

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2004/0109

BETWEEN:

BRADFORD NOEL

Claimant/
Judgment Debtor

and

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED

Defendant/
Judgment Creditor

Appearances:

Ms. C. Joseph for the Claimant/Judgment Debtor
Mr. R. Williams for the Defendant/Judgment Creditor

2010: October 18

DECISION

- [1] **HENRY, J.:** On 23rd October, 2007 judgment was granted to the Defendant/Judgment Creditor (hereinafter 'The Bank') dismissing the claim. Prescribed cost was awarded. The cost amounts to US\$85,500.00. No provision was made in the judgment for the payment of interest. During the proceedings for enforcement of the judgment, the Bank asserted that it is entitled to interest on this sum at the rate of 6% per annum from entry of judgment until payment of same.
- [2] The Claimant/Judgment Debtor's (hereinafter 'Mr. Noel') position is that in this jurisdiction, there is no law allowing for the payment of interest on cost. Neither is

there an established practice of payment of interest on cost. He asserts that the Bank's reliance on section 17 of the UK Judgments Act 1838 is wholly incorrect, since that Act has no applicability in this jurisdiction.

- [3] The narrow issue before the court is whether, in this jurisdiction, there is provision for the payment of interest on cost.
- [4] The Court will not here address whether a Court can order interest on a debt or damages for the period after judgment. That issue is not before this court since no damages were awarded herein, only costs.
- [5] The Bank relies on section 17 and 18 of the UK Judgments Act 1838. Those sections provide:

Section 17:

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

Section 18 provides in part:

“ ... all decrees and orders of courts of equity, and all rules of common law ... whereby any sum of money, or any costs, charges or expenses, shall be payable to any person, shall have the effect of judgments in the superior courts of common law, and the persons to whom any such monies, or costs, charges or expenses, shall be payable, shall be deemed judgment creditors within the meaning of this Act. ...”

- [6] The courts have held that it is section 18 which elevates orders for the payment of costs to the status of a judgment debt giving rise to the payment of interest thereon under section 17. (See **Thomas v Bunn** [1991] 1 A.C. 362).

- [7] Therefore, it cannot be contested that if the provisions of sections 17 and 18 are applicable to Grenada, then interest is payable on costs from the date of entry of judgment until payment.
- [8] The Bank asserts that the UK Judgments Act was in force in Grenada before Grenada's independence or before the Constitution of Grenada came into force; that the transitional provisions of the Constitution preserves existing laws as from the commencement of the Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution; that the only change to the Judgments Act 1838 prior to the Constitution coming into force was in relation to the rate of interest; that the rate of interest as it stood in 1974 was 7.5%, but the Bank is claiming only 6%.
- [9] The Bank further submits that the UK Judgments Act was applicable to Grenada prior to the enactment in 1971 of section 27 of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336. This section of the Act, the Bank argues, is concerned with giving the Court power to award interest on debts and damages unpaid between the date when the cause of action arose and the date of judgment. Therefore the Bank asserts that Cap. 336 did not oust the 1838 Judgments Act. Furthermore, the Bank continues, there are numerous cases evidencing the practice in Grenada of awarding interest on cost. The Bank refers the Court to the case of **Roman Catholic Bishop of Grenada and Randolph Cape**, Civil Appeal No. 8 of 2002, where he asserts the Court of Appeal awarded judgment for unpaid sums with interest at the rate of 6% from the date of filing of the writ to judgment, and thereafter at the statutory judgment rate of 5% per annum to the date of payment.
- [10] Mr. Noel disputes the Bank's submission that the UK Judgments Act 1838 applied to Grenada before Cap. 336 came into force. He submits that Grenada, being a conquered colony, reception of British law took place by the conqueror imposing his law, usually by Royal Proclamation, and the date on which the conqueror imposed his law was the date of reception. Further, that on October 7, 1763, the

British by Royal Proclamation declared British law in force in Grenada. Therefore, 1763 was the date of reception of British Law in Grenada. Further, that after the date of reception and prior to March 3, 1967 when Grenada became an Associated State of the UK, British statute law could only have been received in one of three ways:

- (i) By the UK Parliament expressly extending the application of a particular law or part of a particular law to all or some named colonies;
- (ii) By the local legislature incorporating the English statute by reference in legislation passed by the assembly;
- (iii) By a particular English statute being simply repeated wholesale and enacted by the local legislative assembly.

[11] The submission concludes that the UK Judgments Act, having been enacted in 1838 after the date of reception, and having not been received thereafter by any of the three methods above, that Act was never applicable to Grenada. That in 1971 when Cap. 336 was enacted, the legislature, by section 11, incorporated by reference the law and practice in England relating to probate, divorce and matrimonial causes. Section 27 of the Act made provision for the payment of interest on debts and damages from the date the cause of action arose until entry of judgment, but did not address the payment of interest on cost or interest after entry of judgment. Mr. Noel urges the Court to find that there is no statutory authority in Grenada for the payment of interest on cost; that the common law as existed prior to the enactment of 1838 UK Act still applies in Grenada, that is, that there is no interest payable on cost.

[12] Grenada, unlike many of the Caribbean jurisdictions, has no Judgments Act. The Royal Proclamation of October 7, 1763 declared British law in force in Grenada. A subsequent Proclamation dated 19th December, 1764 makes reference to the earlier one, explained that the earlier Proclamation had not only declared the law of Great Britain to be in force but had given express Power and Direction to

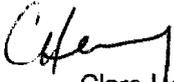
the Governors of the Colonies to summon and call General Assemblies within the said Governments, respectively ... “to make, constitute, and ordain Laws, Statutes and Ordinances, for the public Peace, Welfare, and good Government of our said Colonies ... as were or might be agreeable to the Laws of England ...” The Proclamation also gave power and authority to the Governors to set up Courts of Judicature and Public Justice within the Colonies for the hearing and determination of all causes, civil as well as criminal, according to Law and Equity, “and as near as might be agreeable to the Laws of England ...”

- [13] Accordingly, there was no break in the application of British law between the first and second Proclamations. The second was issued to reinforce the declaration made in the first that British law was in force in Grenada. Therefore, as of the 7th October, 1763, Grenada would have received the common law and statutes of England as it related to the payment of interest on judgment debts.
- [14] Thereafter, Grenada for a time came under French control until possession was restored to the British by the Treaty of Versailles. Thereafter, a Proclamation dated January 10, 1784 was issued which authorised the Governor, with consent of the Council of the Representatives of the people to make, constitute, and ordain laws, statutes and ordinances, for the public peace, welfare and good government of the colony “as near as may be agreeable to the Laws of the Kingdom of Great Britain.” Until that was done, the Proclamation declared that by the restitution of the Island to the Crown, all subjects inhabiting the island became entitled to the enjoyment of the benefit of the laws of the realm of England, as far as the state and circumstances of the said colonies permit.
- [15] On March 16 of the same year, an Act to the same effect was passed. It enacted all parts of the Common Law of England and all and every part of the Statutes or Acts of Parliament as were before in force and binding in Grenada while Grenada was a part of the British Dominions. It specifically listed the Acts that had been passed in the Island when the Island was previously under British dominion and provided that they were revived, re-enacted and declare to be in as full force.

- [16] This suggests that during the period the Island was under French control, British Law, including the statutes referred to had ceased to be in force. Thus necessitating the need to re-enact those laws and declare British law to be in force once again. January 10, 1784 therefore constitutes a second reception date. There is also little contention that from that date legislative assemblies in Grenada were empowered to enact laws.
- [17] According to the Bank, Grenada continued to receive British law to fill in the gaps where no local laws were enacted. The question therefore is when did reception of British law cease?
- [18] Rose-Marie Bell Antoine in her text *Commonwealth Caribbean Law and Legal Systems* addresses the whole issue of reception of English Law. She lists three main ways, during the colonial era, in which Britain imposed its laws in the colonies. These are the ones identified by Mr. Noel. There is no disagreement that the UK Judgments Act 1838 was not received in Grenada by any of these three methods. Of course as noted by Ms. Antoine, Commonwealth Caribbean jurisdictions continue to receive specific English law by way of reception law clauses which extend certain aspects of English law including English statute.
- [19] Chapter 5 of Ms. Antoine's text demonstrates that the question of reception of English law in the Caribbean is far from being a straight forward matter. There are several approaches that have been adopted by various courts. There is also the belief by some authorities that in approaching the issue of when reception ceased, different methods of determination apply to statutory laws than to the unwritten common law.
- [20] In the final analysis it is a question of interpretation.
- [21] I therefore find as follows:
- (i) That when the 1838 Judgments Act was enacted it was not declared to be applicable to Grenada. Thereafter, it was not imposed on Grenada in any of the three main ways stated in paragraph 10 above.

- [ii] The Civil Procedure Act Cap. 55 came into force on 27th November, 1882. By section 3, it made the English Practice and Procedure applicable to Grenada. It provided that: "in all cases not expressly provided for, the practice and forms shall as nearly as possible be in conformity with the practice for the time being in force in the High Court of Justice in England; and the Orders and Rules of the High Court of Justice in England shall, so far as they may be applicable and convenient, be in force in the High Court."
- (iii) That section 3 of Cap. 55 is not a general reception law clause. It addresses only practice, forms and procedure and makes the Orders and Rules of England, as far as they may be applicable, in force in Grenada. The 1838 Judgments Act is not an Order or Rule. It consists of substantive legislation passed by the UK Parliament. Even though UK Orders 42/1/8 and 40.8.1 speak to the payment of interest, both those provisions refer for their authority to the 1838 Judgments Act. Since the said Act was not made a part of the substantive legislation of Grenada, those Orders are not applicable to Grenada, nor could they, by themselves, constitute a method of reception of the Judgments Act into Grenada.
- (iv) That West Indies Associated States Supreme Court (Grenada) Act, Cap. 336, unlike the Civil Procedure Act Cap. 55, does address the power of the Court to award interest. Section 27 grants the Court the power to award interest on debts 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 ..."
Although section 11 extended certain aspects of English law to Grenada, I am of the view that it did not authorise the reception of the 1838 UK Judgments Act in Grenada.
- (v) That because the 1838 UK Judgments Act was not in force in Grenada before Independence, therefore the savings clause of the Constitution does not affect its applicability to Grenada.

- [22] The Bank refers the Court to the case of **The Roman Catholic Bishop of Grenada v Randolph Cape**, Civil Appeal No. 8 of 2002 as supporting its position that interest is payable on cost. The Court of Appeal in that case however, did not award interest on costs. Interest was awarded to the claimant on the amount found to be due. Thereafter an award of cost, in an agreed sum, was made.
- [23] Accordingly, the Court finds the 1838 UK Judgments Act was not received as part of the Laws of Grenada.
- [24] Further, that there is no similar provision to sections 17 and 18 of the UK Act in the Laws of Grenada which authorises the Court to award interest on costs.
- [25] Accordingly, the application by the Bank is denied. Cost to be agreed.


Clare Henry
HIGH COURT JUDGE