EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE COURT OF APPEAL

HCVAP 2011/020

VEDA DOYLE

Appellant

and

AGNES DEANE

Respondent

Before:

The Hon. Mde. Janice M. Pereira	Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mr. Don Mitchell	Justice of Appeal [Ag.]

Appearances:

Mr. Ruggles Ferguson and Ms. Anyika Johnson for the Appellant
Ms. Celia Edwards, QC, Ms. Sabrita Khan-Ramdhani and
Ms. Karina Johnson for the Respondent

2012: January 31;
April 16.

Civil appeal – Post - judgment interest – Whether post - judgment interest automatically accrued on a judgment debt prior to the enactment of the West Indies Associated States Supreme Court (Grenada) (Amendment) Act, No. 7 of 2009 – Section 11(1) of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336 – Whether section 11(1) of the Supreme Court Act permits the reception of substantive English law into the law of Grenada

On 25th April 2007, judgment after trial was entered for the respondent. The appellant was ordered to pay to the respondent nominal damages in the sum of $500.00 as well as $5,000.00 costs. No interest was ordered to run on the judgment debt. The debt was fully was paid off by the appellant in monthly instalments. The respondent however, subsequently claimed interest on the debt in the sum of $1,034.00, and issued a judgment summons in this amount against the appellant. The appellant contended that interest was not due on the debt. The judge held that Part 46 of the Civil Procedure Rules 2000 ("CPR") (dealing with Writs of Execution) applied and ordered that the appellant pay the interest on the judgment debt as well as costs to the respondent.

The appellant, dissatisfied with the judge's ruling on this issue, appealed. On appeal, the respondent sought to rely on section 11(1) of the West Indies Associated States Supreme Court (Grenada) Act ("the Supreme Court Act") in support of the contention that the Judgments Act 1838 of England which provided for the automatic attachment of post-judgment interest on a judgment debt, could be imported into the law of Grenada which was devoid of such a provision.

Held: allowing the appeal, setting aside the order of the trial judge made on 28th July 2011, and awarding costs to the appellant in the court below in the sum of $300.00 and costs of $200.00 on this appeal in accordance with CPR 65.13, that:

1. Post-judgment interest did not automatically attach to the judgment debt as there was no law in the State of Grenada which permitted this at the time the judgment debt became payable. Also, post-judgment interest not having been expressly awarded by the court, none could accrue and become payable by the judgment debtor or be claimed against the judgment debtor by way of Judgment Summons. The trial judge therefore erred in awarding post-judgment interest on the Judgment Summons.

2. Section 27A of the Supreme Court Act, inserted by the West Indies Associated States Supreme Court (Grenada) (Amendment) Act, 2009, now provides for the automatic attachment of post-judgment interest in the State of Grenada.

   Section 27A of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336, Revised Laws of Grenada 2010 cited.

3. The English law intended to be imported by section 11(1) of the Supreme Court Act is the procedural law administered in the High Court of Justice in England and not English substantive law, nor English procedural law which is adjectival and purely ancillary to English substantive law. The wording of section 11(1) indicates that the focus on the importation of any law, rule or practice from England is in respect of the exercise of the jurisdiction as distinct from the importation of English law so as to give jurisdiction.

   Panacom International Inc. v Sunset Investments Ltd. and Another (1994) 47 WIR 139 followed; Dominica Agricultural and Industrial Development Bank v Mavis Williams Commonwealth of Dominica Civil Appeal No. 20 of 2005 (delivered 29th January 2007, unreported) distinguished.

JUDGMENT

[1] PEREIRA, J.A.: The sole issue raised in this appeal is the question whether, in the State of Grenada, interest automatically accrued on a judgment debt prior to

the passing of an amendment to the West Indies Associated States Supreme Court (Grenada) Act in 2009.

Background

[2] The short background to the matter is as follows:

On 25th April 2007, judgment after trial was entered for the respondent. The appellant was ordered, among other things, to pay to the respondent nominal damages in the sum of $500.00, and $5,500.00 costs. Interest was not ordered to run on the judgment debt. The appellant paid off the judgment debt totalling $6,000.00 by monthly instalments. Thereafter, the respondent claimed interest on the judgment debt in the sum of $1,034.00. The appellant having refused to pay the sum, the respondent caused a judgment summons for the said amount to issue. The appellant opposed the judgment summons contending that interest was not due. The trial judge held that Part 46 of the Civil Procedure Rules 2000 ("CPR") (dealing with Writs of Execution) applied and ordered the appellant to pay the sum amounting to interest on the judgment debt and awarded costs against the appellant. The appellant being dissatisfied with the decision, appealed.

