



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2018: No. 375

BETWEEN:

RITA FURBERT

Plaintiff

- and -

(1) WILLISTON FURBERT

(2) DAWN FURBERT

Defendants

RULING ON INTEREST

Whether interest should run from date of Cause of Action or from date of Judgment, or some other date.

Date of Submissions: 24 November 2025 (Plaintiff), 2 December 2025 (Defendants)

Date of Ruling: 19 December 2025

Appearances: Dantae Williams, Marshall Diel & Myers Limited, for Plaintiff

Kyle Masters, Carey Olsen Bermuda Limited, for Defendants

RULING of Mussenden CJ

Introduction

1. The Plaintiff Rita Furbert (“**Rita**”) is the elderly mother of the First Defendant Williston Furbert (“**Williston**”).
2. The Second Defendant (“**Dawn**”) is the wife of Williston and thus the daughter-in-law of Rita.

Background and Pleadings

3. On 10 October 2023 I issued Judgment in this matter. In that Judgment I granted:
 - a. Damages to Rita by way of repayment of \$500,000 as the total funds belonging to Rita that the Defendants applied to their mortgage by way of a balloon payment; and
 - b. The relief sought that the Defendants pay statutory interest.
4. An issue now arises between the parties in respect of whether statutory interest on the judgment sum of \$500,000 should run from:
 - a. June 2016, the date the Defendants misappropriated Rita’s funds by applying them to their mortgage (“**the date of the wrong**”); or
 - b. 10 October 2023, the date of the Judgment (“**date of Judgment**”).
5. Once the issue was raised, I invited Counsel to file brief written submissions taking into account the case of *Lisa S.A. v Leamington Reinsurance Company Ltd. & Avicola Villalobos S.A.* [17 October 2008] (Kawaley J) at paras 26 – 33, 36.

Legal Framework

6. The Court’s power to award pre-judgment interest is governed by section 10 of the Interest and Credit Charges (Regulation) Act 1975 (the “**1975 Act**”), which provides:

10. In any proceedings tried in any court for the recovery of any debts 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 the statutory rate 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 judgment: ...

7. In *Lisa S.A.* Kawaley J (as he then was) held as follows:

“Assuming section 10 of the 1975 Act is engaged and no question of contractual interest is involved, the normal rule will likely be that interest will be awarded at the statutory rate from the date of the accrual of the cause of action until judgment. This period may be abridged where it would be unjust to do otherwise. Where a plaintiff has been guilty of serious delay, as Mr. Riihiluoma submitted, this may be grounds for limiting the period before judgment in respect of which interest is payable. In a case which was not referred to in argument but which confirms the obviously unfettered discretion conferred by section 10, Hull J held:

“The plaintiffs are entitled to interest at the statutory rate from today, i.e. from the date of judgment, until payment of the judgment debt.

But they also ask me to exercise my discretion, under section 10 of the Interest and Credit Charges Act 1975, to award interest prior to judgment.

There appear to me to be three relevant principles:

(1) First of all it is for the plaintiffs to make out a case for the exercise of that discretion.

(2) Secondly, however, the defendant has in the meantime had the benefit of the money to which I have judged them entitled, and they have been kept out of it.

(3) But thirdly any delay - undue delay - on their part in prosecuting this claim is undoubtedly a factor to be taken into account. For that 'proposition, I would refer counsel to the case of Birkett v. Haves (1982), 1 W.L.R. at 816. The law contemplates that litigants will pursue their rights with reasonable dispatch. Mr. Gibbons is now a very elderly man. The plaintiffs, for the reasons

I have given, are in my view entitled to judgment, but I am not prepared to grant interest for the whole of the period that has elapsed.

It may be somewhat rough and ready, and it may be a little robust, but my own view as to this matter is that I should balance the competing factors, and on that basis, what I propose to do is to award interest under the section from the date in which the plaintiffs with expedition began to bring this case ahead again, which by my reckoning was the 16th November 1987, when after a long, long delay, they decided to give notice that they intended to proceed.”

8. *Lisa S.A.* followed the dicta in *Marshall Bernardo Partnership v Gibbons* [1991] BDA LR 47, which in turn relied on the English Court of Appeal case of *Birkett v Haynes and Another* [1982] 1 W.L.R. 816. In *Birkett*, Watkin’s L.J. stated as follows:

“Usually this period will run from the date of the writ to the date of trial, but the court may in its discretion abridge this period when it thinks it is just so to do. Far too often there is unjustifiable delay in bringing an action to trial. It is, in my view, wrong that interest should run during a time which can properly be called unjustifiable delay after the date of the writ. During that time the plaintiff would have been kept out of the sum awarded to him by his own fault. The fact that the defendants have had the use of the sum during that time is no good reason for excusing that fault and allowing interest to run during that time.”

Plaintiff’s Submissions

9. Mr. Williams made a number of submissions that the normal rule should apply that interest should run from June 2016:
- a. The cause of action arose in June 2016 when the Defendants applied the funds to their own mortgage;
 - b. From June 2016, the Defendants have had the direct and substantial benefit of the \$500,000, as their mortgage debt was reduced by \$500,000, saving them significant interest payments to their bank, thus increasing the equity in their property;

- c. Rita has been kept out of her money since June 2016, deprived of the ability to use, invest or otherwise enjoy her own money;
- d. Rita was not guilty of any undue delay as the timeline shows as follows:
 - i. June 2016 – The wrong occurs;
 - ii. 2017 – Rita becomes aware of the misappropriation and confronts the Defendants;
 - iii. March 2018 – Rita, through her attorneys, sends a comprehensive pre-action letter demanding repayment; and
 - iv. October 2018 – The Writ was issued.

