IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 95/2016
[2018] NZSC 37

BETWEEN	SCOTT Appellant
AND	WILLIAMS Respondent

Court:	Elias CJ, William Young, Glazebrook, Arnold and O'Regan JJ
Counsel:	D J Goddard QC and S H Ambler for Appellant S L Robertson QC for Respondent
Judgment:	23 April 2018

JUDGMENT OF THE COURT

A The appellant's claim for interest is dismissed.

B The respondent's claim for interest is upheld. We order the appellant to pay interest of five per cent per annum to the respondent:

(i) on $290,751.34 from 20 February 2014 to the date of payment; and
(ii) on $51,591.13 from 6 June 2014 to the date of payment.

C We make no award of costs in respect of the present application.

REASONS
(Given by O'Regan J)

[1] In its substantive judgment in this case, the Court gave leave to the parties to file submissions on interest in the event that they were unable to agree on the amount of interest (if any) payable by one party to the other.[1]

[2] The parties have not been able to agree. In fact, each makes a claim for interest against the other. We have read and considered the written submissions made by the parties. For reasons to which we will come later, we have decided to deal with these claims on the basis of the written submissions filed.

Background

[3] The Court of Appeal made an order under s 15 of the Property (Relationships) Act 1976 (PRA) that the respondent, Mr Williams, pay the appellant, Ms Scott, $470,000.[2] This Court decided by majority that that order should be quashed and replaced by an order that the respondent pay the appellant $520,000.[3]

[4] The payment required to be made by the respondent as a result of this Court's judgment under s 15 of the PRA is, however, substantially lower than the amount of the s 15 order made by the Family Court Judge.[4] He ordered the respondent to pay the appellant $850,000. This Court reinstated the Family Court's order vesting the Remuera properties of the parties in the appellant and also reinstated the Family Court's valuation of the respondent's law practice. This meant that the only difference between the outcome in the Family Court and the outcome in this Court was the amount to be paid under s 15 by the respondent. As the respondent made a payment to the appellant in June 2014 on the basis of the Family Court judgment (and no adjustments were made following the High Court and Court of Appeal judgments), the practical effect of this Court's decision is that the appellant is now required to make payment to the respondent.

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1 *Scott v Williams* [2017] NZSC 185, [2018] NZFLR 1, order E and [272] [*Scott* (SC)]. Scott and Williams are not the parties' real names, as noted in *Scott* (SC) at [266].
2 *Scott v Williams* [2016] NZCA 356, [2016] NZFLR 499 (Ellen France P, Harrison and Kós JJ).
3 *Scott* (SC), above n 1, order E and [271].
4 *Williams v Scott* [2014] NZFC 7616 (Judge McHardy) [*Scott* (FC)].

[5] Putting to one side the present applications for interest, the contrasting positions can be summarised as follows:

(a) *Family Court*: Attachment 2 to the judgment of the Family Court sets out the calculation of the amount required to be paid by the appellant to the respondent to equalise the division of property, having regard to the assets vested in or retained by each party.[5] That amount was $829,767. That was then adjusted by $881,358.13, comprising the s 15 order made by the Family Court Judge of $850,000, interest of $12,342.47 and a rates adjustment of $19,015.66. The result of this was that the respondent was required to pay the appellant $51,591.13. He made this payment on 6 June 2014.

(b) *Supreme Court*: As a result of this Court's judgment, the adjustment in favour of the appellant from the amount payable by her to equalise the division of property ($829,767) reduced from $881,358.13 to $539,015.66 (being the s 15 order of $520,000 and rates adjustment of $19,015.66). This means that the appellant is required to pay the respondent $290,751.34. In addition, the appellant is required to repay the respondent the amount of $51,591.13 that he paid to her on 6 June 2014.

The claims for interest

[6] The respondent claims interest at a rate of five per cent per annum on the amount of $290,751.34 from the date of the Family Court judgment on 20 February 2014,[6] as well as interest at the same rate on the $51,591.13 he paid to the appellant on 6 June 2014 from that date.

[7] The appellant, while recording the basis of an argument that no interest should be awarded to the respondent on the sums mentioned above, acknowledges that she has had the use of the money she now owes to the respondent since 2014 and that it is

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5 *Scott* (FC), attachment 2.

6 The Family Court judgment was originally released on 20 February 2014. It was subsequently recalled and reissued on 7 May 2014: see *Scott* (FC) at [485].

reasonable that interest should be awarded to reflect this. However, that concession is qualified by the observation that if her own application for interest is not upheld, then it would be unfair to make her pay interest to the respondent.

[8] The appellant's claim for interest is for interest on the s 15 award ($520,000) from the date of separation (June 2007) until the date on which the respondent made payment of the amount required to be paid under the Family Court judgment, 6 June 2014. As the resolution of this claim has a significant bearing on the amount actually payable by the appellant as a result of this Court's decision and also on whether the appellant opposes an award of interest to the respondent, we will deal with the appellant's application for interest first.

