

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nouhi v. Pourtaghi*,
2024 BCSC 718

Date: 20240501
Docket: S184410
Registry: Vancouver

Between:

Massimo Aki Nouhi

Plaintiff

And

Nahid Pourtaghi, Naki Enterprises Inc.

Defendants

And

Massimo Aki Nouhi

Defendant by Way of Counterclaim

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for Plaintiff/Defendant by
Counterclaim:

C. Dennis, K.C.
E. Lennox

Appearing in person and on behalf of Naki
Enterprises Inc.:

N. Pourtaghi

Place and Date of Hearing:

Vancouver, B.C.
April 5, 2024

Place and Date of Judgment:

Vancouver, B.C.
May 1, 2024

Introduction

[1] In reasons indexed as *Nouhi v. Pourtaghi*, 2022 BCSC 807, I invited the parties to return to make submissions as to the applicability of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 [COIA], to both monetary awards contained in my judgment. Almost two years have passed since my judgment was rendered.

[2] The proceedings arose out of an alleged profit-sharing agreement regarding a collection of several properties (titled the “Book Tower” project). Mr. Nouhi discontinued his action against Dr. Pourtaghi at the commencement of trial. Accordingly, the 2022 reasons addressed Dr. Pourtaghi’s counterclaim against Mr. Nouhi.

[3] I awarded Dr. Pourtaghi substantial damages arising from her alternative claim of unjust enrichment.

[4] Since my judgment, I dealt with the matter of costs. They have not yet been assessed.

[5] Regardless, as of this date no payments have been made by the plaintiff, Mr. Nouhi, on account of the principal amount of the judgment. Dr. Pourtaghi, the defendant/plaintiff by counterclaim and beneficiary of the award, calculates the amount owing to her, exclusive of costs and pre-judgment and post-judgment interest as \$528,220. I make no comment on the amount; I am asked only to determine the rate at which pre-judgment interest and post-judgment interest would be payable.

[6] Neither party disputes the manner in which court ordered interest is to be calculated.

[7] The damages arising from the action for slander of title arose in August 2019 when the plaintiff first registered certificates of pending litigation (“CPLs”) against the defendant’s properties. Pre-judgment interest commences as of filing of the CPLs.

[8] The damages awarded for unjust enrichment were founded on principles of *quantum meruit* and, accordingly, any pre-judgment interest calculation must account for the fact interest ought to be staggered over the whole of the nine-year period, commencing with the beginning of her engagement with Mr. Nouhi in 2008 to the completion of the Book Tower project in 2016. Thereafter the award crystallized and, obviously, interest accrues on the whole of the principal amount I awarded until the date of my judgment.

[9] The issue that brings the matter back to me is that Dr. Pourtaghi asserts both pre-judgment and post-judgment interest should be payable at a heightened rate due, in the main, to Mr. Nouhi's conduct throughout the litigation and his refusal to pay the award thereafter.

[10] While costs have yet to be assessed and interest yet to be determined, no reasonable explanation has been offered as to why the principal has not been paid now some two years, approximately, since my judgment was rendered. Mr. Nouhi, as is apparent from the reasons for judgment, is a successful businessperson with a high net worth. He is involved in enterprises throughout the world. The amount of damages awarded to Dr. Pourtaghi is a minuscule portion of the profit earned on the Book Tower venture in which I found she was so instrumental. To be clear, Mr. Nouhi has the ability to pay the judgment but has chosen not to.

[11] Nevertheless, it is argued by Mr. Nouhi's counsel that neither his actions within the litigation nor his recalcitrance in paying the base amount owing under the terms of my judgment is a reason to depart from the usual order pertaining to the calculation of interest.

Legal Framework

[12] Each of the parties agree that s. 1(1) of the *COIA* establishes a general rule that pre-judgment interest is to be added to the pecuniary judgment. The purpose of such is to ensure that the earned capacity of money awarded accrues to the successful party: *Gillis v. Bates* (1979), 12 B.C.L.R. 375, 1979 CanLII 400 (S.C.).

[13] In *Hardwoods Specialty Products LP v. Rite Style Manufacturing Ltd.*, 2006 BCCA 139 at para. 17, Justice Lowe described rates fixed by the Registrar as “rates of convenience to trial judges who resolve disputed claims”. Further, it is noted that in commercial cases, Registrar’s rates might not be appropriate because business entities often borrow working capital at bank rates of interest that are higher than the rates fixed by the Registrar.

[14] Dr. Pourtaghi has referred me to *Conex Services Inc. v. Bogner Developments Ltd.*, 2000 BCCA 54, a case where the appropriate rate of court order interest was the prime lending rate, given the absence of evidence of unavailable rates of return in cash and investments. Further, in *Domtar Inc. v. Univar Canada Ltd.*, 2012 BCSC 510, the Court determined it was not necessary for a party to adduce specific evidence about the use to which it would have put the money had it been received. The take away from *Domtar Inc.* is that where a commercial party is deprived of money to which it was entitled, it would have either earned interest or paid interest on borrowed funds.

