

Interest payable from judgment: Taxing Master

Schimmel & Anor v Commonwealth of Australia should be of interest to most practitioners

by CATHERINE EAGLE

THE FACTS

On 23 August 1991 judgment by consent was entered for the plaintiffs with the costs to be agreed or taxed.

On 8 May 1992 costs and disbursements were taxed and allowed at \$277,188.16 ("the taxed costs").

On 8 July 1992 the plaintiffs' solicitor wrote to the defendant's solicitor seeking payment of interest on the taxed costs in the sum of \$4,057.43 being interest calculated from the date of taxation.

Prior to that the plaintiffs' solicitor had not sought an order for interest on the taxed costs (pursuant to r 63.74).

On 20 October 1992 the plaintiffs' solicitor asked for interest on the taxed costs of \$21,899.69 being interest calculated from the date of judgment. The defendant refused to pay any interest.

The plaintiff brought an application for payment of interest on taxed costs calculated either from the date of the judgment to date of payment or from the date of the order for taxation to the date of payment at the rate fixed by r 59.03(3).

In the alternative, they sought an order that the Registrar issue a certificate in accordance with s 65 of the *Judiciary Act* 1903 (as amended) for one or other sum.

THE ARGUMENT

The plaintiff relied on the decision in *Zabic v Nabalco Pty Ltd* (1983) 25 NTR 28 and *Assan Gardner v General Manager of the TIO & Ors* (unreported decision of the Master).

In the latter case the Master followed *Zabic* and held interest on costs was payable from the date of judgment.

The defendant submitted that r 63.74 is an exception to s 85 and has full force and effect and stipulates the conditions precedent to the payment of interest on an order for payment of costs; that is, the Taxing Master may in his discretion fix a rate of interest payable in respect of taxed costs and the date from which interest will run at the conclusion of taxing the bill.

No application was made and no rate was fixed, therefore no interest was payable.

THE DECISION

It was *held*:

(1) He would not order the Registrar to issue a certificate under s 65 of the *Judiciary Act* as this is a matter for the Registrar to determine once he decided the question of the payment of interest.

(2) Interest on taxed costs is payable from the date of judgment, at the rate applicable from time to time for either of two reasons: -

Reason 1

r 59.02(3) takes its legislative effect from the *Supreme Court (Rules of Procedure) Act* ("the amending act") and has the force of statute law.

Order 63 commenced after the amending act and, as subordinate legislation, gives way to any earlier provision of a statute.

So r 63.74 must be read as subject to r 59.02(3) and to the extent of the inconsistency r 63.74 is invalid.

Reason 2

It is under the judgment of 23 August 1991 that the defendant is to pay the plaintiffs' costs which were simply

fixed by the order of 8 May 1992.

It follows that interest on the taxed costs is a judgment debt in the strict sense and is payable from the date of judgment by virtue of r 59.02(3).

Rule 63.74 relates to costs taxed otherwise than under a judgment.

He ordered that the defendant pay to the plaintiffs the sum of \$21,899.69 by way of interest on the plaintiffs' taxed costs.

PUBLIC HOLIDAYS

Practitioners are reminded that July is show month in the Northern Territory and the following are regional public holidays:

2nd Alice Springs
9th Tennant Creek
16th Katherine
23rd Darwin

MEMBER SERVICES

Practitioners may have noticed that our Member Services sheet is somewhat out of date (several of the businesses featured in it have closed).

We are working on a new one and hope to have it circulated later this month.

And, yes, we have noted comments from Alice practitioners and will try to include more in the southern region.