10. Mr. Williams submitted that this case was not like the case of *Marshall Bernardo Partnership* where the action went to sleep for well over 10 years. Instead, Rita had acted with dispatch, attempting to resolve the matter without litigation and then preparing her claim. He relied on Kawaley J in *Lisa S.A.*, at paragraph 31, where Kawaley J stated “*In my judgment it is not tenable to suggest that Lisa was guilty of delay so unreasonable that it ought to be denied pre-judgment interest on sums held to be due by reason of fraud.*”

Defendants’ Submissions

11. Mr. Masters made a number of submissions in support of the Defendants’ position that interest should run from the date of Judgment.
- a. From the date of the wrong to the date of Judgment, the Plaintiff delayed whilst the Defendants did not delay, although there was a period which was not the fault of either party:
 - i. Rita discovered the wrong in 2017 but took no action until 2018;
 - ii. For the period March 2020 to January 2022 the Respondent took no action;
 - iii. In January 2023 the trial came on for hearing; and
 - iv. The Judgment was delivered in October 2023.
 - b. The period 2017-2018 represents undue/unjustifiable delay as Rita did not bring the case in 2017 after she discovered the wrong. For part of that period she continued to live at the Defendants’ property, rent free. Thus, it can be inferred that at least

part of the reason for her reluctance to commence the claim was because she benefitted from those arrangements.

- c. The dispute was a matter grounded in equity, where there was no fixed quantum and liability remained an issue, both being contested by the Defendants. This was contrasted from a case where quantum could be known upon the determination of liability where it could be argued that the Plaintiff had been kept out of a fixed sum, which did not apply in the present case.
- d. There was no explanation for the matter going to sleep between the period 2020 and 2022.
- e. For nearly a year, the parties were awaiting judgment, which was a circumstance that the Defendants should not have to pay for.

12. Mr. Masters submitted that the Rita had not made out a case for pre-judgment interest and it was not for the Court to make out that case for her. As she failed to explain the delay or pursue her case with reasonable dispatch, it would be wrong for the Defendants to be ordered to pay significant pre-judgment interest in the circumstances.

Analysis

13. In my view, I am satisfied that Rita has made out her case that she should be granted pre-judgment interest for several reasons, although as explained below, such award period should be abridged.

14. First, the normal rule as set out by Kawaley J in *Lisa S.A.* is that interest will be awarded at the statutory rate from the date of the accrual of the cause of action. Thus, I am satisfied that I should, as a starting point, apply the normal rule to grant pre-judgment interest.

15. Second, the Court can abridge the time where it would be unjust to do otherwise. I have reviewed the Judgment. The facts of the case set out that Rita discovered the wrongful act

in 2017¹ but that she took no action until 2018. In the Judgement², I referred to the evidence that on 11 December 2017 there was an argument at the Defendants' property "Fairwinds" which resulted in Rita, Tirsite and Kaelys moving out of the property. Thereafter, in March 2018, Rita retained counsel who issued a pre-action letter and then issued a Writ dated 30 October 2018. In my view, once Rita discovered the wrong, she was entitled to commence the action but she did not do so, instead remaining in residence at Fairwinds. It was only on the night of the argument, 11 December 2017, did Rita say that she wanted her money back. In my view, it would be unjust to award interest to Rita for the period from the date of the cause of action arising in June 2016 to March 2018, because Rita did unduly delay commencing legal proceedings, part of that time preferring to remain living at Fairwinds.

16. Third, I have considered the time period of March 2020 – January 2022 when Mr. Masters submits that no action to progress the matter was taken. I take judicial notice that the Covid-19 Pandemic began around March 2020 and the entire world was affected, including the administration of Court processes in Bermuda. A Consent Order for Directions is dated 9 March 2020. There is some correspondence on file for the remainder of 2021 and a hearing of a Summons listed for 8 February 2021, but on 4 February 2021 all parties agreed to delist the hearing. There was no further movement until Rita filed a Notice of Intention to Proceed dated 28 January 2022 when matters did proceed without delay. In my view, whilst the matter may not have progressed significantly or routinely during the period March 2020 – January 2022, I do not find that there was undue or serious delay during that period. I do note that the Defendants were enjoying the benefit of the reduction of the balance of their mortgage whilst Rita was not enjoying the benefit of her own funds. In my judgment, it is not fair to abridge interest for this time period.

17. Fourth, I have considered the Defendants' submission that there was a period of time, nearly a year, when they had to await the issue of the Judgment. I have reviewed the relevant dates³ which show that the final hearing at trial was 18 May 2023 and there were

¹ Para 8

² Para 43

³ Page 1

supplemental submissions filed dated 22 September 2023. The date of the Judgment was 10 October 2023. These periods do not amount to a period of a year. In my view, it would not be just to abridge the time for an award of interest for the time period set out herein as the Court is entitled to a period of time to consider all the relevant matters and issue its judgment.

Conclusion

18. In conclusion, I am satisfied to grant the interest on the judgment sum of \$500,000 to run from the date of March 2018, the date from which Rita proceeded with expedition.

Dated 19 December 2025



HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE