CITATION: *Credit Corporation v Dalton-Lunn, Credit Corporation v Montecillo, Credit Corporation v Triantafillou* [2007] NTMC 006

PARTIES:	CREDIT CORPORATION LTD
	v
	CATHERYN LOUISE DALTON LUNN
	CREDIT CORPORATION LTD
	v
	ALITA MAYOL MONTECILLO CREDIT CORPORATION LTD
	v
	NIKOLAS TRIANTAFILLOU
TITLE OF COURT:	Local Court
JURISDICTION:	Small Claims
FILE NO(s):	20615207,20621993,20612779
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JUDGMENT OF:	Relieving Magistrate Fong Lim

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Practice and Procedure – interest on interest– default judgment - rule 39.01 Local Court rules

City Mutual Assurance Ltd v Giannarelli[1977] VR 463

B*rian Edward Saunders v Adrian Ernest Nash* - Supreme Court of Victoria Vincent J OR84 1989 6 May 1990, 21 June 1990

REPRESENTATION:

Counsel:

Plaintiff:	Mr Ford
Defendant:	no appearance

Solicitors:

Plaintiff:	Cridlands
Defendant:	self

Judgment category classification:	
Judgment ID number:	[2007] NTMC 006
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IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20615207,20621993 & 20612779

BETWEEN:

CREDIT CORPORATION LTD
Plaintiff

AND:

CATHRYN LOUISE DALTON – LUNN
Defendant

CREDIT CORPORATION LTD

v

ALITA MAYOL MONTECILLO

CREDIT CORPORATION LTD

v

NIKOLAS TRIANTAFILLOU

REASONS FOR JUDGMENT

(Delivered 5th February 2007)

Ms Fong Lim RSM:

1. The Plaintiff in all matters has made application for judgment in default of defence. Part of the Plaintiff's claim is for interest leading up to the date of judgment and subsequent to judgement. The debt claimed in the statement of claim includes interest calculated as per the loan agreement and up to the date of commencing proceedings. In its application for default judgment the Plaintiff claims interest on that debt at the rate provided for in the loan agreement.

2. The Plaintiff is not the original lender in the loan/credit agreements with the Defendants. The Plaintiff comes to the court as the purchaser and assignee of those debts. None of the defendants dispute the debts are owing and had nothing to say about the interest rate to be applied. In fact the defendants having not filed a defence had no standing in the application. It is also important to note that the original loan credit agreements subject of these actions do not allow the relevant lenders to claim compound interest from the defendants.

3. In this court interest after judgement is provided for by Rule 39.01 of the Local court rules and the present rate is 10.5%pa as set by the Supreme Court Rules.

4. A party's right to interest between the date of the cause of action and judgment lies within the discretion of the court.

5. Rule 39.03(1) states

> (1) In a proceeding, the Court may order that interest is to be included in the sum for which judgment is given at the rate it considers appropriate on the whole or a part of the sum for the whole or a part of the period between the date when the cause of action arose and the date of the judgment.

6. Pursuant to Rule 39.03(1) the Court has total discretion as to the period of time for which it allows interest and the rate at which interest is allowed.

7. Rule 39.03 (3) allows for interest between the commencement of the proceeding to the date of judgement where–

> **"**(a) a claim is made for a debt or liquidated demand (whether or not another claim is also made in the proceeding); and
>
> (b) the plaintiff is entitled under Part 11 to an order for default judgment on that claim,
>
> unless the Court orders otherwise, the plaintiff may enter final judgment against the defendant for an amount not exceeding the

amount claimed in the statement of claim together with interest from the commencement of the proceeding up to and including the date of judgment –

(c) on a debt that carries interest – at the rate it carries; or

(d) on any other amount – at the rate payable on a judgment debt during that time.

8. Therefore when a party applies for default judgement they are entitled to do so for the debt claimed plus interest from the commencement of the proceeding to the date of judgement.

9. Typically in matters where a financial institution applies for default judgement against a person who has not repaid their loan the financial institution applies for interest on the debt at the rate set out in their agreement from the commencement of proceedings to the date of judgement.

10. Two questions for this court are whether in those circumstances the plaintiff is entitled to interest on the whole of the debt as outstanding at the commencement of proceedings (inclusive of interest accrued up to that date) and if so are what rate.

11. This court has long held the view that rule 39.03(2) meant that the judgement debt must be divided into 2 parts, principal debt and interest, and the interest on the default judgement should be calculated on the principal only not the interest component because of rule 39.03(2) which reads:

"(2) Subrule (1) does not –

(a) authorise the giving of interest on interest;

(b) apply in respect of a debt on which interest is payable as of right, whether by virtue of an agreement or otherwise; or

(c) affect damages recoverable for the dishonour of a bill of exchange."

