

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. FSD 143 OF 2010

BETWEEN:

CVC/OPPORTUNITY EQUITY PARTNERS, LTD.

Plaintiff

AND:

LUIS ROBERTO DEMARCO ALMEIDA

Defendant

**Appearances: Ms. Laura Clemens of Bodden & Bodden
for the Plaintiff**

**Ms. Denise Owen & Mr. Kyle Broadhurst of
Broadhurst LLC for the Defendant**

Before: Hon. Justice Henderson

Heard: June 6, 2013



JUDGMENT

1. Both parties to this action have requested a review in the Grand Court of a decision of the Taxing Officer taxing the indemnity costs of the Defendant Luis Roberto Demarco Almeida ("Mr. Demarco") in the amount of \$648,219.69. (All amounts are in US

dollars.) On July 9, 2012 I gave a judgment setting out some general principles which, when applied to the facts at hand, enabled the parties to resolve many of the very numerous issues raised. The remaining issues were presented to me in a hearing on June 6, 2013 and, for the most part, resolved then. I invited further written argument on two questions which I will address now.

1) When Does Interest Start to Accrue on an Award of Costs?

2. Mr. Demarco says he is entitled to interest on the costs awarded to him from the date of the judgment which awarded those costs (May 31, 2002). The Plaintiff Opportunity Equity Partners Limited (“OEP”) says it should have to pay interest on the award of costs only from the date at which the amount of the indemnity costs was quantified, which will take place upon delivery of this ruling.
3. Following the issuance of an Interim Certificate of Taxation on November 20, 2002 the sum of \$438,538.01 was paid to Mr. Demarco. After a Certificate of Taxation was issued on October 21, 2003 OEP paid the sum of \$209,681.68 into Court. It was required to do so by the terms of Order 62 rule 30(4)(c) as a condition precedent to this review.



At common law there was no power to award interest on costs. In 1838 the *Judgments Act* of that year provided (in section 17) that interest on a judgment debt would accrue “from the time of entering up the judgment”. By section 18, an award of costs “shall have the effect of [a judgment]”. Subsequently, a difference in practice developed.

Although the common law courts took the view that the “entering up of the judgment” occurred when the entry of the “*incipitur*” was made in the Master’s Book, the Court of Chancery promulgated a rule that interest on costs would run only from the date of the Taxing Master’s Certificate (the “*allocatur*”). There then ensued a long-simmering debate as to which rule was preferable which culminated in the leading case of *Hunt v R M Douglas (Roofing) Ltd* [1990] 1 AC 398 (HL). *Hunt* settled the controversy in favour of the *incipitur* approach. Mr. Demarco urges me to adopt the position set out in *Hunt* and thus bring the law of the Cayman Islands into conformity with that of the United Kingdom.

5. Legislation emanating from Westminster will have application in the Cayman Islands if it is expressed to apply here or in the British Overseas Territories generally. It will also have local application if the “necessary intendment” of the Imperial Act is that it apply in the British Overseas Territories or in Cayman in particular: see the discussion in Davies, Elizabeth W., *The Legal System of the Cayman Islands*, Law Reports International, 1989, pp. 81 *et seq.* Mr. Demarco has not sought to argue that either of these rules makes the *Judgments Act* of 1838 applicable here, but has contented himself with the submission that the *incipitur* approach is most likely to produce a fair result.

6. The Rules Committee of the Grand Court has promulgated on May 1, 1995 the *Judgment Debts (Rates of Interest) Rules 1995* (“the Rules”). These are said in the preamble to have been made in exercise of the power conferred by section 34 of the *Judicature Law (2007 Revision)*. Mr. Demarco has not sought to argue that the Rules are



ultra vires or lacking in legal effect. Section 5(b) of the Rules says under the heading of “Post-judgment interest”:

Interest shall be payable at the rate prescribed for Cayman Islands Dollars upon all orders for costs with effect from –

(i) in the case of fixed costs payable under GCR Order 62, rule 1, the date of service of the judgment or order;

(ii) in the case of costs assessed pursuant to GCR Order 62, rule 3, the date of service of the judgment or order;

(iii) in the case of taxed costs, the date of service of the certificate of taxation. [The rule numbers have now changed but nothing turns on that.]

7. These Rules have the force of law in the Cayman Islands. We have, therefore, taken a different approach from that settled upon in the United Kingdom; in the Cayman Islands, it is the *allocatur* approach that governs.

8. The question before me is determined by section 5(b)(iii) of the Rules as I am dealing with taxed costs. Interest on those costs runs only from the time at which they have been quantified in a Certificate of Taxation and that Certificate has been served. It follows that the only interest owing on the sum of \$438,538.01 already paid to Mr. Demarco is the amount which accrued from the date of the Interim Certificate to the date of payment.

9. As for the sum paid into Court, Order 92, rule 7(6) provides that Mr. Demarco is entitled to interest on that at the rate agreed upon from time to time by the Accountant General and the designated banks (also see the *First Schedule* to the *Judicature Law*

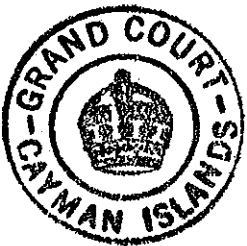


(2007 Revision)). He is entitled to no more from OEP because its liability has been extinguished entirely by the act of making payment into Court: *Judicature Law, section 25(a)*.

2) Quin & Hampson Fees

10. OEP now argues that the amount of \$44,047.20 in fees and disbursements were not properly recoverable because they represented work done by Quin & Hampson on a separate but related action, *Demarco v. Opportunity Fund, Cause 395 of 1999*. This submission was not advanced before the Taxing Officer or in my review of his decision until delivery of the most recent written arguments.

11. Having reviewed the invoice descriptions of the work done by Quin & Hampson, the contemporaneous correspondence, and the Court record in *Cause 395 of 1999*, I find that OEP's assertion is substantially correct. Some of the work done by Quin & Hampson had application to the present action but the bulk of the work did not. I would apportion 25% of the Quin & Hampson accounts to the present action; the balance is not recoverable.



3) Costs of this Review of the Taxing Officer's Decision

12. My decisions given during the oral hearing on this review were divided between the parties in approximately equal proportions. OEP has been substantially successful on the issues addressed in this written ruling and in other circumstances might be entitled to its

costs. However, its failure to make the argument mentioned above about Quin & Hampson's fees until the 11th hour is to be deprecated. Consequently, I am exercising my discretion against awarding the costs of this review to either party.

Dated this 29th day of August, 2013

Henderson, J.

Henderson, J.
Judge of the Grand Court

