

SUPREME COURT OF QUEENSLAND

CITATION: *DTM Constructions Pty Ltd trading as QA Developments v Poole & Anor* [2017] QSC 246

PARTIES: **DTM CONSTRUCTIONS PTY LTD ACN 104 066 462 trading as QA DEVELOPMENTS**
(plaintiff)
v
JUSTIN REID POOLE
(first defendant)
DARRYL ROY HOPKINS
(second defendant)

FILE NO/S: No 12855 of 2015

DIVISION: Trial Division

PROCEEDING: Trial – Orders

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 November 2017

DELIVERED AT: Brisbane

HEARING DATE: Written submissions received 10, 12 October 2017

JUDGE: Ann Lyons SJA

ORDERS:

- 1. The First Defendant pay to the Plaintiff the amount of \$1,009,527.13 for the claim together with interest in the amount of \$136,414.12 and the First Defendant pay the Plaintiff's costs of the proceeding to be assessed on an indemnity basis.**
- 2. The Second Defendant pay to the Plaintiff the amount of \$837,739.13 for the claim together with interest in the amount of \$113,200.95 and the Second Defendant pay the Plaintiff's costs of the proceeding to be assessed on an indemnity basis.**

CATCHWORDS: INTEREST – RECOVERABILITY OF INTEREST – IN GENERAL – where damages were awarded to the plaintiff for the defendants' breaches under general law and under the *Corporations Act* 2001 (Cth) – where the plaintiff submits interest should accrue on damages from date breaches occurred - where the defendants submit that interest on damages

awarded should accrue at the point proceedings were commenced – whether interest should accrue from date of breaches or at point proceedings commenced

Civil Proceedings Act 2011 (Qld) s 58

Butler & Ors v The State of Queensland [2014] QSC 19
Cashmere Bay Pty Ltd v Hastings Deering (Australia) Ltd (No. 2) [2011] QSC 134
GEJ & MA Geldard Pty Ltd v Mobbs & Ors (No 3) [2011] QSC 297
MBP (SA) Pty v Gogic (1991) 98 ALR 193

COUNSEL: P W Hackett with P G Jeffery for the plaintiff
M Lawrence for the first and second defendants

SOLICITORS: Evans Lawyers for the plaintiff
MDR Lawyers for the first and second defendants

Background

- [1] On 28 September 2017 I published my reasons in this matter and found that the first and second defendants had breached some of their duties as a director and officer of the plaintiff company under the general law and under the *Corporations Act 2001 (Cth)* (the Act). Those breaches occurred in circumstances where as a director and officer of the plaintiff company, the first and second defendants were found to have diverted opportunities for the plaintiff company to enter into a number of building and construction contracts. My findings can be summarised as follows:

Contract subject of claim	Date of breach	First Defendant	Second Defendant
21 Blocks Coronation Hill	31/12/2014	\$210,000.00	\$210,000.00
19 Hoffman Way	11/05/2015	\$35,327.84	\$35,327.84
333 Riding Rd	25/05/2015	\$159,709.24	\$159,709.24
Lot 38 Birdwing Cr	01/06/2015	\$31,905.40	\$31,905.40
75 Springwood Rd	04/06/2015	\$259,472.77	\$259,472.77
Lot 2 Hillcrest	04/08/2015	\$35,524.74	\$35,524.74
Lot 3 Hillcrest	17/06/2015	\$35,266.38	\$35,266.38
Lot 8 Hillcrest	13/07/2015	\$35,266.38	\$35,266.38
Lot 21 Hillcrest	11/06/2015	\$35,266.38	\$35,266.38
29 Hunters St	24/08/2015	\$35,327.84	N/A
Total damages		\$1,009,527.13	\$837,739.13

- [2] By those reasons I also made the following Orders:

1. The parties are directed to provide short minutes of orders in accordance with these reasons by 12 October 2017.

2. The parties are directed to provide short submissions as to the calculation of interest and as to costs by 12 October 2017.

