

IN THE CARIBBEAN COURT OF JUSTICE

Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

**CCJ Appeal No. BZCV2015/001
BZ Civil Appeal No. 29 of 2012**

BETWEEN

SPEEDNET COMMUNICATIONS LIMITED

APPELLANT

AND

PUBLIC UTILITIES COMMISSION

RESPONDENT

Before The Honourables

Mr Justice A Saunders

Mr Justice J Wit

Mr Justice D Hayton

Mr Justice W Anderson

Mme Justice M Rajnauth-Lee

On Written Submissions

Mr. Eamon H. Courtenay, SC for the Appellant

Mr. Fred Lumor, SC for the Respondent

SUPPLEMENTARY JUDGMENT ON INTEREST

of

The Honourable Justices Saunders, Wit, Hayton, Anderson and Rajnauth-Lee

Delivered

on the 1st day of February, 2017

- [1] On 9th December 2016, this Court delivered judgment in a dispute between the Public Utilities Commission (“the PUC”) and Speednet Communications Limited (“Speednet”). The PUC was ordered to refund Speednet overpaid licence fees in

the sum of \$792,000 less \$1,400 being the correct licence fee. Speednet was also awarded costs, in this Court and the court below, to be taxed if not sooner agreed.¹ Although the overpaid sums had been lodged with the PUC since 2011, no Order was made awarding Speednet interest for the period the monies were in the PUC's possession.

Speednet's Post-Judgment Application and the Response to it

[2] On 6th January 2017 Speednet filed a Notice of Application seeking, primarily, the variation of paragraph [48] of the judgment in the following terms:

“That the Respondent refunds to the Appellant the sum of \$778,200.00 together with \$267,612.41 being interest thereon from the 6 May 2011 to 6 January 2017 at the rate of 6 percent per annum.”

[3] The Application was made ‘pursuant to Part 9(1) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2015 and the inherent jurisdiction of the Court’. It was based on the following grounds, namely, that:

1. section 166 of the Supreme Court of Judicature (“SCJ”) Act empowers the Court to award interest;
2. the PUC had always been ‘on notice’ that Speednet was demanding the return of its money;
3. a rate of interest of 6% per annum from 6th May 2011 (when the monies were originally paid over to the PUC) until 9th December 2016 (the date of the judgment) is appropriate in the circumstances; and
4. that Speednet should also be awarded post-judgment interest at the rate of 6% on the principal amount refundable to it in keeping with section 167 of the SCJ Act.

[4] The Application was supported by an Affidavit of Speednet's Chief Executive Officer, Mr Ernesto Torres. Mr Torres indicated that it was through inadvertence that no specific claim for interest was included in Speednet's Statement of Claim. He alluded to the circumstances that the PUC never had any legal right to the sum in question and was at liberty to remove the ambiguity in the Regulations that gave

¹ *Speednet Communications Limited v Public Utilities Commission* [2016] CCJ 23 (AJ) [48] – [49].

rise to the overpayment by having the relevant statutory provision suitably amended.

- [5] For its part, the PUC, through its Charmain, Mr John Avery, challenged the relief claimed in the Application on the basis that Speednet had never made a claim for interest in the proceedings. At paragraph 9 of his Affidavit Mr Avery stated that:

“The Applicant did not include in the Fixed Date Claim Form any relief in the form of interest. The Applicant also did not seek in the Court of Appeal, in the Notice of Appeal, interest on the principal. In the application for permission to appeal to this Court, no relief in the form of interest from 6th May, 2011 was sought. Further, in the Notice of Appeal filed in this Court, no interest from 6th May, 2011 was claimed.”

Pre-Judgment Interest

- [6] Rule 9.1(1) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2015 (“the AJR”) provides as follows:

“9.1 (1) An application to the Court for an interlocutory order shall be made by a notice in writing which contains a statement of the order sought and the grounds relied upon and conforms with Form 1 in Schedule 3.”

- [7] It is doubtful that Rule 9.1(1) of the AJR, or Part 9 as a whole for that matter, can be invoked in aid of applications such as this one where a final judgment has been given on the merits after a hearing. We prefer to rest our dismissal of this Application on more substantive grounds, however, and so we say no more on this point.

- [8] Section 166 of the Supreme Court of Judicature Act² does indeed authorise the Court, in proceedings for the recovery of any debt or damages, to include in any judgment 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 the judgment.” The Court’s discretion must, however, be exercised in keeping with the Supreme Court (Civil Procedure) Rules

² CAP 91.

2005 where there are specific provisions governing the making of a claim for interest.

[9] Rule 8.6(3) of the Supreme Court (Civil Procedure) Rules 2005 stipulates that:

“(3) A claimant who is seeking interest must –

(a) say so expressly in the claim form; and

(b) include details of –

(i) the basis of entitlement;

(ii) the rate;

(iii) the period for which it is claimed; and

(iv) where the claim is for a specified sum of money,

(aa) the total amount of interest claimed to the date of the claim; and

(bb) the daily rate at which interest will accrue after the date of the claim,

in the claim form or statement of claim.”

[10] While it is true that Speednet has been kept out of its monies for some time, it must also be borne in mind that one of the purposes of this rule is to promote fairness in the litigation process, a cardinal goal of the Civil Procedure Rules. It is only fair that a party against whom interest is claimed should have an opportunity to understand fully the claim made so that it can appropriately contest or otherwise address it.

[11] Quite apart from this obvious natural justice point, it is an elementary principle of law that there must be an end to litigation; that after judgment is given at a contested trial on the merits, the parties should not ordinarily be permitted to re-open the proceedings to seek relief which could and should have been sought earlier. For these two reasons the Application by Speednet is doomed to failure.

Post-Judgment Interest

[12] As conceded by Mr Avery, the position in relation to post-judgment interest is different. Section 167 of the Supreme Court of Judicature Act³ states that every judgment debt shall carry interest at the rate of six *per centum per annum* from the

³ CAP 91.

time of entering up the judgment. As a matter of practice, it is this Court that itself “enters up” its judgments and, invariably, this is done immediately after the judgment is delivered. The result is that the judgment delivered earlier automatically carries interest at the rate of 6% from 9th December 2016.

Disposition

[13] In the circumstances, and for the reasons advanced above, the Application is denied. The Court makes no Order as to costs.

/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/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee