

IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

**CCJ Application No. BZCV2017/001
BZ Civil Appeal No. 4 of 2015**

BETWEEN

THE ATTORNEY GENERAL OF BELIZE

APPLICANT

AND

THE BELIZE BANK LIMITED

RESPONDENT

**Before The Right Honourable
and the Honourables**

**Sir Dennis Byron, President
Mr. Justice Saunders
Mr. Justice Wit
Mr. Justice Hayton
Mme. Justice Rajnauth-Lee**

Appearances

Dr. Ben Juratowitch, QC, Mr. Nigel Hawke and Ms. Agassi Finnegan for the Applicant

Mr. Eamon H. Courtenay, SC and Ms. Angeline Welsh for the Respondent

JUDGMENT

Of

**The Right Honourable Sir Dennis Byron, President
and Justices Saunders, Wit, Hayton and Rajnauth-Lee**

Delivered by

The Honourable Mr. Justice Adrian Saunders

on the 21st day of March 2018

Introduction

- [1] On 22 November 2017, this Court ordered that the Belize Bank Limited (“BBL” or “the Bank”) was “at liberty to enforce ... in the same manner as a judgment or order of the Supreme Court of Belize to the same effect” a London Court of International Arbitration Award dated the 15th day of January, 2013 made against the Government of Belize. The sum awarded was “in the amount of BZ\$36,895,509.46 (as at the 7th day of September, 2012) plus interest at 17% compounded on a monthly basis from the 8th day of September, 2012 until the date of payment and costs of £536,817.71.”
- [2] By letter dated 15 December 2017, the Bank requested the Registrar of this Court to issue a Certificate in keeping with section 25 of the Crown Proceedings Act. That section entitles “the proper officer of the court” to issue to a party in BBL’s position a certificate containing the particulars of the court’s order.
- [3] The Registrar issued a Certificate on 3 January 2018, certifying that:
- “the amount payable to the Belize Bank Limited by the Attorney General of Belize under the Order is \$91,596,013.22 as at the 15th day of December, 2017 with interest continuing to accrue at 17% compounded monthly until the date of payment and costs of £536,817.71...”
- [4] Whether rightly or inadvertently procured, the issuance of that Certificate has, in effect been treated as the judgment on the Award. It is also to be observed that the words used in the Certificate, so far as interest is concerned, are identical to those used in the Award.
- [5] On 23 January 2018, the Attorney General applied for an order for the Court to declare that the applicable rate of post-judgment (i.e. post-Certificate) interest on the amount payable under the Award is the statutory rate of 6% and not the 17% interest compounded monthly provided for under the Award. The Attorney General accordingly sought an order to correct the Certificate to provide instead for post-judgment interest to run at the statutory rate of 6%.
- [6] The Attorney General’s application was heard on 14 March 2018, simultaneously with other applications made in these proceedings. As we are now in a position to give our decision in respect of it, we have decided to do so right away and in due course we shall give our decision on the other applications.

- [7] In support of the application, counsel for the Attorney General argued that the statutory rate of post-judgment interest, which is provided for by section 167 of the Supreme Court of Judicature Act¹, was expressly applicable having regard to section 24(1) of the Crown Proceedings Act².
- [8] The Bank took the position that our Order of 22 November 2017 was final and has been sealed. As such, said counsel, it ought not to be disturbed. Further, the Solicitor General, acting on behalf of the Attorney General, had approved the draft Order and Certificate before they were finalized and so the Attorney General could not now complain of an error. It was argued that the ‘slip rule’ (embodied in Rule 15.2 of this Court’s procedural rules) must be interpreted narrowly and did not permit a substantive change to the relief ordered by the Court, as is being sought by the Attorney General. BBL also referred to the power of the arbitrators to award interest “until the date of payment”. On these bases, the Bank asserted that the post-judgment rate of interest at 17% compounded monthly was properly ordered.
- [9] The outcome of this dispute turns on interpretation of sections 166 and 167 of the Supreme Court of Judicature Act, on the Court’s intention when it issued the section 25 Certificate and on the general rules applicable to arbitral Awards in this regard. The two sections state:

“**166.** In any proceedings tried in the Court for recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment.