The parties' submissions

- [3] Short minutes of orders together with submissions were received from counsel for the plaintiff and defendants on 10 and 12 October 2017 respectively. The parties agree that the total amount of damages owed to the plaintiff by each defendant for the breaches found is as appears in the table above. The parties also agree that, pursuant to r 360(1) of the *Uniform Civil Procedure Rules* 1999 (Qld) (UCPR), the defendants are to pay the plaintiff's costs calculated on the indemnity basis given that the plaintiff obtained a judgment no less favourable than offers made to each defendant.
- [4] The parties disagree however on the point of time at which interest should accrue on damages awarded. Counsel for the plaintiff submits that interest in respect of each claim should accrue from the date of breach to the date of judgment. Counsel for the defendants submits that it is not appropriate for interest to be calculated from the date of each breach, given that there is no evidence that the plaintiff would have received any money for the contracts on those dates. Rather, counsel for the defendants argue that because payments for construction contracts are typically made in stages, the plaintiff's losses for each diverted contract were staggered and on this basis, submits that interest on each claim should be calculated from the date proceedings were commenced.
- [5] The rate of interest to be awarded is not contested as between the parties.

At what point should interest accrue on damages awarded?

- [6] Section 58(3) of the *Civil Proceedings Act* 2011 (Qld) provides that the Court "may order that there be included in the amount for which judgment is given interest at the rate the court considers appropriate for all or part of the amount and for all or part of the period between the date when the cause of action arose and the date of judgment".
- [7] The High Court in *MBP (SA) Pty v Gogic*¹ stated that "The function of an award of interest is to compensate a plaintiff for the loss or detriment which he or she has suffered by being kept out of his or money during the relevant period". In determining the correct point at which interest should accrue, recent decisions of this court have considered the nature of the damages awarded to the successful party² and the date at which the relevant loss was sustained.³ There can be no doubt that that Courts have adopted a flexible approach given the wide discretion afforded by r 58(3).
- [8] Here, the plaintiff was awarded damages to compensate it for lost opportunities to enter into building and construction contracts that were diverted from it to third parties by the defendants, in breach of their duties. Damages were assessed with reference to the loss of potential profit to the plaintiff company, which was calculated according to the contract price for each diverted opportunity.

¹ (1991) 98 ALR 193.

² See *Cashmere Bay Pty Ltd v Hastings Deering (Australia) Ltd (No. 2)* [2011] QSC 134; *Butler & Ors v The State of Queensland* [2014] QSC 19.

³ See *GEJ & MA Geldard Pty Ltd v Mobbs & Ors (No 3)* [2011] QSC 297.

- [9] The evidence provided at trial⁴ is consistent with the defendants' submission that payment for these contracts would have been received in stages and as such, had the plaintiff had the opportunity to enter into each of the diverted contracts, it would not have received all monies owing under the contracts on the date the breaches occurred.
- [10] As noted above the first breach was 31 December 2014 and the last breach was 24 August 2015. These proceedings were commenced on 18 December 2015. I note that in the decision of *Cashmere Bay Pty Ltd v Hastings Deering (Australia) Ltd (No. 2)* it was common that "the sensible approach was to allow interest to run from the midpoint of the period".⁵ I consider that a similar approach should be adopted here. I also consider that the mid-point should be 30 June 2015.
- [11] Calculated at the default rate, the interest payable by the first defendant on the amount of \$1,009,527.13 for the claim from 30 June 2015 to 1 November 2017 is \$136,414.12.
- [12] Calculated at the default rate, the interest payable by the second defendant on the amount of \$837,739.13 for the claim from 30 June 2015 to 1 November 2017 is \$113,200.95.
- [13] I therefore make Orders in the following terms:
1. The First Defendant pay to the Plaintiff the amount of \$1,009,527.13 for the claim together with interest in the amount of \$136,414.12 and the First Defendant pay the Plaintiff's costs of the proceeding to be assessed on an indemnity basis.
 2. The Second Defendant pay to the Plaintiff the amount of \$837,739.13 for the claim together with interest in the amount of \$113,200.95 and the Second Defendant pay the Plaintiff's costs of the proceeding to be assessed on an indemnity basis.

⁴ See for example *DTM Constructions P/L trading as QA Developments v Poole & Anor* [2017] QSC 210 at [179]-[182].

⁵ At [26].