

IN THE SALFORD COUNTY COURT

Claim No. 4SF07327

Prince William House
Peel Cross Road
Salford

Tuesday, 19th April 2005

Before:

DEPUTY DISTRICT JUDGE S P FOY

Between:

MARK MILLER

Claimant

-and-

CHRISTOPHER PUGH
&
MOTOR INSURANCE BUREAU

Defendants

MR SHENTON appeared on behalf of the Claimant

MR HINES appeared on behalf of the Defendants

JUDGMENT
(Interest)
As Approved

Transcribed by Harry Counsell & Co
Official Court Reporters
Cliffords Inn, Fetter Lane,
London EC4A 1LD
Tel: 020 7269 0370

Tuesday, 19th April 2005

DEPUTY DISTRICT JUDGE FOY:

- 1 In relation to the question of interest, which I propose to deal with first, the history of the matter has been set out in the statement of Mr Newbury dated 10th March 2005, and I do not intend to repeat it here. In addition, Mr Shenton has also in his opening repeated the history of the matter and it would appear to me that there is not a great deal or really any element of dispute between the parties there. The dispute is two-fold. As I say, I will deal with the question of interest at this stage.
- 2 First of all, it is accepted by the defendant that the claimant is entitled to interest on its costs in relation to the costs of the substantive proceedings. Whether that interest is from the date of the agreement between the parties of the 5th July 2004, which is the claimant's case, or, as the defendant suggests, from the date of the order, which was made on 8th November providing for assessment of those costs is what I am asked to consider..
- 3 I have listened carefully to the arguments which both parties have put forward. Looking at CPR 40.8, which I think it is appropriate for me to read out. That says,

"The time from which interest begins to run. 1. Where interest is payable on a judgment pursuant to Section 17 of the Judgments Act 1838, or Section 74 of the County Courts Act 1984, the interest shall begin to run from the date a judgment is given, unless (a) a rule in another part or a practice direction makes different provision or (b) the court orders otherwise. 2. The court may order that interest shall begin to run from a date before the date that judgment is given."

It is the contention of the defendant that, in effect, the agreement that was reached on 5th July 2004 is not a judgment and is not a trigger for interest to be payable from that date. In addition, the defendant says that that agreement, if the claimant required interest on the costs of the substantive proceedings, should have included a clause for interest to be payable from then. In response, the claimant refers to the overriding objective and makes the point, that if the defendant is correct in that respect, where does that leave claimants in the future, they will take the view that it is not worth, as it were, negotiating with defendants because they are going to lose out, in effect, in relation to interest and will immediately issue Part 8 proceedings in order to get an order so that the defendant's contention is satisfied and that that order is the trigger for interest.
- 4 Having carefully considered the matter, and I also do accept here as well that there was no clause providing for interest to be paid, on balance, as I say, having carefully considered

the matter, I am persuaded by the claimant. I think, looking at the question of the overriding objective, the intention of keeping costs down, narrowing issues between parties, and where, if at all possible, matters being settled without the necessity of proceedings, and also taking into account CPR 48.2, that the court may order that interest shall begin to run from the date before the date judgment is given, I think it is appropriate in this case that interest should run from the date of the agreement between the parties on 5th July 2004. As I say, I am persuaded by the claimant's arguments in that respect and I am also satisfied that I have power to make an order in those terms pursuant to CPR 48.2. So, as I say, that will be my order in that respect.

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DEPUTY DISTRICT JUDGE FOY:

- 1 I have listened carefully to what both parties have had to say. In relation to the defendant's objections, and obviously I have to take a broad brush approach in relation to the statement of costs, I am not satisfied, bearing in mind the arguments I have heard today on the points of principle involved that it was inappropriate for Mr Shenton to deal with this matter and that it could have been dealt with a grade D fee-earner. I also accept, as well that in effect the claimant has to do other running in a case and more often than not it is the claimant who is going to incur more by way of costs than a defendant and I have also taken into account what is in the defendant's schedule as well.
- 2 In relation to the total solicitor's base costs, I do however take on board what the defendant says in relation to the time spent. I think it is slightly on the high side and taking a broad brush approach, I am going to reduce the £1963 to £1750.
- 3 In relation to the success fee, as I said whilst being addressed by Mr Hines, I am not persuaded that there is any problem here in relation to the indemnity principle having been breached and I accept that the claimant is entitled to a success fee. I also am satisfied as well, and again bearing in mind this particular case, the issues at large, that the appropriate success fee should be 50% of £1750.

MR SHENTON: £875 sir.

DEPUTY DISTRICT JUDGE FOY: Right. Then we have the VAT on top at 17.5%, if one of you can—

MR HINES: £459.37.

DEPUTY DISTRICT JUDGE FOY: That gives a total solicitor's costs of?

MR HINES: £3084.38.

