

CITATION: *Rob Sheppard Tiling Pty Ltd v Meyering*
[2023] NTLC 9

PARTIES: Rob Sheppard Tiling Pty Ltd (CAN: 009650953)

v

Suzanne Mary Meyering

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2020-00141-LC

DELIVERED ON: 31 March 2023

DELIVERED AT: Darwin

HEARING DATE(s): 2 March 2021

DECISION OF: Judge Macdonald

CATCHWORDS:

Sentencing Act - s97 - Local Court (Civil Jurisdiction) Rules - Local Court Act – restitution

Local Court Act 2015
Local Court (Civil Jurisdiction) Rules 1998
Sentencing Act 1995
Supreme Court Act 1979

Baxter v Hudson [2015] NTSC 17
The Queen v Williams [2010] NTSC 74
TTG Nominees Pty Ltd v Aileron Pastoral Holding Pty Ltd [2020] NTSC 15

REPRESENTATION:

Counsel:

Worker: Mr B Piper

Employer: Self

Solicitors:

Worker: Piper Grimster Jones

Lawyers

Employer: Self

Decision category classification: B
Decision ID number: [2023] NTLC 9
Number of paragraphs: 20

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 2020-03045-LC

BETWEEN:

Rob Sheppard Tiling Pty Ltd

Worker

AND:

Suzanne Meyering

Defendant

REASONS FOR DECISION

(Delivered 31 March 2023)

MACDONALD LCJ

The Proceeding

1. The Plaintiff commenced this proceeding by filing a statement of claim against the Defendant for \$84,475 plus interest and legal costs, on 2 September 2020.
2. The basis of the claim was that between 2013 and 2017 the Defendant misappropriated a total sum of \$84,475 from the Plaintiff's business. The Defendant was convicted and sentenced in the Supreme Court for the misappropriation on 5 December 2018. That was in relation to 45 counts for contravention of s 210 and s 227 of the *Criminal Code* (NT), generically described as 'deception' and 'stealing'.
3. In sentencing on 5 December 2018 the Supreme Court also made a restitution order in the sum for which judgement is sought, with the restitution amount to be paid to the Plaintiff within 5 years of date of sentence.
4. The Defendant filed a notice of defence to the statement of claim on 8 October 2020. The defence included that a restitution order was made in the Supreme Court criminal proceedings, and therefore she still had until 4 December 2023 to pay the restitution order, so a stay was sought. Additionally, that there was no interest or costs on the restitution order, so the Plaintiff was not entitled to that relief from the Local Court (the Court).
5. The matter came before the Court for hearing on 2 March 2021. The Plaintiff was represented during the proceedings, and the Defendant was unrepresented. Following hearing from both parties, the matter was adjourned for the filing of any written submissions by both parties.
6. The Plaintiff filed further written submissions on 9 March 2021, largely in relation to interest and costs.

7. The Defendant filed written submissions on 23 March 2021. Those submissions included that a stay should be granted until five years from the original restitution order of the Supreme Court. She does not admit that she stole the money, but accepts that she 'lost the trial'. If she could pay the amount she would, but believes if given time, she would be able to raise the funds by December 2023.
8. The Defendant raised the case of *Baxter v Hudson* [2015] NTSC 17, being an appellate decision in relation to enforcement of restitution orders. The Defendant also submitted that decision in *The Queen v Williams* [2010] NTSC 74 should prevent the judgment sought.
9. However, each of those decisions concern the use or imposition of imprisonment when restitution is not paid in orders related to criminal proceedings. These proceedings are not an application under the *Sentencing Act 1995* for payment and enforcement of the restitution order.
10. On 24 March 2021, I heard final submissions from both parties and adjourned the matter for decision. The evidence included tender of the relevant Certificate of Conviction dated 14 July 2020 and a transcript of the sentencing proceedings in SCC 21720023 before his Honour Justice Graham on 5 December 2018¹. At that time the restitution order was also made, with a five-year period for payment prescribed.
11. The restitution order was part and parcel of sentence in criminal proceedings, whereas the Plaintiff's claim is in the civil jurisdiction of the Local Court. Section 5 of the *Local Court Act 2015* establishes the court as a "court of law and equity", such that the court has broad civil jurisdiction. Section 13(2) of that Act makes clear that the court is empowered to grant "equitable relief within its jurisdictional limit", with section 17 then calling up Part IV of the *Supreme Court Act 1979*. Most relevantly, s 13(1) of the Act also confers jurisdiction on the court to "to deal with a claim for an amount of money if ... the amount is claimed as damages, a debt or a liquidated demand" (emphasis added), within its jurisdictional ceiling.
12. It is noted that the statement of claim alleges various facts essentially described as 'misappropriation', but does not expressly plead any usual cause of action at common law or in equity, such as breach of contract in employment, debt due and payable, breach of fiduciary duty or the like.
13. Despite that it appears the Defendant continues to not admit her criminal guilt in relation to the money, she accepts the decision of the Supreme Court, including the restitution order. The restitution order was not by consent, but was not the subject of any appeal to the NT Court of Criminal Appeal. It is not my conclusion that the restitution order produces a result such as *res judicata*, or that the restitution order could simply be converted to a civil judgement, including due to enforcement being in the jurisdiction of the Supreme Court. However, I consider the amount sought by the proceeding is owed by the Defendant to the Plaintiff, regardless of whether characterized simply as misappropriation, or as a breach of fiduciary duty, or a breach of employment contract, or some other proper cause.