[15] Finally, in *N.N.N. v. D.E.B.*, 2023 BCSC 1538 at para. 26, the Court referenced *Le Soleil Hospitality Inc. v. Louie*, 2017 BCSC 1390 [*Le Soleil*], rev’d in part on other grounds 2020 BCCA 69, which affirms the court’s jurisdiction to vary interest rates or commencement dates under s. 8 of the *COIA*.

[16] In *Le Soleil*, the matter was addressed as follows:

[153] Section 8 of the *Court Order Interest Act* permits the court to either vary the date from which post-judgment interest is payable or to vary the rate of post-judgment interest. An order under s.8 is discretionary. However, there is no discretion to deprive post-judgment interest to a party entirely. The court should be slow to make exceptions to s. 8. The purpose of post-judgment interest is to compensate a judgment creditor who does not receive his money when it is due: *B.A.J. v. V.L.*, 2012 BCSC 560 at para. 14; *Gillis v. Kralj*, [1992] B.C.J. No. 2464 (S.C.); *Misley v. 420746 B.C. Ltd.*, [1996] B.C.W.L.D. 1174 (S.C.) at para. 11; *Misley v. 420746 B.C. Ltd.* (1997), 46 B.C.L.R. (3d) 166 (C.A.), at paras. 22-23.

[17] In response, counsel for Mr. Nouhi argues that pre-judgment interest ought to be calculated at Registrar’s rates unless there was a demonstrated commercial

nature of the parties' relationship as to the dispute at issue. Otherwise, absent an agreement between the parties or a history of charging interest, it was determined in *Garside v. Stirling*, 2013 BCSC 1457, there was no basis to depart from an award of interest at Registrar's rates.

[18] I agree that the pre-judgment interest needs be calculated on the *quantum meruit* award spread equally out over the nine-year period for which it was ordered but in increments spread equally over the nine years commencing when Dr. Pourtaghi began working for AKNO U.S., a company wholly owned, directly or indirectly by Mr. Nouhi.

[19] Interest should be calculated at the end of each six-month interval during which notional wages should have been earned.

[20] This was the approach taken in *Andrews v. Farrell Estates Ltd.*, [1984] B.C.J. No. 1816, 1984 CarswellBC 2292 (C.A.), and seems in line with the approach taken by Dr. Pourtaghi who was not represented by counsel at the hearing before me.

[21] While acknowledging the court's discretion to set the rate of pre-judgment interest, counsel for Mr. Nouhi submits the calculation of interest is not meant to be punitive. To the extent Mr. Nouhi's litigation conduct was worthy of rebuke, the matter was dealt with in the costs award.

[22] Special costs were awarded to Dr. Pourtaghi respecting the original claim by Mr. Nouhi. Costs of the counterclaim, which occupied all of the trial time, were assessed at a higher level of costs than would otherwise have been payable.

[23] On behalf of Mr. Nouhi it is argued it would be equally improper to exercise my discretion with respect to post-judgment interest simply because he has not paid the judgment.

Discussion

[24] In my view, no commercial relationship as is contemplated in *Le Soleil* was present here. Dr. Pourtaghi, notionally, was an employee of AKNO U.S., wholly

owned by Mr. Nouhi, and was entitled to compensation for the efforts performed on her behalf.

[25] I conclude Dr. Pourtaghi's action is little different from one for wrongful dismissal. I have not been referred to any like case, such as a wrongful dismissal or lost wage claim through misadventure by car accident, where pre-judgment interest has been ordered other than at Registrar's rates.

[26] I have heard no evidence from Dr. Pourtaghi as to the commercial use which she might put the award to, although I have little doubt she has had to expend or borrow funds to pay for counsel throughout. That, too, in my mind is a matter subsumed in the question of costs which have been dealt with.

[27] Accordingly, the pre-judgment interest should be calculated at Registrar's rates in the fashion described in Mr. Nouhi's application response, that is incrementally over the nine-year period until the whole of the award was "earned", and thereafter until the date of judgment.

[28] Post-judgment interest is, in my view, a different matter.

[29] Mr. Nouhi is a businessperson. I have no doubt when he is negotiating loans either personally or in furtherance of his business ventures the negotiated rate of interest is far in excess of that provided for in the Registrar's rates.

[30] By not paying the judgment to Dr. Pourtaghi, he is in effect borrowing from her.

[31] I am satisfied Mr. Nouhi's poor behaviour in this litigation continues. In the 2022 judgment I said Mr. Nouhi had "weaponized litigation" against Dr. Pourtaghi. Mr. Nouhi seems content to spend thousands on defence but nothing on tribute.

[32] An enhanced interest rate on post-judgment interest is in my view a legitimate tool to encourage Mr. Nouhi to meet his financial obligations to Dr. Pourtaghi.

[33] It follows that the calculation of post-judgment interest will be at Royal Bank of Canada's prime lending rate from the date of the judgment, calculated once again in six-month increments from the date of the judgment.

[34] Success in this application has been divided and accordingly each party will bear their own costs.

"Harvey J."