7 pages.

ROYAL COURT
(Samedi Division) 131.

15th July, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff

Between: Lesquende Limited — Plaintiff

And: The Planning and Environment Committee of the States of Jersey — Defendant

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Advocate M.M.G. Voisin for the plaintiff
Advocate W.J. Bailhache for the defendant

JUDGMENT

THE DEPUTY BAILIFF: The plaintiff issued an action by Order of Justice on 28th March, 1995. That Order of Justice contains this prayer amongst others, requesting the Court to:

> *"order that the Defendant shall pay to the Plaintiff interest on the costs and expenses properly incurred by the Plaintiff in the Arbitration Proceedings and this from the 6th February 1995 (being the date of the registration of the Award) such interest payable at such rate as shall from day to day correspond with the Bank of England's Minimum Lending rate compounded at yearly rests and being the interest rate applicable under Article 9A(4) of the Law in respect of compensation determined by the Board pursuant to the provisions of the Law".*

The Court was asked to decide whether the costs and expenses of Lesquende Limited were payable under Article 14(2) or 9(1)(g) of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961. The decision (which is under appeal) was that Article 14(2) applied and that *"all expenses"* meant the legitimate costs and other disbursements which have been incurred in accordance with the law and the defendant was condemned to pay the legal and other costs incurred by the plaintiff on an indemnity basis the costs to be taxed before the Judicial Greffier.

Under the Compulsory Purchase of Land (Procedure) (Amendment No. 3) (Jersey) Law, 1981 a procedure was adopted for the payment of compensation once the land had been vested in the public and it allowed for any variation between the amount ordered to be paid by statute and the amount in excess of that sum assessed by the Board to be payable ***"at such rate as shall from day to day correspond with the Bank of England's Minimum Lending Rate compounded at yearly rests from the date on which the Inferior Number of the Royal Court made the vesting order until the date of the registration of the award".***

That interest rate applies to the payment by the acquiring authority of interest on the deferred part of the consideration which is determined by the Board in respect of the value of the land. It is for that reason and no other that the interest (if I so decide to award it) might be calculated on the same basis. That appears to be an eminently sensible suggestion, although of course, yearly rests are not appropriate since the law relates to simple interest.

Lesquende had paid all its expenses and costs of £658,010.16 p by the date of the award. In the judgment of 13th March, the Court said (at page 26 line 28 of the Jersey Unreported series):

> ***"I need only to return to Pajama Limited v. Ferpet JJ (1982) 137 and to remember that "the landowner should not be placed in a disadvantageous position having regard to the award itself".***

On that basis alone, no payment having been made on these costs since February, Lesquende does indeed seem to be disadvantaged. That is not, of course, a reason for granting interest. The only basis for granting interest is if there is a legal basis for so doing.

Interest, if calculated on the basis suggested by Advocate Voisin, is running at £3,250 per month over what is now a seventeen month period. I have no doubt that the period will be somewhat extended before this matter is eventually finalised. The judicial review is apparently set down for 10th November, 1996.

Advocate Voisin referred me to the case of The Administrator of Peter Muir deceased v. Ann Street Brewery Company Limited (14th July, 1994) Jersey Unreported. That case was based on a similar prayer to the one before me and was based not upon contractual but upon statutory interest. That case was argued pursuant to the Interest on Debts and Damages (Jersey) Law 1971. That law only provided for interest to the date of judgment and the rate was at the Court's discretion. Matters have changed however. The Interest on Debts and Damages (Jersey) Law 1996 came into force on 1st July 1996 (the day before this hearing) and I must therefore examine an entirely new law which repealed the 1971 Law in its entirety.

In the law "judgment debt" is defined to include *"any sum of money ordered to be paid by a court on giving judgment including any costs, charges or expenses".*

Under Article 2:

> *"(1) Subject to paragraph (4), in any proceedings, whenever instituted, for the 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 simple interest at such rate as it thinks fit on the whole or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for the whole or any part of the period between the date on which the cause of action arose and -*
>
> *(a) in the case of any sum paid before judgment, the date of the payment; and*
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> *(b) in the case of a sum for which judgment is given, the date of the judgment".*

This would mean that interest if payable would be paid from 6th February, 1995 until the date of the payment of the capital sum awarded, after having been finally taxed by the Judicial Greffier.

Until 1st July, 1996 a party entitled to its costs could not be awarded interest on those costs even though there had been substantial delay in payment.

Advocate Bailhache was doubtful that this Court has jurisdiction to make any order for interest as to costs.

Although Mr. Voisin pleaded the question of interest he did not (as a matter of fact) reserve the right when judgment was delivered to argue the question of interest. That may be answered in part by the fact that the costs were not yet (and are still not) quantified. Certainly, some sums will be taxed off - I have already been given examples of taxing off. It is because the matter is continuing that Advocate Voisin says that Lesquende fall under the provisions of the 1996 Law.

Advocate Bailhache argues strongly that Lesquende's claim falls fairly and squarely under the 1971 Law and, under that law, there is no right to claim interest on costs. What Advocate Bailhache says is that for as long as you have a judgment before the 1996 Law came into force the 1971 Law will have applied to it. An order for costs is not a judgment for debt or damages.

The argument turns in part on an interpretation of Article 2 of the new Law.

That Article says *"Subject to paragraph (4), in any proceedings, whenever instituted, for the recovery of any debt or damages ..."*

The answer, on the face of it, is pellucid. Article 2 is covering cases where proceedings have been instituted and judgment has not yet been given. The Court would not have power to award interest where judgment has already been given. If that were not the case a floodwater of cases would arise where litigants awarded costs some time ago might come forward now to claim interest on their judgment debts under the 1996 Law.