Provided that nothing in this section shall,

- (a) authorize the giving of interest upon interest; or
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise...

¹ CAP 91.

² CAP 167.

167. Every judgment debt shall carry interest at the rate of six per centum per annum from the time of entering up the judgment until the same is satisfied, and such interest may be levied under a writ of execution on such judgment.”

- [10] Section 166 is plainly inapplicable to the present dispute. That section references “proceedings tried in the court” and, subject to proviso (b), governs awards of interest only up until such time as and when a court issues a judgment. If the Registrar’s Certificate is regarded as having the effect of converting the Award to a judgment, then, subject to what is stated below, it is section 167 that should properly govern post judgment interest. That section makes it clear that the post judgment (i.e. post Certificate) interest should be at 6%.
- [11] When we made our 22 November 2017 order, it was appropriate for us to repeat the terms of the Award in respect of which we were granting leave to enforce. Since, however, the issuance of the Registrar’s Certificate was, in effect the judgment on the Award, the automatic repetition of those terms in the Certificate was inadvertent. At the point of its issuance there was no argument before us on the matter of post judgment interest and it would naturally be unfair to the Government of Belize that post-judgment interest should be imposed at almost triple the statutory rate in circumstances where this was not sought by BBL and the Attorney General had no meaningful opportunity in court to make any submissions in this regard. The post judgment interest figure in the Certificate was an unfortunate replication of the terms of the Award.
- [12] The true position on post judgment interest on arbitral awards that have been made judgments is that once judgment is entered on the award, judgment rate interest will start to accrue.³ If an arbitral award is enforced in a country as a court judgment, interest accrues “at the domestic rate applicable to civil judgments in that country, instead of at the rate set forth in the original award.”⁴

³ Andrew Lafferty and Kit Jarvis, *Commercial Enforcement* (2nd edn, Tottel Publishing 2008) at [7.97] at fn 1. See also *Gater Assets Ltd v Nak Naftogaz Ukrainiy* [2008] EWHC 1108.

⁴ Reisberg and Pauley, ‘An Arbitrator’s Authority to Award Interest on an Award until “Date of Payment”’: Problems and Limitations’ [2013] Int.A.L.R. 25, 28 citing John Yukio Gotanda (ed), *Supplemental Damages in Private International Law* (Kluwer Law International 1998) at §3.4. See also *Carte Blanche (Singapore) Pte., Ltd. v Carte Blanche Intern., Ltd.* 888 F.2d 260, 269 (2d Cir. 1989).

- [13] There is, however, a narrow and strictly interpreted exception to this general rule in cases where the parties have specifically agreed upon and expressly stated the post-judgment interest rate payable on any judgment.⁵ This is to be resolved by reference to the contract, and the arbitral award. The post judgment interest rate, if it is to be different from the statutory post judgment rate, must be based on specific agreement or be specified in the award.
- [14] No one contends that this is the position here. It is clear that the Award did not provide in clear and unambiguous terms for post-judgment interest. Neither did the underlying Loan Note. Thus, once the Certificate was issued in this case the judgment debt rate under section 167 applies, the contractual debt for principal and interest having merged in the judgment debt.⁶ In all the circumstances, we therefore reiterate that the applicable post-judgment interest is the statutory rate of 6% simple interest from the date of the Certificate.

Order

- [15] The application is granted. The issue of costs is reserved.

/s/ CMD Byron

The Rt. Hon. Sir Dennis Byron, President

/s/ A. Saunders

The Hon. Mr. Justice A. Saunders

/s/ J. Wit

The Hon. Mr. Justice J. Wit

/s/ D. Hayton

The Hon. Mr. Justice D. Hayton

/s/ M. Rajnauth-Lee

The Hon. Mme. Justice M. Rajnauth-Lee

⁵ Reisberg and Pauley (n 4), 29.

⁶ See *Economic Life Assurance Society v Osborne* [1902] AC 147 at 149-150 (per Earl of Halsbury LC) endorsing *Re Sneyd ex p Fewings* (1883) 25 Ch D 338, 355 (per Fry LJ), reflected in proviso (b) to s 166 of the Supreme Court of Judicature Act.