The Legislative provisions

[3] The respondent, in its submissions before the Court, relied heavily on section 25 of the Civil Procedure Act[1] which says, in effect, that a Writ of Seizure shall issue not only for the judgment debt but also for interest at the rate of 6% from the time of judgment. The respondent readily conceded during the hearing of the appeal, that the enforcement method being employed by the respondent was not by way of a Writ of Seizure in respect of which CPR 46 would have been applicable, but rather by way of a judgment summons. Unlike the Writ of Seizure under CPR 46 which allows for the recovery of interest on a judgment debt,[2] the Judgment

[1] Cap. 55, Revised Laws of Grenada 2010.
[2] CPR 46.4(1)(b).

Summons under CPR 52 makes no mention of recovery or payment of interest on a judgment debt.

[4] It is common ground that at the time of the judgment, there was no express provision in the substantive law of Grenada (unlike many other common law States in the OECS, with enactments commonly called the Judgments Act) which provided for the automatic accrual of interest commonly referred to as 'judgment interest' or 'statutory interest' on a judgment debt. It is also common ground that the case of Campbell v Hall[3] decisively determined the date on which the reception of substantive English law ceased in Grenada. This was as early as the year 1763. It is also not disputed that a provision for the attachment of post-judgment interest is a matter of substantive (as distinct from procedural) law.

[5] At the hearing of the appeal, counsel for the respondent sought to invoke section 11(1) of the West Indies Associated Sates Supreme Court (Grenada) Act[4] ("the Supreme Court Act") as the basis for saying that the Judgments Act 1838 of England which provided for the automatic attachment of interest on a judgment debt was part of the law of Grenada since the law in Grenada was devoid of such a provision. Section 11(1) of the Supreme Court Act states as follows:

> "The jurisdiction vested in the High Court in civil proceedings … shall be exercised in accordance with the provisions of this Act and any other law in operation in Grenada and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in the High Court of Justice in England." (My emphasis).

The Court felt it necessary to invite counsel to provide further submissions on this point as it became apparent that there appeared to be two schools of thought on the scope of section 11(1) of the Supreme Court Act.

[6] In her further written submissions, counsel for the respondent also relied on section 3(2) of the Civil Procedure Act which says:

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[3] [1558-1774] All E.R. Rep. 252.
[4] Cap. 336, Revised Laws of Grenada 2010.

> "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."

To my mind, section 3(2) of the Civil Procedure Act is materially analogous to section 11(1) of the Supreme Court Act. The real question is whether these sections permit the reception of substantive English law into the law of the State or whether they permit the importation of such laws, rules, forms, orders or rules of practice only in so far as they govern procedure where our law or rules of procedure and practice are silent.

The cases

[7] In Dominica Agricultural and Industrial Development Bank v Mavis Williams,[5] Barrow J.A. (as he then was), in considering whether pre-judgment interest may be awarded by virtue of importing into the law of the Commonwealth of Dominica section 35A of the English Supreme Court Act through the medium of section 11 of the Supreme Court Act, had this to say at paragraph 64 of his judgment:

> "There is clear authority in the judgment of Bryon C.J. in Eversley Thompson v The Queen[6] that the words "law and practice administered" in England must be taken to include Acts of the United Kingdom Parliament. I therefore accept the argument on behalf of the respondent that the English legislation that permits the awarding of pre-judgment interest is capable of being imported, by the application of section 11 of the Eastern Caribbean Supreme Court Act, into the laws of the Commonwealth of Dominica."

[8] However, prior to the Mavis Williams decision, this Court (differently constituted save for one member[7]) considered the scope of section 11 of the Supreme Court Act. This was the case of Panacom International Inc. v Sunset Investments

[5] Commonwealth of Dominica Civil Appeal No. 20 of 2005 (delivered 29th January 2007, unreported).
[6] Saint Vincent and the Grenadines Criminal Appeal No. 9 of 1995 (delivered 21st July 1997, unreported) at p. 4.
[7] Byron J.A. (as he then was) was a member of the Court in this appeal.

