[2016 Gib LR 205]

C. MITCHELL and C. MITCHELL v. M. TRAVERSO and S. TRAVERSO

SUPREME COURT (Jack, J.): August 5th, 2016

Civil Procedure—judgments and orders—interest on judgment debt—under Supreme Court Act 1960, s.36, as amended, Minister for Justice to fix rate of interest—Judgment Debts (Rates of Interest) Order 2000, made by Chief Justice, continues to apply until Minister makes Order

The court considered whether interest was payable on a judgment debt.

Judgment had been given against the defendants in the sum of £54,917.47 following a dispute over a project for the refurbishment of a flat. As they had failed to pay, the claimants sought a charging order over the flat. An interim order was made in the sum of £80,644, which included interest on the judgment at 8% pursuant to s.36 of the Supreme Court Act 1960. By the return date, the parties had agreed a consent order that provided for the flat to be charged with £80,644, together with any further interest becoming due, and the costs of this application.

At the hearing, the court raised the issue of whether interest on the judgment debt would continue to run because in a recent decision the Registrar had determined that no interest was payable under s.36. Section 36 had provided for the Chief Justice to fix the rate of interest on judgment debts. The Chief Justice had made the Judgment Debts (Rates of Interest) Order 2000, which provided that "the rate at which judgment debts shall carry interest shall be the rate prescribed for such debts from time to time in the High Court in England," which was 8% per annum. Section 36 had been amended by the Supreme Court (Amendment) Act 2007 and now provided that "every judgment debt shall carry interest, from the time the judgment is entered until it is satisfied, at such rate as the Minister with responsibility for justice may by order direct and such interest may be levied under a writ of execution on the judgment." The Minister for Justice had made no such order.

The defendants agreed to the court making the consent order.

Held, ruling as follows:

Interest would continue to run on the debt. The Judgment Debts (Rates of Interest) Order 2000 would remain in full power and effect unless and until the Minister for Justice made a new order. The amendment to s.36 of the Supreme Court Act 1960, changing the person with power to fix the rate of interest from the Chief Justice to the Minister for Justice, was at most a neutral matter. The fact that the legislator had provided that, from the date of the amending Act, the Minister had authority to fix the rate, did not imply that the 2000 Order made by the Chief Justice should be rendered nugatory. The express provision that the rate of interest was to be prescribed by the Minister did not denote a contrary intention for the purposes of s.34 of the Interpretation and General Clauses Act 1962 (which provided that "where any . . . part of an Act is repealed, any subsidiary legislation made thereunder shall . . . unless a contrary intention appears, remain in force . . .") (paras. 6–13).

Cases cited:

(1) *Bunyan* v. *Church Lane Trustees Ltd.*, Supreme Ct., Claim No. 2008–B–163, May 18th, 2016, unreported, not followed.

(2) *Pepper (Inspector of Taxes)* v. *Hart*, [1993] A.C. 593; [1992] 3 W.L.R. 1032; [1993] I.C.R. 291, referred to.

(3) *Van Geens* v. *Jyske Bank (Gibraltar) Ltd.*, Supreme Ct., Case No. 2012–G–179, December 4th, 2014, unreported, referred to.

Legislation construed:

Interpretation and General Clauses Act 1962, s.34: The relevant terms of this section are set out at para. 9.

Judgment Debts (Rates of Interest) Order 2000, para. 1: The relevant terms of this paragraph are set out at para. 6.

Supreme Court Act 1960, s.36: The relevant terms of this section are set out at para. 6.

R. Wilkinson for the claimants;
The defendants appeared in person.

1 **JACK, J.:** On November 10th, 2015, following a trial, I gave judgment against the defendants in the sum of £54,917.47. With interest until that date and costs, the total owed was £77,015.64. The background was a dispute over a project for the refurbishment of a flat, 23/4 Cumberland Road, Gibraltar. To date the defendants have paid nothing.

2 By an application made on June 21st, 2016, the claimants sought a charging order over the flat, which is held by the second defendant on a 999-year lease subject to a mortgage in favour of the Norwich & Peterborough Building Society. On June 29th, 2016, Dudley, C.J. made an interim charging order in the sum of £80,644. This sum included interest

accrued on the judgment since November 10th, 2015 pursuant (or at least purportedly pursuant) to s.36 of the Supreme Court Act 1960.