12. Subsection (2) certainly excludes interest on interest when interest is issued over a judgement pursuant to 39.03(1). However the Plaintiff argues in relation to matters where interest if claimed by virtue of an agreement or otherwise,(subrule (2)(b)) subrule (1) does not apply and it follows therefore the restriction in subrule (2)(a) does not apply.

13. I agree that the restriction on the granting of interest on interest in Rule 39.03(2) does not apply to matters such as the present matters where interest is claimed by virtue of an agreement however that does not necessarily mean that the court should grant interest on interest in the circumstances of these present matters.

14. It must be made clear at this stage that it is still within the discretion of the court to order that the interest not be allowed and the set the rate allowable. The words “unless the court otherwise orders” give the court that discretion.

15. The concern for this court is that by granting interest at the commercial rate applicable in the relevant loan agreements for the period between the commencement of proceedings and the date of judgment on a debt which is already inclusive of interest it will be allowing for compound interest to be paid to the lender. It would seem inequitable to allow a Plaintiff interest that it would not be allowed under its original agreement. The court was provided with the original credit agreements applicable in each case and it is conceded by the Plaintiff that none of those agreements allowed for compound interest to be imposed.

16. The Plaintiff referred to the decision of the Supreme Court of Victoria in *City Mutual Assurance Ltd v Giannarelli* [1977] VR 463 as authority for the proposition that the restriction on interest on interest does not apply to matters where the pre judgment interest is claimed as part of the agreement even if the agreement does not allow for compound interest.

17. The provisions being considered in *City Mutual's case* were the sections 78,79 & 79A of the Supreme Court Act [1958]. Section 79A being the relevant section for the purposes of the present application. Section 79A, as it then was, read:

> "(1) the Judge upon the application shall in all actions for the recovery of debt or damages give damages in the nature of interest at such rate not exceeding the rate for the time being fixed under section 2 of the *Penalty Interest Rate Act* 1983 as he thinks fit from the commencement of the action until the entry of the judgment unless good cause is shown to the contrary over and above the debt or damages awarded by the court or jury.
>
> (2) Nothing in this section shall -
> (a) authorise the granting of interest upon interest;
> (b) apply in relation to any sum upon which interest is recoverable as of right by virtue of any agreement or otherwise;.....
> (e) apply in relation to any sum on which interest might be awarded by virtue of section seventy –eight or section seventy -nine of the Act "

18. It is clear that the provisions considered by the court in the *City Mutual's case* were not exactly the same as the Rules of court being considered in the present matters although very similar.

19. In his analysis of the Victorian provisions His Honour Justice McInerney considers the English legislation upon which the Victorian provisions were based. His Honour quotes section 3 of the Law Reform Miscellaneous Provisions Act 1934 (Eng) which read:

> "3(1) In any proceedings tried in any court 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 interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgement:
>
> Providing that nothing in this section -
> (a) shall authorise the giving of interest upon interest; or

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise…"

20. At page 466 His Honour commented that

> " The effect of that section was that in any proceedings in any court of record for the recovery of any debt or damages, the court was given a discretionary power to award interest for the whole or any part of the period between the date between when the cause of action arose and the date of the judgement"

21. At page 468 His Honour found that in the circumstances of that case interest was allowable under section 78 of the act and that the provision in section 79A(2) that nothing in that section shall :

> " (e) apply in relation to any sum on which interest might be awarded by virtue of se78 or s79 of this Act"

22. His Honour says:

> "That sub-paragraph has in my judgement the effect of taking the action out of the operation of s79A and therefore out of the operation of s79A(2) the effect of which is to preclude the granting of interest upon interest in cases falling within s79A"

23. His Honour then goes on to say:

> "… it is clear that the objection taken on the part of the appellants that the judgment is irregular as having included interest upon interest contrary to the provisions of section 79A is not sustainable and that the judgement should not therefore on that score be set aside."

24. The argument put forward by counsel for the Credit Corporation Services Pty Ltd is that Local Court Rules in this jurisdiction mirror the provisions considered by the Court in *City Mutual Life Assurance Society ltd v Gianarelli* and therefore applying the Justice McInerney's reasoning the Plaintiff should entitled to claim interest because the restriction of interest on interest does not apply to matters where interest is claimed as per an agreement.

25. It is clear from his reasoning that Justice McInerney was of the view that as interest granted by the court is, by virtue of the section, granted in the nature of damages there is no real link back to the provisions of the loan agreement. Whether the loan agreement allowed compound interest was therefore not a relevant factor in His Honour's mind. His Honour also found that any interest allowed should only be allowed at the rate set under the Act and not the commercial rate unless good cause could be shown otherwise.

