

Reasons given for the award of interest under the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 on certain costs orders made by the Court in these proceedings, at the statutory rate of 8% from the date of making the costs orders until payment, despite the amount of costs payable having not been quantified when the orders were made.

[2020]GRC050

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

**IN THE MATTER OF SECTION 5 OF THE PUBLIC TRUSTEE (BAILIWICK OF
GUERNSEY) LAW, 2002**

**AND IN THE MATTER OF SECTION 69 OF THE TRUSTS (GUERNSEY) LAW, 2007
(AS AMENDED) ("Trusts Law")**

**AND IN THE MATTER OF THE INTERIM EXECUTIVES GROUP OF PENSION
SCHEMES**

BETWEEN:

THE PUBLIC TRUSTEE

Applicant

AND

- (1) RED RIVER PROPERTIES LIMITED** (BVI company no. 1486250)
- (2) IXG ALBION LIMITED** (Alderney company no. 1759)
- (3) WARWICKSHIRE HOLDINGS INC.** (Seychelles company no. 012317)
- (4) SHERBORNE CORPORATE SERVICES LIMITED** (Seychelles company no. 012277)
- (5) KENILWORTH CONSULTANTS INC.** (Seychelles company no. 012316)
- (6) ROGER PAUL MEWIS**
- (7) SCS ADMINISTRATION LIMITED** (English company no. 09824780)

Respondents

Judgment handed down: 18th September 2020

Before: Sir Richard Collas, Lieutenant Bailiff

**Counsel for the Applicant: Advocate S H Davies
The Respondents did not appear**

Cases, Texts and Materials referred to in Judgment:

Judgments (Interest) (Bailiwick of Guernsey) Law, 1985

The Royal Court (Costs and Fees) Rules, 2012

Judgments (Interest) Rules, 1996

Hunt v RM Douglas (Roofing) Ltd (1988) 3 All ER

Civil Procedure Rules, Rule 40.8 and Rule 44.2(g)

Introduction

1. In this judgment, I give my reasons for awarding interest under the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 (“the 1985 Law”) on certain costs orders made by the Court in these proceedings at the statutory rate of 8% from the date of making the costs orders until payment, even though the amount of costs payable had not been quantified when the orders were made. I am not aware of any previous decision of the Royal Court awarding interest on a costs order from the date of the order. I therefore consider it appropriate to give reasons for the decision in this reserved judgment.

Background

2. The application relates to 5 separate costs orders:

On 17 August 2018 the Court ordered that the Applicant’s costs of an application to serve proceedings on the Respondent out of the jurisdiction are payable by the Respondent on the standard recoverable basis.

On 9 January 2019 the Court ordered that the Applicant’s costs of an application to admit expert evidence are payable by the Third to Seventh Respondents on the recoverable basis.

Also on 9 January 2019, the Court ordered that the Applicant’s costs of an application for disclosure of documents and information dated 24 December 2018 are payable by the Third, Fourth and Sixth Respondents jointly and severally on the indemnity basis. On 23 January 2019, the Court ordered that the Applicant’s costs of an application for declaratory and other relief in relation to a property situated in Kidderminster, England are payable by the Third, Fourth, Fifth and Sixth Respondents, jointly and severally on the indemnity basis.

The Court has also ordered that the costs of the Applicant from 23 January to date are to be paid by the Third, Fourth, Fifth and Sixth Respondents, subject to those Respondents having the right to apply within one month to vary the sum order to be paid.

3. With the exception of the most recent costs, bills of costs had been prepared by the Applicant’s Advocates with the assistance of specialist costs draftsmen and served upon the Respondents. In doing so, the Respondent had been advised of the provisions of Rule 5 of The Royal Court (Costs and Fees) Rules, 2012 which states:

“5. (1) Where in any proceedings the Court awards costs against any party, that party may, within a period of one month immediately following the date when he or his Advocate receives the opposing party’s bill of costs, submit a written request –

(a) to the judge who presided over the proceedings (“the presiding judge”); or

*(b) if the presiding judge is unavailable, to the Bailiff;
for the costs to be taxed.”*

