



Neutral Citation Number: [2023] EWHC 1412 (comm)

Case No: CL-2022-000479

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 09/06/2023

Before :

DEPUTY JUDGE CHARLES HOLLANDER KC
(Sitting as a Judge of the High Court)

Between :

**VS MSN 36118 CAV DESIGNATED ACTIVITY
COMPANY**

Claimant

- and -

SPICEJET LIMITED

Defendant

Decided on written submissions

JUDGMENT ON CONSEQUENTIAL MATTERS

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date for the hand-down is deemed to be Friday 9th June 2023.

CHARLES HOLLANDER KC :

1. This short judgment deals with consequential matters arising after I gave summary judgment in favour of the Claimants and refused the Defendants permission to appeal. The parties agreed that I should deal with it by written submissions. I received and have considered written submissions from both parties.

Interest

2. Clause 9.2 of the Lease provides:
“If Lessee fails to pay any amount payable under this Agreement on the due date, Lessee shall pay to Lessor on demand from time to time interest (both before and after judgment) on that amount, from the due date (or, in the case amounts expressed to be payable on demand, from the date of such demand) to the date of payment in full by Lessee to Lessor, at the Default Rate. All such interest will be calculated on the basis of the actual number of days elapsed and a 360 day year. Interest payable pursuant to this Clause 9.2 which is unpaid at the end of each such period shall thereafter itself bear interest at the Default Rate or the maximum allowed under Indian law.”
3. ‘Default Rate’ is defined in clause 1.1 as *“in relation to any overdue amount, for the relevant period, LIBOR plus 3%”*. As set out in paragraph 13 of the Particulars of Claim, the Claimant claims a default rate of 3% due to the complexity of calculating the default rate by reference to a discontinued LIBOR rate. There is no objection, subject to the point below, to that.
4. The question is whether the Claimants are entitled to compound interest. They claim that Clause 9.2 provides for it to be compounded on a monthly basis. The Defendants say (i) there is no plea in the Particulars of Claim in relation to compound interest (ii) there is no such claim in the summary judgment application (iii) Clause 9.2 does not provide for monthly compounding.
5. The Particulars of Claim refers expressly to Clause 9.2. It is clear that Clause 9.2 permits compounding: *“Interest payable pursuant to this Clause 9.2 which is unpaid at the end of each such period shall thereafter itself bear interest.”* Moreover, the accompanying schedule claims on the basis of compound interest. In those circumstances, permitting the action to continue for a further claim for additional interest is unnecessary and a waste of costs and I consider it is appropriate for me to deal with it.
6. As is the case elsewhere, the compound interest provision is not clearly drafted. What is meant by interest payable *“which is unpaid at the end of each such period.”*? The Claimants say that under the terms of the Lease, Rent and Maintenance Reserve Payments are paid on a monthly basis. It therefore follows, they say, that, on a natural reading of clause 9.2, the reference to *“each such period”* must also relate to a month (not a year). Further, clause 9.2 expressly provides that this continues *“after judgment”*.
7. I consider the words *“at the end of each such period”* are very unclear because there is no indication as to what *“such”* period is referring to in this context. The previous sentence refers to a year, and the most obvious construction is for *“such period”* to

refer back to the year and thus mean “annually”. Compounding at 3% above LIBOR every month would give rise to ridiculously large figures, would be potentially penal, and as an aid to construction I am entitled to take the view that the parties are highly unlikely to have intended such an extraordinary result.

8. The Claimants are thus entitled to interest at 3% compounded annually from the date of each payment being due. They would be entitled to a declaration that they are entitled to interest at that rate after judgment but I would refer them to 16A1.17 of the 2023 whitebook: I think they have an election as to whether to claim statutory interest (the contractual cause of action being merged in the judgment) or contractual interest instead, which they may or may not wish to do in the light of my finding on compounding.

Costs

9. I do not consider anything in this case is so outside the norm as to justify an order for indemnity costs. Nor is Clause 18(1)(ii) of the Lease drafted so as to displace the CPR costs rules.
10. The Claimants’ costs of the application were £31,722.70, those of the Defendants £57,733.50. I will make a small deduction from the Claimants’ costs for the above-standard charging rates of their solicitors and award £30,000, taking into account the much lower figure than the Defendants’. As for the costs of the action, claimed at £23,709.00, it is not appropriate for me to assess them now and I award an interim payment of £14,000.

Disposition

11. The parties should be able to agree figures and an order on the basis of this judgment.
12. The Claimants are entitled to:
 - a. interest at 3% from the due date of each payment compounded annually.
 - b. in their election, either statutory judgment rate interest or interest at 3% compounded annually until payment after judgment and a declaration to that effect
 - c. costs of the application and the action
 - d. costs of the application assessed at £30,000
 - e. an interim payment on account of costs of the action in the sum of £14,000