

Neutral Citation No. [2013] NICty 3

Ref: 2013NICty3

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 10/01/2013

**IN THE SMALL CLAIMS COURT FOR THE DIVISION OF ARDS**

**ON APPEAL FROM THE DISTRICT JUDGE**

**BETWEEN:**

**BLUE AUTUMN LIMITED**

**Claimant/Appellant**

**And**

**GLENVIEW NURSING HOME**

**Defendant/Respondent**

**By Her Honour Judge Kennedy**

[1] The Appellant appeals against the decision of District Judge Casey on a single point of law concerning the application and interpretation of the Late Payment of Commercial Debts (Interest) Act 1998 (“the 1998 Act”). Leave to appeal was granted on 10 October 2012.

[2] The Appellant is a small company which manufactures and supplies uniforms and work wear to customers including the Respondent. It is accepted that the supply of goods to the Respondent was governed by the Appellant's standard terms and conditions which included a requirement that payment be made within 30 days and if that was not done statutory interest and compensation would be payable under the 1998 Act.

[3] It is not disputed that the contract between the parties was one to which the 1998 Act applied nor that the Appellant's invoices referred to payment being required within 30 days. There is no dispute over the fact that the Respondent has paid all the invoices nor that these payments were frequently made outside the 30 day period.

[4] In the Small Claims Court the judge held that statutory interest under Section 5(1) of the 1998 Act should be fully remitted under the subsection which provides that:

“Where, by reason of any conduct of the supplier, the interests of justice require that statutory interest should be remitted in whole or in part in respect of a period for which it would otherwise run in relation to a qualifying debt”.

The judge exercised his discretion in this respect because the Appellant took no action against the Respondent for late payment over a number of years and did not issue proceedings until two years after the contractual arrangements ceased.

He also held that because statutory interest had been remitted, statutory compensation under Section 5A was not payable. Subsection 5A(1) provides that:

“Once statutory interest begins to run in relation to a qualifying debt, the supplier shall be entitled to a fixed sum (in addition to the statutory interest on the debt)”.

The calculation of the fixed sum is based on 77 invoices giving a figure of £3080 and the Appellant has abandoned the excess to bring the claim within the jurisdiction of the Small Claims Court.

[5] The appeal relates only to the matter of whether statutory compensation is payable where all statutory interest claimed has been remitted.

[6] On behalf of the Appellant, Mr Temmink of Counsel argued that the judge was wrong in law in remitting the compensation payment claimed when he

remitted interest on the debt. Section 5A(1) of the 1998 Act provides for statutory compensation arising out of late payment and the sum payable as compensation depends on the amount of the debt as set out in Section 5A(1). Although there is an express power to remit interest there is no such power under Section 5A to remit compensation payments. Therefore once the provisions of the Act are engaged and statutory interest is payable, the compensatory element on each invoice also becomes due and payable. Section 4(2) states that “statutory interest starts to run on the day after the relevant day for the debt unless Section 5 applies. This means that interest accrues from the day after payment is due. If the interests of justice require it, interest can be remitted as was done in this case. However that does not stop the legal liability for interest running, but remission has the effect of releasing the debtor from the obligation of payment of some or all of the interest.

[7] Mr Temmink drew the court’s attention to the intention of the legislature when the 1998 Act was enacted to promote the prompt payment of bills to prevent damage to businesses caused by having to chase debts and pay bank charges for overdrafts while awaiting payment.

[8] He argued that statutory compensation payments are quite distinct from the right to claim interest and are intended to cover expenses incurred by the supplier and in particular the cost of pursuing debtors. If the decision to

remit compensation were upheld this would disentitle the creditor to any sanction for late payment which could not have been the intention of the 1998 Act.

[9] Mr Sheil of Counsel on behalf of the Respondent contended for the opposite view. The intention of the legislation is, that, if statutory interest is remitted entirely due to the supplier's conduct, then the fixed compensatory sum under Section 5A does not apply to the debt either. For this interpretation he relied on the words of Section 5A(1) "once statutory interest **begins to run**". Therefore if statutory interest is remitted entirely and "does not run in relation to the debt" then the fixed compensatory sum is not payable because it only applies in a situation where the statutory interest "begins to run" in relation to the qualifying debt.

[10] Mr Sheil further argued that the language of the Act is clear and unambiguous and that the clear intention of Section 5A is that if statutory interest does not run at all in relation to a debt then the fixed compensatory sum is not payable either. Such interpretation makes logical sense as it would appear perverse that a supplier, whose conduct the court found to be such as to disallow his whole claim for statutory interest would still be entitled to the fixed compensatory payment. Had the legislature intended the compensatory

sum to apply irrespective of the remission of statutory interest by the court then this fact could have been clearly stated in the 1998 Act.

[11] Counsel referred me to the leading case of *Ruttle Plant Hire -v- Secretary of State for Environment Food and Rural Affairs [2010] 1 ALL ER (Comm)*. The decision in the case centres largely on the power to remit interest in the interests of justice and the exercise of a judge's discretion in these circumstances. It is therefore of no assistance in deciding the issue which is before me. There appears to be no authority on the particular point of law which I have to decide.

[12] I have carefully considered the respective arguments put forward by counsel. I have come to the conclusion that the meaning of the provision "once statutory interest begins to run" refers to the day after the day when payment is due and that the right to interest continues from that date until a court decides whether interest is payable in part or in whole or whether some or all of the interest should be remitted. It was conceded by counsel for the Respondent that if one day's interest was payable then statutory compensation would be payable. I consider that even if all interest is remitted in the interests of justice, statutory interest had in each case begun to run when the debt became due. There is no express provision for the remission of statutory compensation and I am not attracted by the Respondent's argument that the legislature could have included a statement that the compensatory

sum should apply irrespective of the remission of statutory interest if that had been the intention.

[13] I therefore find in favour of the Appellant. I allow the appeal and order the Respondent to pay the sum of £3,000 to the Appellant.