3 The return date on the interim charging order is today. Both defendants appeared. Since the trial they had received advice from Mr. Ray Pillay of Triay & Triay, although that firm has not gone on the record. He and Mr. Wilkinson, who is now acting for the claimants, agreed a consent order which provided for the flat to be charged with £80,644 "together with any further interest becoming due and £1,585 the costs of this application." The order made further provision for the sale of the flat, but I do not need to recite those terms.

4 At the hearing, I raised the issue as to whether any interest is payable on the judgment debt. This issue arises because Mr. Registrar Yeats in the recent case of *Bunyan* v. *Church Lane Trustees Ltd.* (1) determined that no interest was payable under s.36 of the 1960 Act because the Minister had made no order fixing the rate of interest payable on judgment debts.

5 I gave the parties an opportunity to read the case. The defendants decided not to apply for an adjournment and agreed to the court making the consent order in the terms already agreed. The figure of £80,644 in the order includes interest at 8% per annum under s.36. The issue, however, potentially arises as to whether such interest continues to run so as to fall within the provision as to "any further interest."

6 Section 36 (in its current form) provides:

> "Every judgment debt shall carry interest, from the time the judgment is entered until it is satisfied, at such rate as the Minister with responsibility for justice may by order direct and such interest may be levied under a writ of execution on the judgment."

No such order has been made. Instead, the only legislation dealing with interest on judgment debts is the Judgment Debts (Rates of Interest) Order 2000, made by the then Chief Justice with the approval of the Governor. Paragraph 2 of this Order provided that "the rate at which judgment debts shall carry interest shall be the rate prescribed for such debts from time to time in the High Court in England." This is currently 8% per annum.

7 When the 2000 Order was made, s.36 provided for the Chief Justice to fix the rate in the manner in which it was done. The question is therefore whether the 2000 Order continues in force after the amendment of s.36 which was effected by the Supreme Court (Amendment) Act 2007.

8 In *Bunyan* (1), Mr. Registrar Yeats set out the judgment debtor's submission as follows (at para. 7):

> "Mr Gomez submits that the amendment of section 36 now requires the Minister to prescribe a rate of interest. There are no

transitional provisions in the Supreme Court (Amendment) Act 2007 and this, he argues, denotes an intention by the legislature that interest be payable only at the rate set by the minister. Furthermore, the power to prescribe a rate is discretionary. There shall be interest payable but only if the minister decides to direct a rate. The statute is to be interpreted literally."

9 He then set out s.34 of the Interpretation and General Clauses Act 1962, which provides:

"Where any Act or part of an Act is repealed, any subsidiary legislation made thereunder shall, if in force at the date of such repeal and unless a contrary intention appears, remain in force, so far as it is not inconsistent with the repealing Act, until it has been revoked or amended by subsidiary legislation made under the provisions of the repealing Act, and shall be deemed for all purposes to have been made thereunder."

10 The learned Registrar reasoned as follows (at paras. 10–15):

"10. Section 36 was not repealed, it was amended. Had it been repealed then we could look to the repealing Act to determine whether the subsidiary legislation would remain in force. Nevertheless, Mr Lewis Baglietto QC for the judgment creditor submits that the preservation of subsidiary legislation must apply with equal or greater force when an Act is merely amended and not repealed. No authority is relied on, it is, in effect, a matter of common sense it is submitted.

11. In the alternative, Mr Baglietto further submits that an amendment or substitution of an Act may be the same as a repeal. He relies on Halsbury's Laws of England [vol. 96(2) para. 689 footnote 4 (2012)] . . . which reads as follows:

'A substitution is a repeal in so far as it removes words: *Moakes* v *Blackwell Colliery Co Ltd* [1925] 2 KB 64, CA; *Briggs* v *Thomas Dryden & Sons* [1925] 2 KB 667, CA. If a provision of an Act is deleted, it can be said that the provision is "repealed" but that the Act is "amended." In so far as an amendment also constituted a repeal, the rules relating to repeals will apply.'