MR SHENTON: Sir plus on top of that the other two disbursements and then the costs of today's hearing, which is separate, so in respect -- I cannot see any argument on the disbursements, but in respect of the costs of today, both myself and Mr Hines spent an hour and a half preparing, so that seems to be unobjectionable. I put down in advance, guessing, that I was going to spend an hour, including travelling and waiting, I think two hours in terms is more realistic in terms of the amount of time we spent today. That is including the waiting time and the hearing time.

DEPUTY DISTRICT JUDGE FOY: You are content to rely upon these figures that are here?

MR SHENTON: No I would like two hours, because that was obviously a guestimate.

DEPUTY DISTRICT JUDGE FOY: In fairness, yes, it is estimated is it not in that respect?

MR SHENTON: Yes.

DEPUTY DISTRICT JUDGE FOY: So preparation time, advocacy, including travelling and waiting, so you are looking for two hours there, which would take it to £320, is that right?

MR SHENTON: Correct. And the one and a half for preparation, which, as I said, Mr Hines has spent.

DEPUTY DISTRICT JUDGE FOY: So that is £240 plus £360 that is what you are seeking?

MR SHENTON: Plus the success fee on that.

DEPUTY DISTRICT JUDGE FOY: Yes. Mr Hines?

MR HINES: Yes, I agree with that.

MR SHENTON: Thank you. Success fee was £560 plus the (Inaudible) £840.

DEPUTY DISTRICT JUDGE FOY: So the total solicitor's base costs there that is £560, as you say, 50% going on that figure, (Inaudible).

MR SHENTON: Yes the total sir is £840.

DEPUTY DISTRICT JUDGE FOY: Sorry, we have got £560, then the success fee, 50%, which I am prepared to allow, so that is 280.

MR SHENTON: That is a total of £840 and then also we have got plus VAT then on that.

DEPUTY DISTRICT JUDGE FOY: £840, the VAT is 147?

MR SHENTON: Yes, £987 total.

DEPUTY DISTRICT JUDGE FOY: Which gives a grand total of?

MR HINES: £4161.38.

DEPUTY DISTRICT JUDGE FOY: £4161.38.

MR SHENTON: £4071.38.

DEPUTY DISTRICT JUDGE FOY: I have got 41 – I think Mr Hines said, did you say 4161?

MR HINES: 61, yes.

DEPUTY DISTRICT JUDGE FOY: £4161.38?

MR SHENTON: I am not going to argue against him any more!

DEPUTY DISTRICT JUDGE FOY: Yes – there may be agreement on that.

MR SHENTON: Oh sir I missed £90 out, so yes £4161.38, yes, okay.

DEPUTY DISTRICT JUDGE FOY: Right.

MR SHENTON: Sir I am very grateful for the time you accorded us.

MR HINES: Yes thank you sir. I just would ask for leave to appeal in respect of the interest judgment. I appreciate you have used your discretion there, but I think there is an issue to be dealt with there.

DEPUTY DISTRICT JUDGE FOY: Bear with me. Let me see whether I have got an appeal form.

MR SHENTON: Sir, one thing, I am not sure whether it is actually specifically mentioned in the judgment, for the sake of clarity, is on the question of interest, do we actually have an agreed figure? I actually mentioned it in my opening as to what I consider the amount to be.

MR HINES: I would have to obviously calculate that, there is payment on account to take into account, so I do not know if you have noted them...

MR SHENTON: To be fair I have not.

MR HINES: So I think we should probably...

MR SHENTON: We should agree that between us?

MR HINES: Yes I think we should leave it.

MR SHENTON: Yes, it runs from 5th July and the parties to agree, if not to come back before you. I am sure we will be able to.

DEPUTY DISTRICT JUDGE FOY: Right. I have got to complete this form now gentlemen, so bear with me. Right, you are seeking permission to appeal in relation solely to the question of the ruling in relation to the interest?

MR HINES: It would also be sir in respect of the allowance of costs prior to the Part 8 proceedings.

DEPUTY DISTRICT JUDGE FOY: Right. Right, having listened to what you said Mr Hines, and also bearing in mind the nature of the hearing and the issues involved, I am going to allow permission to appeal in respect of those matters.

MR HINES: Thank you sir.

DEPUTY DISTRICT JUDGE FOY: Though specific authority of a previous decision dealing with these points was produced at the hearing, as I understand the position, and I feel therefore that it is appropriate for the defendant to be given permission to appeal.

MR HINES: Thank you sir.

DEPUTY DISTRICT JUDGE FOY: So I will just fill in the box.

MR SHELTON: Not that I was invited for submissions on the point but sir I would not have objected.

DEPUTY DISTRICT JUDGE FOY: Yes, I thought you may have done. Right. What I will do gentleman is, with your consent, I will write up the order later. Obviously I have made full notes so I know what the position is in that respect. I think I have to give this form to you,

Mr Hines. If you would be kind enough just to ask the usher to do a couple of copies, one for your opponent, Mr Shenton, and one to remain on the court file.

MR HINES: Certainly sir.

MR SHENTON: I take it the hearing has been transcribed, recorded. You will need a transcript for the appeal.

MR HINES: Yes.

MR SHENTON: I am very grateful sir.