I have no doubt that the Law is not retrospective. As is said in Halsbury's Laws of England Volume 44(1) Fourth Edition Re Issue paragraph 1284 and 1285:

> *"1284 Nature of retrospectivity. The effect of an enactment is said to be retrospective when (1) it changes the relevant law with effect from a time earlier than the enactment's commencement; or (2) it otherwise alters the legal incidents of a transaction or other conduct effected before its commencement; or (3) it confers on any person a power to act with retrospective effect. An enactment is not retrospective, however, merely because a part of the requisites for its action is drawn from a time before it was passed. Where an enactment is intended to be retrospective it applies to pending actions."*

> *"1285 Presumptions regarding retrospectivity. The presumptions that prevail on the question whether by implication an enactment is or is not intended to be retrospective are based initially on the nature of legislation, which gives rise to the general presumption against retrospectivity. Thereafter those presumptions depend on the concept of fairness. It is because of the general presumption against retrospectivity that an enactment will not normally be treated as retrospective even where to do so would not be unfair to any person."*

As the law is not retrospective then if the matter is done and dusted that is an end to it but even if Lesquende had applied for interest in March, the Court would not have been able to grant the application.

Advocate Voisin argues strongly that the judgment in March was not a judgment for costs. It was a claim for a debt due by the Acquiring Authority pursuant to Article 14(2) of the Compulsory Purchase Law. Whether it arose out of costs incurred is not relevant. There was a claim for a sum of money reimbursable under

14(2) of the Law. Article 14(2) of the Law does not refer to costs. The Court was asked to determine as to whether Article 14(2) referred to "expenses" and the matter for consideration was what "all expenses" meant. The application by Lesquende was for the statutory right to recover its expenses incurred in the arbitration proceeding. That is, a <u>debt</u> due. I cannot accept that argument. To all intents and purposes the hearing in March, 1995, was a decision as to whether costs were payable at all. It came about because the Board, in the final words of its judgment, said:

> *"The Law does not empower us to make any ruling as to the costs of either party."*

Advocate Voisin argues that no order has yet been made because there is still a material issue before the Court and the Court may make an order for interest on an award not yet quantified and yet which is structured for a decision. That is not, in my view, the point. The fact that the quantification has been delayed does not alter the fact that all the ancillary matters arose out of a decision which established that costs <u>were</u> payable.

The judgment was made in March, although the practicalities arising from it will not be resolved for some time in the future. The application for interest is accordingly refused.

Turning to the second question which is not made by way of a summons, the Court said this in its judgment of 13th March:

> ***"I feel that the matters raised in paragraph 5 of the Committee's Answer will have to be examined and adjudicated upon by the Judicial Greffier. At the present time I cannot see that there is anything in these complaints which are more than the complaint of an unsuccessful litigant faced with a substantial bill of costs. If these are matters that the Greffier is prepared to admit he will no doubt have experienced such arguments before".***

It was not to be. On 12th June, 1996, the Greffier remitted those matters to this Court for trial. He set a time table. The date for the trial was to be set down in the manner prescribed by Rule 6/22 of the Royal Court Rules 1992, as amended. Advocate Bailhache feels that the hearing will be for several weeks; Advocate Voisin pooh-poohs the suggestion and says that the matter could easily be dealt with in five days.

The pleading under paragraph 5 reads as follows:

> *5. Further and alternatively it is in any event denied that the costs and expenses set out in the Appendix to the Order of Justice were "properly" or reasonably*

incurred by the Plaintiffs. In addition to the detailed submissions set out in the Appendix hereto in respect of the costs claimed, the Defendants will contend that the following matters are relevant.

(i) The Plaintiffs' costs of the proceedings were increased unreasonably by the prolonged manner in which the proceedings were conducted by and on behalf of the Plaintiffs.

(ii) The Plaintiffs' costs and expenses of the proceedings were increased by the number of issues raised by the Plaintiffs, including issues in respect of which the Plaintiffs were unsuccessful namely issues as to the costs of construction of the putative development, issues as to the adequacy of the housing supply on the Island and contentions as to development value attaching to areas 2 and 3 of the areas alleged by the Plaintiffs to be the "relevant land".

(iii) The Plaintiffs' costs and expenses were increased by the failure of the Plaintiffs to plead their case fully in advance of the hearing, to answer requests for further and better particulars of their case adequately, and to serve their evidence in good time."

These are complex matters made more complex by the fact that the President of the arbitration board (who is a competent witness in respect of proceedings in the arbitration) has intimated that he declines to give a witness statement at this stage because the Judicial Review might conceivably refer matters back to the Board for reconsideration. We have briefly examined the pleadings in the Judicial Review. They raise matters quite novel to this jurisdiction. Advocate Voisin felt strongly that any further delay would merely grant Advocate Bailhache the stay that he has had refused by the Royal Court and by the Court of Appeal. I have some doubts that this matter should in any event be decided before the Judicial Review scheduled for November has been argued and adjudicated upon. The frustration of Lesquende is palpable but I cannot see that the Committee is acting in an improper manner. Matters must take their course and the provision of Rule 6/22 must be followed in the way prescribed. If an abridgement of time is appropriate then the parties have counsel well able to advise them on the best way forward.

Authorities

Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961.

Compulsory Purchase of Land (Procedure) (Amendment No. 3) (Jersey) Law, 1981.

Administrator of Peter Muir, deceased -v- Ann Street Brewery Company Limited (14th July, 1994) Jersey Unreported.

Interest on Debts and Damages (Jersey) Law, 1996.

4 Halsbury 44(1) (Re-issue): paras 1284-5.

Lesquende Ltd -v- Planning and Environment Committee (13th March, 1996) Jersey Unreported.

Legal Practice Committee Report (1993): Chapter 10.