Hon CJ

IN THE CAYMAN ISLANDS COURT OF APPEAL

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C.I.C.A. (CIVIL) NO. 4 OF 1991.

BEFORE :- The Rt. Hon. The President Mr. Edward Zacca, P.C., OJ.
The Rt. Hon. Mr. Justice Telford Georges, P.C., JA.
The Hon. Mr. Justice Kenneth C. Henry, JA.

BETWEEN :- OMNI METALS TRADING — Defendant/APPELLANT

AND :- METALLGESELLSCHAFT HONG KONG LIMITED — Plaintiff/RESPONDENT

Mr. J. Angus Elliot Foster of W.S. Walker & Co. for the Appellant.
Mr. Andrew Jones of Maples & Calder for the Respondent.

AUGUST 14th and DECEMBER ~~3rd~~ 2nd 1992

JUDGMENT

HENRY J.A.

The Respondent applied for summary judgment in an action to recover moneys due on a number of dishonoured promissory notes, together with "interest pursuant to section 62 (2) of the Judicature Law at the rate of 10% per annum calculated from the maturity date of each note until the date of payment on the grounds that there is no reasonable defence to this action". The Appellant opposed the application on the ground that there were two disputed and triable issues between the parties, the first being as to the amount then due in respect of the promissory notes, the second being in relation to one of the promissory notes payment of which was said to have been orally deferred by the issue of further promissory notes. The Chief Justice in a written ruling rejected the Appellant's submissions and entered judgment

for the Respondent for the amount of $5,353,559.55 claimed, with compound interest at 10% at half yearly rests from the 1st September 1991 until the date of payment. In relation to the first issue he found :

> "As regards the dispute over the difference between the sum claimed and the amount which the defendant admits to be due, the defendant cannot have an order as in Lloyd's Bank v. Ellis Feuster and Others (1983) 2 All E.R. 424 to pay the plaintiff U.S.$3,498,147.20 with unconditional leave to defend as to the balance, if any. For unlike that case where there was a triable issue, here, there is no triable issue since the defendant does not aver a total lack of consideration. To my mind the plaintiff is entitled to be paid U.S.$5,353,559.95.
> In addition I think the circumstances justify my exercising the discretion conferred on me by section 62 (2) of the Judicature Law to award the plaintiff interest".

The Appellant appealed on two grounds :-

> "(a) The learned Chief Justice erred in holding that "As regards the dispute over the difference ... the plaintiff is entitled to be paid U.S.$5,353,559.95 as the Appellant raised a triable issue in its Amended Defence and Counterclaim concerning the amount paid by the Appellant to the Respondent in respect of the Promissory Notes held by the Respondent which issue requires to be determined at trial. The learned Chief Justice should accordingly have entered Judgment for the sum of U.S.$3,498,147.20 and not the sum of U.S.$5,353,559.55 and the balance due to the Respondent (if any) should have been determined after trial.
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> (b) The learned Chief Justice erred in holding that 'In addition I think ... to award the Plaintiff interest' as the Plaintiff's claim to payment of U.S.$5,353,559.55 is totally unjustified and the Defendant was entitled and obliged to file a Defence questioning the Plaintiff's claim. Accordingly the Chief Justice should have awarded interest only at 7 1/2 % per annum from the date of Judgement until payment of the judgement pursuant to section 62(1) of the Judicature Law. Furthermore interest at 7 1/2 % per annum should only have been awarded on the sum of US$ 3,498,147.20".

In so far as the first ground is concerned, it would appear that the Chief Justice relied on rule 23(5) of the Grand Court Rules which, in relation to summary judgement on specially indorsed

writs, provides:

> "(5) If the suit is founded upon dishonour of a negotiable instrument, leave the defend will only be granted upon the defendant's affidavit averring total lack of consideration for the said instrument".

The rule has no counterpart in the corresponding English Order 14 rules, but would appear to be consistent with the observation by Lord Denning M.R. in Fielding & Platt Ltd. v. Selim Najjar (1959) 2 All E.R. 150 at 152, "We have repeatedly said in this court that a bill of exchange or a promissory note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary", to which the editors of the 1991 Supreme Court Practice have, in the note to order 14/3-4/14 at p. 153 added in parenthesis ("e.g. if there is an arguable case based on total failure of consideration").

The Appellant does not allege total failure of consideration. The four promissory notes which in its defence it specifically alleges have been paid were not in fact sued upon by the Respondent. Other payments alleged in the defence are "through retentions made by the Plaintiff". Whatever may be the effect of those retentions on the running account between the parties they cannot in my view affect the dishonoured promissory notes or provide a triable issue in the action brought on them. In my view the Chief Justice was correct in his conclusion.

In so far as the second ground of appeal is concerned, rule 62 of the Grand Court Rules provides:

> "62. (1) Where a party to a civil suit is ordered to pay to another party a fixed sum of money he shall in addition, unless the court otherwise orders, pay interest at the rate of 7 1/2 per cent per annum upon that sum calculated from the date of the order until the date of the payment both inclusive.
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> (2) Where a party to a civil suit is ordered to pay another party a fixed sum of money and the court is of opinion -
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> (a) that the indebted party has no serious

> defence to the action; or
>
> (b) was guilty of using delaying tactics in order to postpone payment, the court may at its discretion order that the indebted party shall in addition pay compound interest not exceeding 10 per cent per annum at half yearly rests from any time after the occasion giving rise to the indebtedness until the date of payment, both dates inclusive, upon the sum representing the indebtedness originally incurred".

It is clear that once he found that the Appellant had no serious defence to the action the Chief Justice had a discretion to order the payment of interest at 10% per annum "from any time after the occasion giving rise to the indebtedness". The five promissory notes sued upon were dishonoured on March 30, 1991, May 30, 1991, June 30, 1991, July 30, 1991 and August 30, 1991. It was therefore well within the Chief Justice's discretion to order the payment of interest from September 1, 1991.

I would dismiss the appeal.

I agree

I agree