26. In all three matters before this court the relevant agreements were from three different institutions and all calculated interest on the daily balance accruing monthly. The Plaintiff conceded there was no provision for interest to compound and any of the agreements. The Plaintiff also conceded that in the application of the court's reasoning in the *City Mutual Case* the appropriate interest rate is that allowed by the Local Court Rules (See rule 39.01 Local court rules and Order 59.02 Supreme Court Rules) and not the commercial rate as originally claimed.

27. At this point it is important to consider the facts in the *City Mutual case*. In that matter the plaintiff sued for two outstanding payments of interest, no principal, on a loan and applied for default judgment on those payments plus interest pursuant to the Supreme Court Act. Default judgment was entered by the prothonotary of the Supreme Court for the payments outstanding and for interest at the rate provided for by the Supreme Court Act not the rate provided for by the agreement. The default judgment effectively gave the plaintiff interest upon interest. The defendants appealed the decision on two basis first that the Plaintiff was not entitled to the interest on interest pursuant to section 79A and second that the any allowance for interest could only be made by the court and not the prothonotary. The second ground of appeal does not have any reference in the current matters.

28. His Honour found that the provisions of the Act required and application to be made for interest and language of the provisions required "an application" to be made to the court :

> "I therefore conclude therefore that on the entry of judgment in default of appearance there was no power to allow interest pursuant to s 78(as amended). The consequence is that the judgment entered was irregular as having been entered for an amount greater than was legally recoverable on judgement in default of appearance."

29. The court then set aside the default judgment and entered judgment for the original debt with no interest accruing for the period between the date of application to the date of judgement. His Honour was of the opinion that it is clear from the wording of the Act section 78,79 and 79A that interest is allowed on the basis that it is part of the damages granted to the Plaintiff and as no application was made those damages could not be granted.

30. This is clearly not the situation in the present cases. In this jurisdiction the Plaintiff is entitled to interest on judgement in default of defence by virtue of the rules "unless the court otherwise orders".

31. Rule 39.03(2) clearly excludes the court entering a judgement which grants interest on interest if granting interest pursuant to Rule 39.03(1) however it also just as clearly excludes debts claimed where interest is claimed by virtue of an agreement from the operation of rule 39.03(1). The logical conclusion is that where a plaintiff is claiming interest under an agreement and that agreement has been proved then there is no reason why the Plaintiff, just be virtue of commencing proceedings, should be denied its interest as per the terms of its agreement with the Defendant. That reasoning is supported by the fact that Rule 39.03 allows for interest in a default judgement on such an action to be at the rate applicable under the agreement.

32. In the *City Mutual case* Justice McInerey accepted that the words used in 79 and 79A of the Supreme Court Act which specifically referred to damages in

the form of interest allowed for interest to be granted on a claim which already included interest because the interest allowed pursuant to section 79A was in the form of damages.

33. His Honour's reasoning has been applied in B*rian Edward Saunders v Adrian Ernest Nash* - Supreme Court of Victoria Vincent J OR84 1989 6 May 1990, 21 June 1990. Vincent J in considering whether to set aside a judgment obtained which allowed interest on a debt which included interest applied McInerny J's reasoning in *City Mutual's case* and found there was no error:

> "The second limb of the ground relating to that matter was that he was not entitled to award damages in the nature of interest calculated on that part of the judgment debt comprising interest. Now, my interpretation of s60 is that the debt to which that section refers is the amount which is owing as principal and interest under the contract as at the date of the institution of the proceedings because it is that debt which the proceedings are intended to recover. So, in other words, the interest, though calculated as simple interest, is interest upon the amount of principal and interest which is outstanding under the contract as at the date that proceedings are instituted."

34. The provision considered in Saunders case was section 60 of the Supreme Court Act as it now is:

> "60. Interest in proceedings for debt or damages
>
> (1) The Court, on application in any proceeding for the recovery of debt or damages, must, unless good cause is shown to the contrary, give damages in the nature of interest at such rate not exceeding the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 as it thinks fit from the commencement of the proceeding to the date of the judgment over and above the debt or damages awarded.
>
> (2) Nothing in this section-
>
> (a) authorises the granting of interest on interest;

(b) applies in relation to any sum on which interest is recoverable as of right by virtue of any agreement or otherwise

(c) affects the damages recoverable for the dishonour of a negotiable instrument;

(d) authorises the allowance of any interest otherwise than by consent on any sum for which judgment is entered or given by consent;

(e) applies in relation to any sum on which interest might be awarded by virtue of section 58 or 59; or

(f) limits the operation of any enactment or rule of law which, apart from this section, provides for the award of interest.

(3) If the damages awarded by the Court or jury include or if the Court in its absolute discretion determines that the damages awarded include any amount for-

(a) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest;

(b) compensation for loss or damage to be incurred or suffered after the date of the award; or

(c) exemplary or punitive damages-

the Court must not allow interest in respect of any amount so included or in respect of so much of the award as in its opinion represents any such damages.

