

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. S 244 OF 1998

BETWEEN STEVE STEADMAN

PLAINTIFF

AND THE SUGAR COMPANY OF JAMAICA LIMITED

DEFENDANT

Dorcas White for the Defendant/Applicant instructed by Mr. A. A. Hines

John Givans for the Plaintiff/Respondent instructed by Priya Levers

Heard on the 29th day of July, the 23rd day of August and the 25th day of November 1999.

IN CHAMBERS

CORAM: ORR J.

This is an application to set aside a judgment in default of defence and for leave to file a defence.

The ground of the application is stated thus in the summons;

“The judgment was entered irregularly.

Particulars of Patent (irregularity)

Entering judgment for an unliqui-
dated sum in that judgment is
entered for a stated sum at 35%
per annum interest without having
had the interest adjudicated upon.”

The judgment complained of, was entered in the following form:

"The Defendants, the Sugar Company Jamaica Limited not having filed a Defence to the Writ of Summons herein IT IS THIS DAY ADJUDGED that the Plaintiff Steve Steadman recover against the said Defendants the sum of (\$200,023.17) Two Hundred Thousand and Twenty-Three Dollars Seventeen Cents with interest of 35% per annum from the date of the Writ until payment together with costs to be fixed or agreed."

The endorsement of the Writ is couched in the following terms:

Statement of Claim

1. By oral agreement on the 24th day of April 1996, Plaintiff agreed to sell to the Defendant a Rowe Harrow for a price of \$600,000.00 owned by the Plaintiff and K.F. Hobbins Limited a company duly registered under the Laws of Jamaica.
2. In pursuance of the said agreement, the Defendant paid the Plaintiff the sum of \$60,000.00 and the balance was to be paid not later than (six) 6 months with interest at a concessionary rate of 10% (ten percent) to be paid on the balance.
3. In pursuance of the said agreement the Plaintiff duly delivered the Rowe Harrow to the Defendant.
4. That on the 10th of October, 1997, the Defendant paid to the Plaintiff who was the duly authorized agent of K.F.

Hobbins Limited, to act on its behalf, the sum of \$600,000.00 but was failed and/or refused to pay the outstanding balance of \$200,023.17 due and owing under the terms of the agreement.

The Plaintiffs therefore claim:

1. The sum of \$200,023.17
2. Interest thereon at 35% a commercial rate
3. Costs

Two affidavits in support of this application were filed. They disclose an arguable defence, and give a satisfactory explanation of delay in filing a defence.

The Submission on behalf of the Defendant/Applicant

The judgment is irregular in that there is no pleading that the interest of 35% is due under a contract or by statute but merely a pleading that 10% was the rate agreed to be paid on the balance of the debt.

The claim for 35% interest appears in the prayer only and no details are given.

If the claim is under statute and not contract it would be an unliquidated demand and final judgment could not be entered but only interlocutory judgment for damages to be assessed.

Since this case is founded on contract the claim for 35% interest is not claimed under contract. Hence one may imply that it is claimed under the Law

Reform (Miscellaneous Provisions) Act, and Section 3 thereof requires that an award for interest be granted only where the matter is tried.

The origin of the claim must be stated in the Writ.

The writ of seizure and sale should not have been issued since there was pending an application to set aside the judgment on the ground of irregularity and for a stay of execution. The defendant is entitled to a refund of all monies paid as a result of the execution of the writ of seizure and sale.

The Submissions on behalf of the Respondent Plaintiff/Respondent

The issue is essentially what is a pleading. It is immaterial whether the claim for 35% interest appears in the body of the writ or the prayer.

The plaintiff is authorised by Section 70 of the Judicature (Civil Procedure Code) Law to enter final judgment for any sum not exceeding the sum endorsed on the writ i.e. \$200,023.17 together with interest at the rate specified which the plaintiff says is 35%.

Pleadings includes both the facts, and the relief claimed.

The Court's Analysis and Conclusion

Has the Plaintiff Committed a Procedural Irregularity ?