Interest on s 15 order from date of hearing to date of payment

[9] The basis of the appellant's interest claim is that the amount ordered to be paid under s 15 was based on a calculation as at the date of separation (June 2007) and that "as a matter of logic and justice" that amount should carry interest from the date of separation until the date of payment. The appellant argues that the respondent could have made a payment on account of economic disparity at any time after separation, and ought to have done so but did not. Thus he enjoyed the benefit of his own share of relationship property and this amount should have been at the appellant's disposal. It is argued that a failure to pay interest would be inconsistent with the purpose and principles of the PRA and in particular with the date at which relationship property is valued under the PRA.

[10] The respondent opposes the appellant's claim. His arguments are, in summary, as follows. First, the appellant's claim is without merit because the respondent was under no obligation to make any payment under s 15 until an order was made under that section by the Family Court and, in any event, the appellant had the benefit of the major asset of the parties, the Remuera properties, throughout the period from June 2007 to June 2014. Second, the appellant is, in substance, trying to increase the amount of the s 15 order which has been finally determined by this Court. The amount of the order under s 15 was assessed on a broad-brush approach and the amount finally determined was the amount this Court considered to be a fair compensation for

economic disparity in terms of s 15. Third, as was the case in relation to much of the appellant's argument in the substantive appeal, the claim for interest and the submissions in support of it are advanced without the benefit of expert evidence on the merits of the claim and its impact on the calculation of the s 15 order.

[11] Perhaps anticipating the third submission above, counsel for the appellant, Mr Goddard QC, sought leave to file expert evidence in the event that this Court considered that it could not adopt the approach to interest for which the appellant contended without such evidence. He also sought an opportunity to present oral argument in support of the appellant's claim for interest if the Court was not persuaded, after having read the written memoranda, that her claim should be upheld on one of the three approaches suggested in the submissions.

[12] We consider that the claim for interest on the s 15 amount between the date of separation and the date of hearing is, in substance, a claim for an increase in the amount ordered to be paid under s 15. If any allowance needs to be made for the delay between the date of separation and the date of hearing in the calculation of the set amount ordered to be paid under s 15, this is something that should be brought to bear in the calculation of the amount itself, rather than in the provision of interest. As the respondent rightly points out, there is no expert evidence on this and we do not consider it is appropriate to allow for expert evidence to be called at this stage of the proceeding.

[13] Nor do we see it as necessary to hold an oral hearing. We accept that the three separate bases on which the appellant's application for interest is advanced would have required some explanation that may have been assisted by oral submissions, but our decision that the claim fails at the first hurdle makes an oral hearing unnecessary.

[14] For these reasons we decline the appellant's application for interest.

[15] The result of this is that the amounts payable by the appellant to the respondent are the amounts set out at [5](b) above.

The respondent's claim for interest on the adjusting payment

[16] The respondent argues that he should be awarded interest at the rate of five per cent per annum:

(a) on the $290,751.34 that the appellant is required to pay him from the date of the Family Court judgment (20 February 2014) to the date of payment; and

(b) on the $51,591.13 that he paid to the appellant on 6 June 2014 that the appellant must now pay back from 6 June 2014 to the date of payment.

[17] The respondent's claim is founded on r 45(2) of the Supreme Court Rules 2004 and s 87(1) of the Judicature Act 1908.[7] He says the rationale for an award of interest is that the claimant should be compensated for the fact that the other party has had the use of the money which should have been available to the claimant.[8] He argues that this rationale applies in this case.

[18] We agree that the respondent is entitled to interest on the sums now owed to him by the appellant to reflect the fact that she has had the use of the amount owed since 2014. We do not see any reason to depart from the Judicature Act rate of interest of five per cent per annum.[9] We do not consider that the rejection of the appellant's claim for interest on the s 15 amount has any bearing on the fairness or otherwise of an award of interest to the respondent on the sums now owed to him.

[19] We therefore order the appellant to pay interest of five per cent per annum to the respondent:

(a) on $290,751.34 from 20 February 2014 to the date of payment; and

(b) on $51,591.13 from 6 June 2014 to the date of payment.

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7 Section 87(1) of the Judicature Act 1908 applies in this case despite its repeal by s 182(4) of the Senior Courts Act 2016: Interest on Money Claims Act 2016, sch 1 cl 1. An alternative source of power to award interest is s 33(4) of the Property (Relationships) Act 1976.

8 *Worldwide NZ LLC v NZ Venue and Event Management Ltd* [2014] NZSC 108, [2015] 1 NZLR 1 at [23].

9 Judicature (Prescribed Rate of Interest) Order 2011, cl 4.

Costs

[20] We make no award of costs on the present application.

Solicitors:
Tompkins Wake, Hamilton for Appellant
North Harbour Law, Auckland for Respondent