

IN THE HIGH COURT OF LESOTHO

In the matter of:

THABANG MOSHE

Plaintiff

v

DAN PERKINS

Defendant

JUDGMENT

Delivered by the Hon. Acting Mr. Justice D. Levy
on the 14th day of July, 1986

On the 11th of August 1981, a summons and declaration were issued against Defendant in which were claimed:

1. (a) Cancellation of a lease agreement
 - (b) Return of a leased vehicle
 - (c) Forfeiture of all paid instalments
 - (d) Damages
 - (e) Interest at the rate of 21% per annum from date of issue of summons to date of repayment.
 - (f) Costs.
2. Alternatively, payment of the sum of M4,505.34.

Although the Plaintiff was in possession of a consent to judgment, he did not seek nor did he obtain judgment on such consent and the Defendant being in default, judgment was entered against Defendant in the following terms:

" 31-8-81 - Granted as prayed for M4,505.34 plus costs and interest."

This citation appears from the entry of the learned judge who granted the default judgment in the matter.

/It will ...

It will be seen that Plaintiff did not obtain any order in terms of Prayer 1 of the declaration, but he was granted a default judgment in terms of the alternative prayer 2. The further award of interest can only relate to prayer 1(e), which the learned judge granting the default judgment presumably regarded as part of the alternative prayer 2. No application for rescission of judgment has been sought and Plaintiff accepted payment of several sums of money from Defendant until ultimately, a warrant of execution which had been originally issued for M4,505.35 was re-issued by Plaintiff against Defendant for an amount of M6,808-06.

A dispute over the quantum of this amount and its method of calculation, are the issues now before the Court in an application brought by Defendant to set aside that warrant. In the re-issued warrant the Plaintiff acknowledged payment of an amount of M3,200.00, leaving a balance of M1,305.35 to which were added costs of M905.36 and interest expressed to be from date of issue of summons to 22nd February, 1986, at 21% per annum on a diminishing balance for an amount of M4,669.35, making a total in all of M6,808.06. There was at first some dispute in the application as to what further amounts have been paid since judgment by Defendant to Plaintiff but ultimately, Mr. Harley, for Plaintiff, conceded that three further payments, unknown to him, had been received by his client which also should be deducted from the capital of the sum claimed. Mr. Harley also conceded that several further amounts had been added into the final sum in respect of professional fees, M300.00, costs M450.53, and other sums.

While no doubt, these amounts will ultimately be recoverable from the Defendant in terms of his agreement with Plaintiff, they are not part of the judgment awarded to Plaintiff

/nor has ...

nor has its bill of costs yet been taxed and the issue of a writ for such costs is premature. It is clear, therefore, that the writ has been re-issued for an amount in excess of Plaintiff's entitlement and it must be set aside.

As I have already indicated, there are two further issues between the parties:

1. The rate of interest payable on the unpaid judgment debt.
2. The method of calculation of such interest.

As to (1) judgment has been obtained for interest at the rate of 21% per annum. In the absence of any application for rescission, that portion of the judgment must stand. In terms of the lease agreement between the parties, the original agreed rate of 18,25% was subject to increase by the Plaintiff on certain conditions. I cannot now enquire into the question whether the Plaintiff did or did not properly increase the rate to 21%. Certainly he could have and the matter must stand there.

As to (2), I pointed out in argument that it was not for me to calculate for the parties the number of days that have elapsed between payments and the corresponding calculation of the reduced capital consequent upon such payment, and the interest payable on such reduced capital. I am satisfied that I should only answer the two questions posed and leave it to the parties to make their calculation on the lines of my judgment. If any dispute arises thereafter, then that dispute, no doubt, can be determined in the light of appropriate evidence.

Question (2), can be re-phrased in this form:

If interest is payable at 21%, as I find it is, is such
/interest ...

interest to be compounded monthly or annually or after each payment is made or is it to be simple interest on the balance as reduced from time to time by the Defendant's payments?

I have assumed in Plaintiff's favour, although there is nothing in the judgment to support such a view, that interest should be calculated in the manner required by the lease agreement.

I have examined the lease agreement and I have not found nor have Counsel pointed out to me any clause which permits of compound interest on unpaid instalments. It must be remembered that the agreement is a lease agreement and there is no single capital sum owing. In the absence of cancellation of the agreement, Plaintiff is entitled only to payment of the balance of unpaid instalments. In that regard, Clause 19 of the lease provides that the Defendant shall pay to the Plaintiff interest on all amounts overdue in terms of the lease calculated from their respective due dates to the actual dates of payment thereof at the rate of 18,25% per annum. That interest must now, of course, be rated at 21%, but the clause itself is a clear expression of simple interest and not of compound interest. It would require a further provision that such interest is to be paid monthly in advance or in arrears or annually in advance or in arrears, that is, after the lapse of a specified period, to justify a calculation of interest up to that date which could then be compounded by adding it to the capital sum for the purpose of calculating interest on the new amount for the following period. Clause 19 contains no such provision, and in the absence of agreement, compound interest may not be charged on overdue amounts. See:

Barclays Bank International v. Smallman 1977(1) S.A.
401 Rhodesia.

In my judgment interest should be calculated as simple interest on the unpaid capital balance owing from time to time exclusive of any unpaid interest owing at that time.

/On the ...

On the default judgment as it stands there is nothing to justify a compounding of interest. Both the prayer in Plaintiff's summons and the order itself justify only simple interest on the balance outstanding from time to time.

To this extent, Defendant's pro-forma calculation is correct and it would appear prima facie that the amount presently owing by the Defendant to the Plaintiff is M2,608.54, but I make no finding on that point and leave it to the parties' calculation. The re-issued warrant of execution is set aside and the Plaintiff is ordered to pay the costs of this application.

D. LEVY

ACTING JUDGE

14th July, 1986

For the Plaintiff : Mr. Harley

For the Defendant : Mr. Mphalane