IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: YEBOAH, CJ (PRESIDING)

DOTSE, JSC

BAFFOE-BONNIE, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL MOTION

NO. J8/64/2019

17TH JUNE, 2020

DANIEL OFORI …….

PLAINTIFF/APPELLANT/APPELLANT/RESPONDENT

VRS

1. ECOBANK GHANA LIMITED …… 1ST
   DEFENDANT/RESPONDENT/RESPONDENT/
   APPLICANT
2. SECURITIES AND EXCHANGE COMMISSION
3. GHANA STOCK EXCHANGE

RULING

BAFFOE-BONNIE, JSC:-

This ruling is in respect of an application by the 1st defendant/judgment debtor for the court to determine the mode of calculating interest on the judgment debt in this case. The background to this application is that on 2nd June, 2008 the plaintiff was paid an amount of GHS13,762,240.00 by the 1st defendant on behalf of the original 2nd defendant in this case. The payment was for shares in Cal Bank Ltd 2nd defendant bought from the plaintiff. On receiving the money plaintiff instructed the 1st defendant to invest GHS6,160,240.00 in time deposits at an agreed interest of 30% per annum. The plaintiff made the 1st defendant to issue banker's drafts covering the remainder GHS7,600,00.00 payable to plaintiff's accounts with Zenith Bank and SSB Bank. On the next working day 1st defendant cancelled the banker's drafts on the ground that the trade in the shares did not settle so plaintiff was not entitled to receive the money paid to him. The issue ended up in litigation up to the Supreme Court where the plaintiff prevailed.

By the main judgment dated 25th July, 2018 the 1st defendant was ordered to pay to plaintiff the total amount of GHS13,760,240.00. 1st defendant was also ordered to pay interest on the amount which was broken down into two parts; the invested amount of GHS6,160,240.00 was to attract interest at the rate of 30% from 2nd June 2008 to the date of the High Court judgment and thereafter the interest shall be calculated at the rate of interest prevailing at the date of the High Court judgment till the date of payment. The GHS7,600,000.00 was to attract interest at the rate prevailing at the time of the High Court judgment from 2nd June, 2008 till final payment.

On an application for review the court changed the terms for calculating the interest in main judgment to;

1. The GHS6,162,240.00 was to attract interest at the rate of 30% from 2nd June till date of the Supreme Court judgment (25/7/2018), and thereafter at the statutory rate of interest prevailing at the time of the main judgment (25/7/2018).
2. The GHS7,600,000.00 was now to attract interest at the statutory rate as at 25/7/2018 from 2nd June, 2008 till the date of payment.

Following upon the review judgment of the court the plaintiff filed a motion on notice seeking to amend its entry of judgment filed on the basis of the main judgment. In the attached proposed entry of judgment the plaintiff calculated the interest rate on the investment amount of GHS6,162,240.00 on the basis of compound interest. Secondly, he stated the statutory rate of interest as at 25/7/1018 as 22%. In its affidavit in answer, the 1st defendant calculated the interest on the investment at simple interest and stated the prevailing rate of interest as at 25/7/2018 as 13.34%. It is this difference between the parties that the 1st defendant has prayed the court to resolve.

In justification for calculating the interest on the investment at compound interest the plaintiff exhibited a letter from the Bank of Ghana which in answer to an enquiry from the plaintiff stated that;

"where a financial institution holds on both principal and interest against a customer's demand of both and in breach of its mandate, until a time the financial institution is to make payment, the new interest should be compounded on the matured principal and interest (new principal) until such a time as the financial institution makes good its obligation by honouring the payment of both new principal and interest".

Plaintiff also referred to Halsbury's Laws of England Fifth Edition Volume 49 Paragraph 1304 where it is stated as follows;

"Compound interest was not usually allowed except where there was an agreement, express or implied to pay it, or where the debtor had employed the money in trade and had presumably earned it, or unless its allowance was in accordance with a usage of a particular trade or business."

He submitted that the letter of the Bank of Ghana is testimony of the custom and practice in the banking industry. He also referred us to the case of **Bank of America Canada v Mutual Trust Co [2002] 2 CLR 601.**

The defendant on the other hand has argued that compound interest calculation is not the normal thing upon a court judgment and that by C.I.52, it would only be applied where an agreement or an instrument states compound interest as the manner for calculating interest. It contends that in this case though it was agreed that the investment would attract 30% interest, no manner of calculation was specified so the interest has to be simple interest.

The defendant's contention that the parties to the investment in this case which is contained in a written document did not agree anything on the manner of calculating interest is difficult to accept. An agreement for a time deposit is not complete without a term on the manner of calculation of interest since after a year interest would have accrued on the principal. It is either that the investment should be rolled over or, interest should be paid to the investor's account and the principal re-invested. We use the term time deposit as that was what was stated and admitted in the interrogatories but in his evidence, the plaintiff stated that he requested that his money should be put in a fixed deposit. Therefore, as the plaintiff has argued, this is a proper case where the court is required to imply a term on the manner the principal and interest were to be treated after one year in order to give efficacy to the agreement of the parties. The leading case on implied terms of contracts is **The Moorcock (1889) 14 P.D.64**

In that case the defendants, a wharf operators, in consideration of charges for landing and storing their cargo, agreed to allow the plaintiff, a ship owner, to discharge his vessel at the defendants' jetty, which extended into the River Thames, where the vessel must necessarily ground at low water. The bed of the river adjoining the jetty was vested in the Conservators. The defendants had no control over the bed of the river, and had taken no steps to ascertain whether it was or was not a safe place for the vessel to lie upon. The vessel, on grounding, sustained damage from the uneven condition of the bed of the river adjoining the jetty:—

At page 68 of the report Bowen L.J stated the law as follows;

"I believe if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have. In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances."