Ltd. and Another[8] decided in 1994. Sir Vincent Floissac, the then Chief Justice of the Court, in his judgment (in which the other members of the court concurred), had this to say in relation to section 11 of the Supreme Court Act at page 149:

> "Section 11 of the Supreme Court Act relates solely to the manner of the exercise of the jurisdiction of the High Court. It is therefore an intrinsically procedural provision. The words 'provisions', 'law' and 'law and practice' appearing in section 11 are evidently intended to be references to procedural (as distinct from substantive) law.
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> "The English law intended to be imported by section 11 is the procedural law administered in the High Court of Justice in England. In enacting section 11, the legislature of St Vincent and the Grenadines could not have intended to import English substantive law nor English procedural law which is adjectival and purely ancillary to English substantive law."

[9] In my view, this pronouncement of the scope of section 11 of the Supreme Court Act (which is a provision found in the Supreme Court Acts of all Member States and Territories making up the jurisdiction of the Eastern Caribbean States Supreme Court) is an accurate and as clear and succinct a statement on section 11 as there could be. Furthermore, the notion that all Member States are subject to the importation of English substantive law by virtue of section 11 would leave much to be desired in any sovereign State not to mention the state of uncertainty as to what laws a citizen of the State may be subject at any given point in time and without regard to its own parliament which is charged with the making of laws for the State as it may deem necessary for that State's good governance. Section 11 certainly could not have been intended to have this effect. The emphasized words in the section[9] indicate that the focus on the importation of any law, rule or practice is in respect of the exercise of the jurisdiction as distinct from the importation of English law so as to give jurisdiction.

[10] The Panacom decision does not appear to have been brought to the Court's attention in Mavis Williams. Quite apart from this, having read the judgment of Byron C.J. in the Eversley criminal appeal, I am satisfied that Byron C.J., when he

[8] (1994) 47 WIR 139.
[9] See para. 5 of this judgment where s. 11(1) has been set out.

opined that "the words 'law and practice administered' in England must be taken to include Acts of the United Kingdom Parliament for the time being in force", he was there addressing a wholly different matter, namely section 3 of the Evidence Act, 1988 of Saint Vincent and the Grenadines, and not section 11 of the Supreme Court Act. Section 11 was not addressed in Eversley as being a provision which allowed for importation of English substantive law or indeed addressed at all. It is also unlikely that Byron C.J. who was a member of the Court in Panacom a few years earlier, would have changed his view on the operation of section 11 without more. From this I can only conclude that his dictum in Eversley was taken out of context in Mavis Williams. In my humble view, the statement by Sir Vincent Floissac C.J. in Panacom represents the correct approach to be taken on the operation of section 11 and is the approach which ought to be followed whenever importation of an English provision is being considered under that section.

[11] It is no doubt in recognition of the fact that there was no substantive provision in Grenada which allowed for the automatic accrual of post-judgment interest that the Parliament of Grenada saw it fit to enact the West Indies Associated States Supreme Court (Grenada) (Amendment) Act, 2009[10] which, by the insertion of section 27A, provided for the automatic attachment of post-judgment interest. This case was not caught by this new provision however, since the judgment debt pre-dated the coming into force of that amendment.

Conclusion

[12] From the foregoing it may be discerned that post-judgment interest did not automatically attach to the judgment debt herein as there was no law in the State of Grenada which permitted it, and since post-judgment interest was not expressly awarded by the court on the giving of judgment none could accrue and become payable by the judgment debtor or be claimed against the judgment debtor by way of a judgment summons. The Judgments Acts of England cannot be imported into

[10] Act. No. 7 of 2009, Laws of Grenada.

the law of Grenada by virtue of section 11(1) of the Supreme Court Act as this Act does not allow for the importation of substantive English law.

[13] The trial judge therefore erred in awarding post-judgment interest on the judgment summons. I would accordingly allow the appeal and set aside the order of the trial judge made on 21st July 2011. I would award costs to the appellant below in the sum of $300.00 and costs of $200.00 on this appeal in accordance with CPR 65.13.

Janice M. Pereira
Justice of Appeal

Davidson Kelvin Baptiste
Justice of Appeal

Don Mitchell
Justice of Appeal [Ag.]56ws