rd Defendant.