The principle was further explained in the case of **Reigate v Union Manufacturing Company (Ramsbottom) Ltd and Elton Cop Dyeing Company Ltd [1918] 1 KB 592** where at page 605 of the report Scrutton L.J said;

'[a] term can only be implied if it is necessary in the business sense to give efficacy to the contract, that is , if it is such a term that it can confidently be said that if at the time the contract was being negotiated someone had said to the parties "what will happen in such a case", they would both have replied "Of course, so and so will happen; we did not trouble to say that; it is too clear".

From the nature of the investment contract entered into by the parties, its effectiveness depends on the manner the principal and interest were to be dealt with after each year because the reason for the contract was clearly in order for the plaintiff to earn interest on his money and for 1st defendant to have use of the funds for its banking business. However, the parties did not set a date for the fixed deposit to cease but the rate of interest was agreed at 30% per annum. So if at that time a third party standing by had asked what would happen to the principal and interest after one year of the fixed deposit running and the money is not returned to the depositor, the question is; what would have been the answer? We have no doubt in our mind that the answer would have been, "of course the principal and interest together should roll over." In our understanding, the situation would not be different if it were even a call deposit as the 1st defendant contends. After one year of the investment interest of 30% would have accrued on the amount and if the plaintiff did not call for the amount, what would have happened to that interest?

Furthermore, the law also allows a court to imply some terms into a contract in accordance with the custom of the contract. In her book **"The Law of Contract in Ghana" (2016)** Professor Christine Dowuona Hammond states the law as follows at page 151;

"Often a contract is set against the background of customary practice that is familiar to all those who engage in the particular trade or business. Thus quite often negotiations leading to the making of a contract are carried out against the background of a certain commercial or business practice or usage and it may safely be assumed that such custom or usage are intended to govern the parties' contract."

In **Quartey v. Norgah [1967] G.L.R. 319, C.A**. Ollennu J.A. (as he then was) quoted with approval the following passage in **Halsbury's Laws of England (3rd ed.), Vol. 11, para 340:**

"Where persons enter into contractual obligations with one another under circumstances governed by a particular usage, then that usage, when proved, must be considered as part of the agreement. The contract expresses what is peculiar to the bargain between the parties, and the usage supplies the rest."

This is where the letter of the Bank of Ghana comes in. It states that where at the end of the period when interest would accrue on the investment, one year in this case, if the money is not returned then the principal and interest together is expected to be re-invested. This would amount to the investment earning compound interest.

On the basis of the above analysis we are unable to agree with the 1st defendant that the contract did not provide for a manner of calculating interest and was an incomplete contract. The 1st defendant definitely had an understanding of all the terms of the investment contract and so did the plaintiff. The law in these circumstances would imply the remaining terms to make the business that the parties entered into effective.

We therefore hold that the manner for calculating interest on the invested amount of GHS6,120,240.00 shall be at 30% compound interest from 2nd June, 2008 to 25/7/2018, the day of the our main judgment.

The next issue is the rate to be applied in calculating the post judgment interest. C.I.52 defines statutory rate as the "prevailing bank rate". However, that definition itself is ambiguous. In the banking industry there are more than one prevailing bank rates at any particular time and they differ significantly. The statute does not say whether it is the prevailing borrowing rate of the bank or the prevailing lending rate. To complicate matters further, the definition does not mention any particular bank whose prevailing rate is applicable even though the rates differ among the banks and even in one particular bank the prevailing rate differs depending on the sector of the economy the transaction relates. The statute says;

"Where there is doubt as to the prevailing bank rate, the 91 days Treasury Bill rate as determined by the Bank of Ghana shall be the prevailing bank rate."

It is based on this that the 1st defendant argues that the 91 days Treasury Bill rate as at 25/7/08 of 13.34 % ought to be applied. But the plaintiff rightly argues, this provision comes into play when there is doubt as to the quantum of the rate, then the quantum of the Treasury Bill will be used. The issue we have here is which of the several prevailing bank rates we shall choose and apply. We must admit that the issue is far more complicated and the C.I.52 has left a number of thorny issues hanging. It is nonetheless unclear to us the grounds for using the lending rate in the construction industry as the basis for calculation as being suggested by the judgment creditor. To him the facts of this case make the prevailing lending rate of the Bank of Ghana which is 17% to be the rate that meets the contemplation of C.I.52. The defendants retained the plaintiff's funds against his will and it is reasonable to conclude that the money soured up the 1st defendant's operational funds and the appropriate compensation to the plaintiff in the circumstances of this case is for it to pay interest at 17% to him. But in our view, these matters are to be determined on a case by case basis until the rule maker addresses the ambiguity in the meaning of "prevailing bank rate". The wording of the statute is such that once there is a dispute as to the prevailing bank rate, the treasury bill rate is applicable. So the defendant shall pay interest at 13.34% on GHC7,600,000.00 at simple interest from 2/6/2008 to date of final payment.

So our final orders will be;

1. The invested capital i.e. the GHS6,162,240.00 is to attract interest at the rate of 30% at compound interest from 2nd June, 2008 till date of the Supreme Court judgment (25/7/2018), and thereafter at the statutory rate of interest prevailing at the time of the main judgment(25/7/2018) that is, 13.34%, at simple interest, till date of final payment.

3. The defendant shall also pay interest on the amount of GHC7,600,000 at the treasury bill rate of 13.34% from 2/6/2008 till date of final payment.

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH

(CHIEF JUSTICE)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

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