4. None of the Respondents made application to have any of the bills of costs taxed within the requisite period of time.
5. The Application before me (“the Application”) sought costs in specified amounts of £20,156.40, £11,462.79, £29,021.20 and £188,217.82 in respect of the first four of the costs orders listed above. The Applicant had served the Application on the Respondents at the address for service previously ordered by the Court to be their address for service. The address is an email address and Advocate Davies advised the Court that the email had been read by the recipient.
6. There had also been a communication indicating that the Respondents were aware of the Application.
7. The matter came before the Court on 9 September 2019. I made orders that costs be paid in the sums requested, on the ground that the Respondents had not exercised their right under Rule 5 of the 2012 Rules to have the costs taxed. It was not my role to seek to tax the costs in the absence of any request to do so.
8. On 9 September 2019, Advocate Davies also sought to recover judgment interest at the rate of 8% on the amount of costs ordered to be paid from the date of each costs order. I reserved judgment and invited further written submissions from him.
9. I am grateful to Advocate Davies for his further submissions. On 13 September 2019, I made orders as requested and reserved my reasons. These are the reasons. Judgment interest is payable under the provisions of the 1985 Law. Section 2 states that *“every judgment debt of the Court should carry interest at the rate of 8% per annum or such other rate as the Royal Court of Guernsey may from time to time by Rules of Court prescribe from the date of the judgment until the same shall be satisfied; and such interests may be recovered by the judgment creditor as part of such judgment.”* The rate of 8% was inserted following an amendment under the Judgments (Interest) Rules, 1996, Rule 1.
10. Judgment debt is defined in section 4 (1) of the 1985 Law as: *“in relation to section 2 of this Law, [Judgment Debt] means all Acts of Court and orders of the Court made after the coming into force of this Law whereby any sum of money, or any costs, charges, or expenses shall be payable to any person; and any judgment debt shall have the effect of a judgment of the Court, and the person to whom any judgment debt shall be payable, shall be deemed to be a judgment creditor.”* The 1985 Law repealed and replaced the Judgments (Interest) Ordinance, 1978 and replicated the definition of Judgment Debt that appeared in that Ordinance. The difference between the two enactments is that the 1985 Law incorporated provisions giving the Court a discretion to order costs on a judgment debt during the period from the accrual of the cause of action to judgment.
11. I agree with Advocate Davies’ submission that the definition of judgment debt is unambiguous; it includes costs.
12. Whilst it might be considered harsh by the payer of a costs order that interest should run prior to the amount payable being quantified, it is understandable that the legislature might have agreed that costs are to be considered as part of the judgment debt. The justice of the matter was considered by Lord Ackner in Hunt v RM Douglas (Roofing) Ltd (1988) 3 All ER confirming that where an order for costs is made by the High Court, interest on the costs runs from the date on which the order is made (the *incipitur* date) and not the date on which the costs are subsequently assessed or agreed (the *allocatur* date). At pages 832-833 he said:

“Accordingly the incipitur rule prevails. I respectfully agree with the observations of the Court of Appeal that a satisfactory result cannot be achieved in every case, but in my judgment the balance of justice favours the incipitur rule for the following reasons.

- 1. It is the unsuccessful party to the litigation who, ex hypothesi, has caused the costs unnecessarily to be incurred. Hence the order made against him. Since interest is not awarded on costs incurred and paid by the successful party before judgment, why should he suffer the added loss of interest on costs incurred and paid after judgment but before the taxing master gives his certificate?*
 - 2. Since, as the Court of Appeal rightly said in the Erven Warnink case [1982] 3 All E.R. 312 payments of costs are likely nowadays to be made to lawyers prior to taxation, then the application of the allocator rule would generally speaking do greater injustice than the operation of the incipitur rule. Moreover, the incipitur rule provides a further necessary stimulus for payments to be made on account of costs and disbursements prior to taxation, for costs to be more readily agreed, and for taxation, when necessary, to be expedited, all of which are desirable developments. Barristers, solicitors and expert witnesses should not be expected to finance their clients’ litigation until it is completed and the taxing master’s certificate obtained. If interest is not payable on costs between judgment and the completion of taxation, then there is an incentive to delay payment, delay disbursements and taxation.*
 - 3. It is common ground between the parties that the unsatisfactory situation illustrated in K. v. K. can be simply dealt with by an express agreement between the solicitor and his client that any interest recovered on costs and disbursements after judgment is pronounced but before the taxing master’s certificate is obtained, which costs and disbursements have not in fact been paid prior to taxation shall as to the interest on the costs belong to the solicitor, and as to the interest on disbursements be held by him for and on behalf of the person or persons to whom the disbursements are ultimately paid.”*
13. The costs regime in England and Wales is different and more complex than in Guernsey. Specifically, a Court in England and Wales has a discretion to order interest from a date other than the date on which judgment is given (Rule 40.8 of the Civil Procedure Rules) and from a date before judgment (Rule 44.2(g)). The power to make rules of court that prescribe the period of time when interest shall run is given by section 17 of the Judgments Act 1838.
14. That is not so in this jurisdiction where the Court has no discretion. Interest is payable as of right under the terms of the 1985 Law cited above. The Royal Court may prescribe the rate of interest by Rules of Court but it may not alter the period of time when interest is payable. Any alteration to the legal position, such as an amendment to give the Court a discretion as to the period of time when interest shall run would require primary legislation.
15. As for the quantum of interest, there is normally no need to apply to the Court for an order verifying the amount. The unusual circumstances of the present case are such that Advocate Davies considered it appropriate to apply to the Court for an order in the specified amounts to assist in enforcement of the judgment in another jurisdiction.