HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 52270/2015

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 14 JUNE 202[redacted]

SIGNATURE [redacted]

In the matter between:

ANDRE NICOLAAS NEPGEN Plaintiff

and

JOHN-GEORGE LANDSKRON Defendant

Summary: *Interest – to run from date of when debtor could reasonably have ascertained the amount due – contractual claim – Prescribed Rate of Interest Act 55 of 1975 applied.*

ORDER

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1. The defendant is ordered to pay interest to the plaintiff on the amount of R 127 521,00 at the rate prescribed in the Prescribed Rate of Interest Act 55 of 1975 calculated from date of service of the summons until date of payment of that amount on 23 August 2023.

2. The defendant is ordered to pay the plaintiff's costs of the quantum portion of the trial as well as the costs of the proceedings launched to obtain the above order, such costs to be on the High Court scale and which shall include the qualifying fees of Mr Ivor Davkin.

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically with the effective date of the judgment being 14 June 2024.

DAVIS, J

Introduction

[1] The current dispute concerns the determination of the date from which interest is to be calculated on the outstanding amount payable after termination of a partnership agreement. The dispute between the partners culminated in litigation which has commenced in 2015 and which had resulted in a proverbial trench war in which every inch of advance had been bitterly contested.

Procedural history

[2] Pursuant to a case management meeting held on 21 February 2024 a statement of facts had been produced by the plaintiff, which had been supplemented by the defendant in respect of his tender for interest and costs. I shall sum up the relevant parts of this statement and the tenders hereunder.

[3] On 7 July 2015 the plaintiff instituted action in this court, claiming an order confirming the dissolution of an oral partnership agreement between the parties as well as payment of R810 910.00, together with interest thereon. The existence of a partnership was disputed by the defendant.

[4] At a subsequent case-management meeting, it was agreed that the aspects of merits and quantum be separated.

[5] On 8 March 2017 Molopa-Sethosa J handed down a judgment in favour of the plaintiff whereby it was declared that a partnership had indeed been "established" between the parties in 2005.

[6] On 27 November 2019 the parties by agreement requested this court to refer the determination of the outstanding issue of quantum to a senior independent auditor. Pursuant to this, the matter was postponed sine die. Costs were ordered to be costs in the cause.

[7] In due course of Mr Gary Blake had been appointed by the Chairperson of the South African Institute of Chartered Accountants. On 17 September 2024 Mr Blake handed down his award, directing the defendant to pay the plaintiff R127 521,00, being the determined balance owing by the defendant.

[8] On 30 June 2023 Fisher J dismissed an application by the plaintiff to have Mr Blake's award reviewed, set aside and remitted. Regarding the issue of costs,

Fisher J's view was: "*Both parties have contributed to the confusion which has reigned in relation to this matter. It should have been clear to each of them and their legal and financial representatives that the issues at hand required factual determinations. In the circumstances, I am of the view that it is proper that no order be made as to costs*".

[9] I interject in the narration of the summary of facts to point out that the litigation was punctuated by numerous interlocutory skirmishes. These included a notice of bar, an opposed application to have the bar uplifted, applications to compel, applications for condonation, counter-applications, applications for leave to appeal and disputes regarding discovery.

[10] On 23 August 2023 the defendant paid the capital amount of R127 521.00 to the plaintiff and on 12 February 2024 tendered to pay interest on that amount from date of determination to date of payment and costs on the Magistrates Court scale.

Disputes

[11] The disputes are the commencement date of the calculation of interest and the scale on which costs are to be paid.

Ad commencement of the running of interest

[12] The parties were *ad idem* that the payment of *mora* interest was governed by the Prescribed Rate of Interest Act[1] (the Act), which had abrogated the common law rules relating to such interest.[2]

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[1] 55 of 1975.

[2] See: *David Trust and Others v Aegis Insurance Co Ltd* 2000 (3) SA 289 (SCA) at [39].

[13] In terms of the Act, the rate applicable when *mora* interest begins to run, applies until payment, regardless of any intervening variations made under the Act.[3]

[14] In terms of section 2A(2)(a), once judgment is granted, even in respect of an unliquidated claim, interest "*shall run from the date upon which payment of the debt is claimed by the service on the debtor of a demand or summons*".[4]

[15] Despite this, section 2A(5) grants the court the power to make such order as appears just in respect of the payment of interest on an unliquidated debt, including a direction as from which date it should run.

Evaluation

[16] The defendant contends that it would be inequitable to allow interest to run from date of the service of the summons as provided for by the Act. With reliance on *Victoria Falls & Transvaal Power Co Ltd v Consolidated Langlaagte Mines*[5] (*Victoria Falls*) the defendant argued that this inequity would flow from charging him interest on an amount which he "*did not know and could not ascertain the amount which he had to pay*".