(4) The Court may request a jury to specify in its verdict any amount included in the verdict in respect of the matters referred to in sub-section (3).”

35. It is clear that Section 60 of the Supreme Court Act as considered by Justice Vincent also classifies interest as a form of damages. On this basis the *City Mutual case* and *Saunders v Nash* must be distinguished. These authorities should also be distinguished on the basis that the provisions considered in those cases did not provided for a particular situation given default judgment as is provided in Rule 39.03(3) of the Local Court Rules.

36. It could be argued that while there is no specific reference to damages in the form of interest in the Local Court rules the allowance of interest between the date of commencement of proceedings and the date of judgment must be in the form of damages otherwise there is no other justification for it. However if the interest is only damages then on matters such as the present matters those damages should not give the plaintiff for any more than they would have been entitled pursuant to their agreement with the defendant. The agreement in each of these matters did not allow for compounding interest so it is clear that the claim for interest between the date of commencement and the judgement should not be granted in a manner that allows compound interest on that part of the debt claimed that is interest. If the court allows compound interest at the commercial rate then it would be granting the Plaintiff a windfall.

37. The difficulty in the present cases and in all such matters involving loans from financial institutions is how to assess what amount should be granted to the Plaintiff for damages and if an interest component in that judgement should be categorised as damages. The Plaintiff has conceded that the interest rate applicable is the judgement interest rate provided by the rules and that interest is claimed as damages however it is my view in the circumstances of these present matters that concession may be in error.

38. The legislature has chosen to specifically exclude matters where interest is claimed by virtue of an agreement from the operation of Rule 39.03.(1) and in rule 39.03(3) has allowed for interest in such matters to be included on default judgement at the rate " it (the debt) carries". It is my view that the reason for excluding such claims is to allow the plaintiff to claim what it is entitled to claim pursuant to its agreement. The successful plaintiff should not be restricted in its claim for the interest under its agreement by the court allowing a lower rate of interest. By the same token the successful Plaintiff should not be allowed a windfall if the interest rate claimed under the agreement is less than the court allowed rate.

39. If the words of Rule 39.03(3) are carefully analysed the answer to the question becomes clear. Rule 39.03(3) allows a Plaintiff in an action for "an amount" to obtained default judgment with interest and that interest shall be:

> "(a) on a debt that carries interest – at the rate it carries"

40. There is a distinction within the between the "amount claimed" and " a debt that carries interest". Obviously the rule applies to all actions some of which will not relate to a debt that carries interest. In these matters however the debt that carries interest is the principal debt. There is no allowance for the interest to carry interest in the relevant agreements that is no allowance for the compounding of that interest.

41. Therefore it is my view that the Plaintiff should be allowed interest on the principal debt (no interest) in all cases in the applicable interest rate allowed under the relevant agreements from the commencement of the proceedings to the date of judgement.

42. The issue of the applicable rate subsequent to judgement is not an issue in these matters however for the sake of completeness and for the certainty of the parties. Interest on a judgement is a less complicated issue. The Rules specifically say that:

> "39.01 Interest on judgment and costs
>
> (1) Subject to subrule (2) and unless the Court orders otherwise, every judgment debt carries interest from the date of judgment at the rate fixed in accordance with rule 59.02 of the Supreme Court Rules."

43. There is no equivalent restriction in rule 39.01 as there is in Rule 39.03(2) that is excluding interest on interest and any matters where interest is claimed pursuant to an agreement. It is clear that the legislature intended that all judgement debts were to carry interest at the fixed rate unless otherwise ordered by the court.

44. In my view a judgment debt carries interest at the judgement debt rate unless there applicant makes an application otherwise and the Court is satisfied the situation justifies a different rate to apply. While there has been no application for a judgment debt interest rate other than the rate fixed by Rule 39.01 and I propose to direct that interest rate of 10.5% pa annum apply to the judgment debt by the registrar upon any further application for the enforcement of the judgment debt.

45. Given the above I order in each matter that there be default judgment on the following basis:

45.1 There be judgement in favour of the Plaintiff in the sum of the principal debt claimed plus interest accruing on that debt up to the commencement of the proceedings and from that date to the date of the judgement at the rate set by the relevant credit agreement.

45.2 Interest to accrue on the judgement debt at 10.5% pa from the date of judgement.

45.3 I will leave it to the Plaintiff to provide the court with the appropriate calculations for the amount of the judgments in each matter.

45.4 In relation to costs of this application in both the Dalton – Lunn matter and the Montecillo matter there are no costs applicable as they are matters within the Small Claims jurisdiction and in the Triantefallou matter the costs are reserved.

Dated this 5th day of February 2007.

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Tanya Fong Lim
RELIEVING STIPENDIARY MAGISTRATE