12. I have [been] referred to the cases mentioned in the Halsbury's footnote, in particular the case of *Moakes* v *Blackwell Colliery Co Ltd.* Scrutton LJ at page 70, in the context of the English equivalent of section 33(2) of the Interpretation & General Clauses Act said the following:

'Now it appears to me that when an Act of Parliament not using the word "repealed" contains a provision which alters the

> provisions of a previous Act it repeals that provision. It is not necessary that the word "repeal" should be used, or that the Act repealed should be in the schedule to the second Act. You may easily have a repeal which is not made by using the word "repeal" and is not effected by putting the Act into shape. It seems to me that when 150l. was altered to 200l., when 10l. was altered to 15l., and when the provision was inserted that you might not deduct weekly payments so as to reduce the total sum payable to dependants below 200l., you were repealing three provisions of the 1906 Act. If you were repealing them, you start, in construction, with the provision of the Interpretation Act, 1889, that unless the contrary intention appears the repeal of the previous Act will not affect any right, privilege or obligation or liability acquired, accrued or incurred under any enactment so repealed.'
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> 13. A close look at the Supreme Court (Amendment) Act 2007 adds further food for thought into this particular argument. Section 2 of that Act (dealing with changes in the manner of appointment of the Registrar) states: '*Section 3 of the Supreme Court Act is repealed and replaced by . . .*' That expressly comprises a repeal. However, section 5, which is the section which concerns us, provides: '*Section 36 of the Supreme Court Act is amended by deleting . . .*' Therefore it appears that the 2007 Amendment Act differentiates between repeals and amendments. Does this therefore mean that section 34 of the Interpretation and General Clauses Act is of no assistance? If it is not, the point is made that if section 36 had been repealed and replaced with a new section 36 referring to the Minister instead of the Chief Justice, then the Chief Justice's order would have survived the repeal. A non-sensical proposition says Mr Baglietto.
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> . . .
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> 15. I have carefully considered the matter and conclude the following. For section 34 of the Interpretation and General Clauses Act to have effect, the amendment must take the form of a repeal. In this particular case the amendment can be said to be a repeal as per the rationale set out by Scrutton LJ in the *Moakes* v *Blackwell Colliery Co Ltd* case. It therefore seems to me that section 34 applies. However, as required by section 34, I then have to go on to consider whether there is a 'contrary intention' or 'inconsistency' in this amendment (repeal)."

11 Thusfar I respectfully agree with the learned Registrar's conclusions for the reasons he gives. Where I disagree is with his next conclusion, where he says (*ibid.*, at para. 16):

> "It is expressly provided that the order as to rate of interest be now prescribed by the Minister with responsibility for justice. In my judgment this denotes a 'contrary intention' in the repeal. The subsidiary legislation is to be made by a different delegate. Absent a transitional provision in the amending Act, the order made by the Chief Justice could not remain in force."

12 In my judgment, the change in the person having power to fix the rate of interest is at most a neutral matter. The fact that the legislator provides that from the date of the amending legislation (in this case from the publication of the 2007 Act in the *Gibraltar Gazette* on June 28th, 2007) the person with authority to fix the rate is the Minister does not imply that there should be rendered nugatory the legislative acts of the person (in this case, the Chief Justice) who thitherto had had that power. There is no inconsistency. If there is no inconsistency, it follows in my judgment that no "contrary intention" is demonstrated either.

13 Accordingly, in my judgment the 2000 Order remains in full power and effect unless and until the Minister for Justice makes a new order.

14 That is sufficient to dispose of the issue. I should add that, if this had been a case where resort needed to be had to parliamentary debates under the doctrine in *Pepper (Inspector of Taxes)* v. *Hart* (2), this would have supported my view that there was no contrary intention. The second reading of the 2007 Act was introduced by the Chief Minister, the Hon. Peter Caruana (as he then was). As appears from *Gibraltar Hansard* (June 15th, 2007, at 140), the Chief Minister suggested that 8% per annum was perhaps too high, but he gave no indication that the rate was to be reduced to nil. The debate predated the run on Northern Rock on September 13th, 2007, which was the harbinger of the financial crisis which engulfed the world (see the account in *Van Geens* v. *Jyske Bank (Gibraltar) Ltd.* (3) (at para. 1)). The Bank of England official rate of interest in June 2007 was 5.5% and, to control inflationary pressures in the then booming economy, was about to rise to 5.75% (source: http://www.bankofengland.co.uk/boeapps/iadb/Repo.asp, accessed August 5th, 2016). It is inherently unlikely against that background that the Gibraltar Parliament in June 2007 intended judgment debts to attract no interest. It is also significant that the Minister for Justice made no attempt at that time to introduce a fresh order fixing a new rate of interest, which again is an indication that Parliament proceeded on the basis that the 2000 Order remained in force.

Order accordingly.