

IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS

BETWEEN

THE ATTORNEY GENERAL
OF THE TURKS AND CAICOS ISLANDS

Plaintiff

-AND-

URBAN DEVELOPMENT LIMITED

Defendant

BEFORE THE CHIEF JUSTICE THE HON. M RAMSAY-HALE
Mr. Patrick Patterson for the Attorney General
Mr. Martin Green for the Defendant
Heard on the 25 January 2016

JUDGMENT

1. On the 18 January 2016, the Court entered judgment for the Crown in an action to recover the 50% Belonger discount which had been to the transfer of Freehold title to land at Northwest Point, Providenciales and which fell to be repaid under the terms of the transfer when the company ceased to be Belonger owned and controlled. The Attorney General now seeks an award of pre-judgment interest from the date of the transfer of the Land at the statutory rate of 6%. The Defendant resists the application on the ground that there was unreasonable delay in prosecuting the claim and says further and in any event, that the statutory rate of interest under the Ordinance is not the appropriate rate for an award of interest in commercial cases.
2. In *B.P. Exploration Co (Libya) Ltd v Hunt* (No 2) [1979] 1 WLR 783, Robert Goff J stated that the “fundamental principle is that interest is not awarded as a punishment, but simply because the plaintiff has been deprived of the use of the money which was due to him” at p 845G.
3. He also observed that,
“interest will generally run from the date of accrual of the cause of action in respect of money then due or loss which then accrues; and in respect of loss which accrues at a date between accrual of the cause of action and judgment, from such date” at p 846C before noting that,
“the power to award interest is discretionary, and there is certainly no rule that interest will invariably run from the date of loss. It is no part of my task to attempt to define the circumstances in which the court will depart from the fundamental principle; indeed, since the discretion to award interest is unfettered, it would be improper to do so” at p 846E

4. He identified three groups of cases where the court could depart from the fundamental principle that interest is awarded from the date of loss to the date of judgment as those where the defendant had no knowledge of the plaintiff's claim in which case interest may run from date of claim, those where the plaintiff had unreasonably delayed in prosecuting the claim which may have lulled a defendant into a false sense of security and those where it would be unjust in all the circumstances to do so.
5. In **Birkett v Hayes** [1982] 1 WLR 816, to which Mr. Green referred the Court, Watkins LJ said at page 825E:

"Far too often there is unjustifiable delay in bringing an action to trial. It is, in my view, wrong that interest should run during a time which can properly be called unjustifiable delay after the date of the writ. During that time the plaintiff will have been kept out of the sum awarded to him by his own fault. The fact that the defendants have had the use of the sum during that time is no good reason for excusing that fault and allowing interest to run during that time."

6. In similar vein, Colman J observed in the *Athenian Harmony (No 2)* [1998] 2 Lloyd's Rep 425, at 427,

"In cases where delay and the degree of fault are so substantial that the predominant cause of the plaintiff being out of his money can be seen to be his own failure to prosecute the claim, rather than the defendant's maintenance of his defence, it is not difficult to see that the policy should be that a successful plaintiff should not be compensated for the loss of use of the money. However, in order for it to be said that the plaintiff's fault has displaced the defendant's fault as the predominant cause of the plaintiff being kept out of his money, the delay in question would have to be very substantial and not merely relatively short periods of weeks or months during which in commercial litigation lulls in activity inevitably occur and the plaintiff's fault would have to be very substantial, as where an action has inexcusably been allowed to go to sleep for years."

7. It appears to me that given the Attorney's delay in prosecuting this matter that the predominant cause of the Crown being kept out of its money was the very substantial delay in prosecuting its claim.
8. It would have been clear to the Defendant on receipt of the letter before action that the Crown intended to pursue the claim against it but until then, the Defendant might properly have believed that no claim would be commenced against it. There was a subsequent and unexplained delay in prosecuting the claim which I view as unreasonable.
9. In light of the principles above, I award interest from the date of the letter before action to judgment, the interest due between the date of the letter before action and the date the claim was commenced to be reduced by one half on account of the delay.

Rate of Interest

10. The Crown seeks interest at the statutory rate of 6%. In **Claymore Services Limited v Nautilus Properties Limited** [2007] EWHC 805 (TCC) on which Mr. Patterson for the Attorney General

relied, Jackson J held that it would not be appropriate to use the statutory rate in commercial cases. Rather the Court should award at the rate at which the Plaintiff could have borrowed money during the relevant period.

11. There is no evidence before the Court as to the base lending rate in the Turks and Caicos Islands during that period or at what percentage rate over the base lending rate TCIG or a large commercial borrower would have been able to borrow money and I would ask Counsel to make submissions on the appropriate rates to be applied.

DATED 28 JANUARY 2016

RAMSAY-HALE CJ