¹ Exhibits 2 and 1 respectively.

14. It is clear that the Plaintiff is generally entitled to bring the proceedings, separate to any restitution order made by the Supreme Court as a result of the criminal proceedings. Section 97 of the *Sentencing Act 1995* provides:

97 *Orders not to affect other rights*

Nothing in this Division affects the right of a person to bring and maintain a civil action except that anything done or paid under an order made under this Division must be taken into account in any award of damages.

15. In all the circumstances, including having regard to the evidence tendered at hearing, I am satisfied on the balance of probability that the Defendant is civilly liable to the Plaintiff in the sum of \$84,475 as sought by the proceeding. I therefore order that the Defendant pay to the Plaintiff that amount, less any amount that she has paid to the Fines Recovery Unit for payment to Rob Sheppard Tiling Pty Ltd.
16. The issues concerning interest and costs are to be determined. In relation to interest, I accept the submissions of the Plaintiff, in that, the ability to do so is covered expressly in rule 39.03 of the *Local Court (Civil Jurisdiction) Rules 1998*, which provides;
- (1) *In proceedings, 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.*
 - (1A) *Sub rule (1) applies subject to Part 4 of the Personal Injuries (Liabilities and Damages) Act 2003.*
 - (2) *Sub rule (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, 5 whether by virtue of an agreement or otherwise; or*
 - (c) *affect damages recoverable for the dishonour of a bill of exchange.*
17. I also agree with the submission that the Court has a discretion to allow pre-judgment interest and that it should be at a fair and reasonable rate. In *TTG Nominees*, cited by the Plaintiff, his Honour Justice Mildren held it is "*open to the plaintiff to call evidence about relevant commercial interest rates... [and] in the absence of such evidence, the practice is to apply the rates from time to time applicable to post judgement interest*".²
18. I accept where there is no evidence as to pre-judgment interest rates, post judgement interest rates can be used. Here the Plaintiff is applying for and prepared to accept half the rate that would be applicable should a calculation be done using 6 per cent above the Reserve Bank cash rate. That is 3.05 per cent from the date of last offending.
19. I find there is no reason not to allow interest and costs of these proceedings in relation to the amount owed.

² *TTG Nominees Pty Ltd v Aileron Pastoral Holding Pty Ltd* [2020] NTSC 15.

20. It is appropriate for interest to be 3.05 per cent. Whilst this amount was calculated to be \$12,902.85 at the time of submissions, it would now be a larger amount, and I rely on the Plaintiff for a new calculation, less any amount already paid through the Fines Recovery Unit.

I will hear the parties as to costs.

The Orders are:

1. Judgment is entered for the Plaintiff in the sum claimed (\$84,475) minus any amount already paid of the restitution order of the Supreme Court; plus
 2. Interest at a rate of 3.05 per cent of this amount from the date of last offending contained in Exhibit 2.
 3. Costs to be agreed or determined
-