Section 70 of the Judicature (Civil Procedure Code) Law provides as follows:

“Where the Writ of Summons is endorsed with a claim for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants (if more than one) fail to appear thereto, the plaintiff may, on an affidavit of service of the writ, and of such non-appearance as aforesaid, and to the effect that the debt is due and payable and still subsisting and unsatisfied, enter final judgment for any sum not exceeding the sum endorsed on the writ, together with interest of the rate specified (if any), or if no rate be specified, at the rate of 6 per centum per annum, to the date of the judgment and costs.

Such affidavit in proof of debt shall in all cases be filed before entry of judgment even though the defendant admits the debts, or consents to such judgment.”

It is common ground that in law a claim for interest under the Law Reform (Miscellaneous Provisions) Act need not be pleaded, and that in this matter the claim for interest should be pleaded. The parties differ in that the plaintiff's position is that it is sufficient that the claim is included in the prayer, the defendant contends not only that it is not, but that it constitutes an irregularity which entitles it to have the judgment set aside ex debito justitiae

Mr. Givans argues that the position in England should not be adopted here as in England there are rules which do not exist in our Civil Procedure Code. The English rule is summarized in Chitty and Jacob's Queen's Bench Forms, Twenty-First Edition at page 14.

It reads as follows:

For debts and liquidated sums, the statement of claim must plead the cause of action, with particulars, the sum claimed and the date when payment became due, and it must further plead the claim for interest under section 35A of the Supreme Court Act 1981 or otherwise stating the rate and the amount of interest claimed from the date when payment became due to the date of the issue of the writ; in addition, it must also claim further interest as aforesaid from the date of the issue of the writ to judgment or sooner payment, expressed at a daily rate (see Practice Note [1983] I W.L.R. 377; (1983) 1 All E.R. 934). If the amount claimed for such interest is at a rate which is not higher than that payable on judgment debts at the date of the writ, it will be treated as a liquidated demand (Ord. 13), r. 1(2). If the claim for interest is under contract, the statement of claim must show the date from which the interest became payable, the rate of interest fixed by the contract and the amount of interest due at the date of the issue of the writ, and will also contain a prayer for further interest at the contract rate from the issue of the writ to judgment or sooner payment, calculated at a daily rate. If the interest is claimed under section 57 of the Bills of Exchange Act 1882 in respect of the dishonour or a cheque or other bill of exchange, the statement of claim should set out the date of dishonour, the rate of interest claimed, a calculation of the interest due at the date of the issue of the writ and a prayer for further interest

at the rate claimed until judgment or sooner payment. If the interest claimed in these or other classes of cases is at a rate higher than that payable on judgment debts at the date of the issue of the writ, it will not be treated as a liquidated demand, so that the Court will order the interest to be assessed.

Form 21 *ibid* sets out a model claim, including interest, for goods sold and delivered. Under the heading "particulars" after setting out the facts alleged regarding the sale of the goods it gives the following example of a claim for interest.

"Goods Sold and Delivered (or Bargained and Sold)"

The plaintiff's claim is for \$ being the price (or the balance of the price) of goods sold and delivered (or bargained and sold) by the plaintiff to the defendant.

Particulars

January 10th to
September 24th

To goods sold and delivered
(or bargained and sold)
between these dates (full
particulars of which have
been delivered and exceed
3 folios)

19
July 25th

Paid on Account -----

Balance due -----

And the plaintiff further claims interest on the said sum of \$ _____ pursuant to section 35A of the Supreme Court Act 1981 at the rate of (_____) per cent, per annum (or the rate payable on judgement debts current at the date of the issue of this writ) from the day of _____ 19 _____ until the date hereof amounting to _____

Total due _____

And the plaintiff further claims interest as aforesaid from the date of the issue of the writ until judgment or sooner payment at the rate of \$ _____ per day.”

In deciding this issue it is necessary to consider the purpose of pleadings. These are to define clearly and precisely the issues which separate the parties; to give each side notice of the issues he has to meet, and to inform the court of the issue it has to decide. In The Why Not (1868) LR 2 AL + E 265 at 266, Phillimore J said that:

["Pleadings"] are not to be considered as constituting a game of skill between the advocates. They ought to be so formed as not only to assist the party on the statement of his case, but also the court in its investigation of the truth between the litigants.”