[17] The facts in *Victoria Falls* are clearly distinguishable from the present. The claim there was for damages consequential upon a breach of contract. The appellant in that matter had been contracted to render electricity at an agreed rate of kilowatts. Its failure to do so, resulted in various consequences, such as the delay in the commissioning of a mill and consequential loss of profits. The extent

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[3] *Davehill (Pty) Ltd v Community Development Board* 1988 (1) SA 290 A at 30A-C.
[4] See also *The MV Sea Joy Owners of the Cargo lately laden on board v The MV Sea Joy* 1998 (1) SA 487 (C)
[5] 1915 AD 1 at 32.

of such unliquidated claims were clearly difficult to ascertain and calculate, particularly for an unrelated defendant.

[18] In the present matter, the claim was on a different footing. It was simply for payment of the balance due after dissolution of a partnership. The parties were equally able to compute that balance and the fact that they computed the amounts differently from each other, does not mean that the balance was not ascertainable.

[19] Even if one were to consider the *Victoria Falls*-case, which pre-dates the Act by a good many years, Innes CJ, writing for the majority, also stated: "*cases may possibly arise in which, though the claim is unliquidated, the amounts payable might have been ascertainable upon an enquiry which it was reasonable the debtor should have made*".

[20] In addition, I find the following *dictum* instructive: "*It may be accepted that the amount of interest payable to a creditor, where his debtor is in mora in regard to the payment of a monetary obligation under a contract is, in the absence of a contractual obligation to pay interest, based upon the principle that the creditor is entitled to be compensated for the loss or damage that he has suffered as a result of not receiving his money on due date ...*".[6]

[21] Applying the above to the present case, I find that it would be more inequitable to the plaintiff to be deprived of interest on what had been due to him upon dissolution of the partnership, than the inequity complained of by the defendant in perceiving difficulties with calculating the amount due in a contractual context.

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[6] *Bellairs v Hodnett and Another* 1978 (1) SA 1109 (AD) at 1145D-G.

[22] In weighing up these two contentions and, in the exercise of these court's discretion[7], I decline to limit the starting date of the running of interest and determine that interest should run from date of service of the summons.

Costs

[23] I find no reason why costs should not follow both the event of quantum and the success of the litigation in determining the starting date of interest.

[24] Although the eventual quantum falls within the monetary jurisdiction of the Magistrates Court, I do not intend limiting the costs to that scale. I do this in the exercise of the Court's inherent jurisdiction.

[25] Factors which I have taken into account in exercising the above discretion, include the nature of the disputes, the duration of the litigation, the initial amount claimed, the difficulties presented in both the evidence and the presentation of the case, the involvement of experts and the engagement of senior counsel by both parties.

[26] Where both parties had resorted to the use of experts and where a third independent expert had been employed to conduct a further fact-dependent accounting exercise, underpinned by schedules prepared by the parties' respective experts, I find that the costs of the employment of Mr Ivor Davkin by the plaintiff had been a reasonable and necessary expense and that the qualifying fees of this expert should be claimable as between party and party.[8]

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[7] As discussed in *Adel Builders (Pty) Ltd v Thompson* 1999 (1) SA 680 (SE) at para [15]/

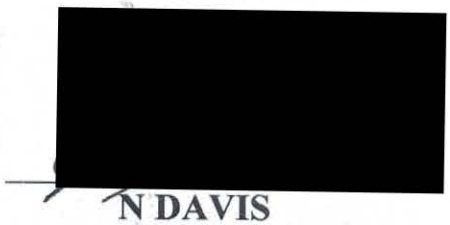
[8] See *Alenson v AB Brickworks (Pty) Ltd* 1993 (1) SA 62 (AD) with reference at 68A-B to *The Government v The Oceana Consolidated Co* 1908 TS 43 at 48

Order

[27] In the premises, the following order is made:

1. The defendant is ordered to pay interest to the plaintiff on the amount of R127 521, 00 at the rate prescribed in the Prescribed Rate of Interest Act 55 of 1975 calculated from date of service of the summons until date of payment of that amount on 23 August 2023.

2. The defendant is ordered to pay the plaintiff's costs of the quantum portion of the trial as well as the costs of the proceedings launched to obtain the above order, such costs to be on the High Court scale and which shall include the qualifying fees of Mr Ivor Davkin.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 March 2024

Judgment delivered: 14 June 2024

APPEARANCES:

For the Plaintiff:	Adv J K Berlowitz
Attorney for the Plaintiff:	Orelowitz Inc., Pretoria
For the Defendant:	Adv B C Stoop SC
Attorney for the Defendant:	Pennells Attorneys, Pretoria