

The Royal Court Civil Rules (Amendment)

Order, 2008

THE ROYAL COURT, in exercise of the powers conferred upon it by Article 64 of the Reform (Guernsey) Law, 1948^a and section 12 of the Royal Court (Miscellaneous Reform Provisions) Law, 1950^b, hereby orders:-

Interim payments.

1. There are inserted, immediately after Rule 62 of the Royal Court Civil Rules, 2007^c, the following additional Rules -

“Power to order interim payments.

62A. (1) The Court may, at any time after inscription of a cause on the Rôle des Causes à Plaider, on the application of a plaintiff, order the payment (“interim payment”) by a defendant on account of any damages, debt or other sum (except costs) which the defendant may be held liable to pay to or for the benefit of the plaintiff if a final judgment or order of the Court in the proceedings is given or made in favour of the plaintiff; and the plaintiff may make more than one application for an order for an interim payment.

(2) A plaintiff intending to apply for an order for an interim payment shall give notice of his intention to all other parties to the action by service of a signification upon each of them, which signification shall -

^a Ordres en Conseil Vol. XIII, p. 288.

^b Ordres en Conseil Vol. XIV, p. 388.

^c Order of the Royal Court No. IV of 2007.

- (a) be served not less than 4 clear days before the date of the application,
- (b) state the date and time appointed for the hearing of the application,
- (c) be signed by the plaintiff or his Advocate, and
- (d) contain, or have annexed to it, a copy of the application and an affidavit setting out the evidence relied upon in support of the application.

(3) The Court may make an order for an interim payment only if -

- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the plaintiff,
- (b) the plaintiff has obtained judgment against the defendant for damages to be assessed or for a sum of money (other than costs) to be assessed,
- (c) the Court is satisfied that, if the claim went to trial, the plaintiff would obtain

judgment for a substantial amount of money (other than costs) against the defendant against whom the order is sought, whether or not there are other defendants to the claim, or

- (d) in a claim where there are two or more defendants, the Court is satisfied that, if the claim went to trial, the plaintiff would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (even if the Court cannot yet determine which), and the defendants each satisfy at least one of the following conditions -

(i) the defendant is insured in respect of the claim,

(ii) the defendant's liability will be met by an insurer under section 151 of the Road Traffic Act 1988 or by an insurer acting under the Motor Insurers Bureau Agreement or by the Motor Insurers Bureau where it is acting itself, or

(iii) the defendant is a public body.

(4) The Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(5) The Court must take into account -

(a) contributory negligence, and

(b) any relevant set-off or counterclaim.

(6) The fact that a defendant has made an interim payment, whether voluntarily or under an order, shall not be disclosed to the Jurats, or to the trial judge if he is sitting alone, until all questions of liability and the amount of money to be awarded have been decided, unless the defendant agrees.

Adjustment of interim payments.

62B. (1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the Court may make an order to adjust the interim order and, without limitation, may in particular -

(a) order all or part of the interim order to be repaid,

(b) vary or discharge the order for the interim payment,

(c) subject to paragraph (2), order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

(2) The Court may make an order under paragraph (1)(c) only if -

(a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution, indemnity or other remedy, and

(b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the Court could make an order for interim payment under Rule 62A.

(3) The Court may make an order under this Rule without an application by any party if it makes the order when it disposes of the claim or any part of it.

(4) Where -

(a) a defendant has made an interim

payment, and

- (b) the amount of the payment is more than his total liability under the final judgment or order,

the Court may award him interest on the overpaid amount from the date when he made the interim payment.”

Other amendments to 2007 Rules.

2. The Royal Court Civil Rules, 2007 are further amended as follows -

- (a) in Rule 21, the words “disposal of the” are deleted,
- (b) in Rule 39(2), for “paragraph (2)” substitute “paragraph (1)”,
- (c) in Rule 52, paragraph “(7)” is renumbered “(6)”, and
- (d) in Rule 88(d)(iii), the words “shall be made” are deleted.

Interpretation.

3. (1) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of this Order.

(2) Any reference in this Order to an enactment is a reference

^d Ordres en Conseil Vol. XIII, p. 355.

thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

4. This Order may be cited as the Royal Court Civil Rules (Amendment) Order, 2008.