The rationale of the requirement that interest under Section 70 of the Civil Procedure Code (Supra) must be pleaded is very important. Jacob and Goldrein op. cit. page 99-100 explain it thus:

Rationale The requirement of the rules that any claim for interest must be specifically pleaded reflects the fundamental principle that the

pleading should give fair notice to the opposite party of the nature and extent of the claim which is being made against him, and to the relevant facts relied upon so as to enable that party to meet such claim and to prevent surprise at the trial. Thus, if the defendant has due notice of the plaintiff's intention specifically expressed in his pleading to seek an award of interest he will know the nature and extent of the plaintiff's claim and he can better calculate what sum (if any) he should pay into court in satisfaction of the claim, or what sum he can fairly offer to settle the claim or even whether in all the circumstances he should allow the plaintiff to enter judgment in default of pleading.

Pleading interest and the payment-in If no interest has been pleaded, the defendant need not include an element of interest in any payment into court that he may make in satisfaction of the claim.

But the issue remains, how should this be pleaded. In McDonald's Hamburgers Ltd v Burgerking (OK) Ltd [1987] F.S.R. 112, it was held that it is sufficient if the claim to interest under Section 35A of the Supreme Court Act 1981 was only made in the prayer and not also in the body of the pleading, but all other claims for interest must appear both in the body of the pleading and the prayer Section 35A (Supra) replaces the Law Reform Miscellaneous Provisions Act Section 3 and like its predecessor enables the Supreme Court and the County Court to order interest at their discretion in a large number of cases.

Jacob and Goldrein op. cit. make the following statement at page 100 footnote 69.

“ In this context it may be worth remarking that the prayer in the statements of claim is ordinarily treated and regarded as being an adjunct or supplement to that pleading in the sense that it is a summary of the relief or remedy claimed on the basis of the material facts relied on in support of the claim. This explains why a separate rule is provided precisely to require that the relief or remedy must be specifically stated in the statement of claim; see R.S.C. Ord. 18. R 15 (1). On the other hand, the claim to the entitlement of interest whether under statute or otherwise, is a material fact which like other material facts is required to be pleaded and this explains why a separate rule is provided that the claim for interest must be specifically pleaded (see R.S.C.Ord. 18. r 8 (4)).”

The learned authors continue thus:

“Pleading the grounds for the claim to interest

....If the claim for interest is under a contract, express or implied or under mercantile usage, the contractual term relied upon or otherwise the relevant facts and matters relied upon for entitlement to interest must be sufficiently pleaded, as should the rate at which and the period for which interest is being claimed.

.....If the plaintiff claims to be entitled to interest on the judgement debt which he may obtain at a higher rate than payable for the time being on judgement debts he must specifically plead the contracted term relied upon to support such claim.”

In Long Ying v Forbes Manufacturing (1986) 40 W.I.R. 229 at 235C,
Carey J.A. seems to make the same distinction. He says:

.... a claim for an award of interest under the Law
Reform (Miscellaneous Provisions) Act 1955
need not be pleaded. Nevertheless where a claim
for liquidated damages is being made, and it is
intended to claim interest under the Act, it is
desirable that such a claim should be included
in the prayer. (emphasis mine)

It is of interest to note that if a plaintiff does not include a prayer in his
statement of claim and so omits to ask for any relief or remedy claimed in the writ,
will be deemed to have abandoned that claim. Lewis & Lewis v Dernford (1907)
24 T.L.R. 64.

Nothing in the judgements in Long Ying v Forbes Manufacturing (Supra),
supports the contention of Mr. Givans. Further as Jacob and Goldrein op. cit. point
out at page 71.

“It is not enough; ..for the statement of claim merely
to state the material facts and to claim specific
relief or remedy; there must be an inner connection,
a legal nexus between the facts relied on and the
relief or remedy claimed.”

I hold that the statement of claim should have in its body the claim for
interest, giving details of the basis for the rate claimed. In the absence of this the
plaintiff is guilty of a procedural irregularity and judgment ought not to have been

entered for interest. Hence I agree that the judgment was entered for too much and ought to be set aside, as the effect of this error is that there is no pleading to interest.

The judgment and the execution thereupon is hereby set aside. The sum levied is ordered to be repaid to the defendant. Costs of this application and costs thrown away to the defendant applicant to be taxed if not agreed.