



LEGAL BRIEFING

Taiwan Scot Co Ltd v Masters Golf Company Ltd

[2009] EWCA CIV 685 (CA, Civil Division), Longmore, Pill & Richards LJ

The Facts

Master Golf Co Ltd (“Masters”) bought golf clubs from two ranges through their Far Eastern purchasing agents, Taiwan Scott Company Ltd (“Taiwan Scott”) for resale in the United Kingdom. Clause 2 of the agreement between them provided for a contractual rate of interest of 15 per cent per year.

A dispute arose between the parties as to what sums were due to Taiwan Scot under the agreement. At first instance the Judge found that Masters were obliged to make the disputed payments but declined to award the contractual rate of interest on the grounds that it was “an unreasonably high rate, and more inclined towards a penalty than a genuine estimate of loss”. Masters appealed in respect of the judgment and Taiwan Scot cross-appealed in respect of the judge’s decision not to award interest.

The Issue

Was the agreement for the contractual interest rate of 15 per cent enforceable or was it a penalty and therefore unenforceable?

The Decision

The appeal as to the disputed payments was dismissed but the cross appeal in relation to contractual interest was upheld. Longmore LJ emphasised that the interest rate of 15 per cent was either a penalty or it was not. An interest rate can not be “more inclined towards a penalty than a genuine estimate of loss” as stated by the Judge at first instance.

Longmore LJ also examined the circumstances at the time the agreement was entered into commenting that it did not “seem to me that a contractual rate of 15 per cent was in any way exorbitant in July 2001” as, at that time, interest rates were significantly higher. He went on to emphasise that the rate of 15 per cent had been agreed between two commercial concerns in the economic circumstances of the time and should not lightly be set aside. Accordingly the Court of Appeal held that the contractual interest rate of 15 per cent was not a penalty and interest at 15 per cent was awarded on the amounts held due by the Judge at first instance from the date they became due until the date of judgment.

Comment

This case is a reminder that it is necessary to assess whether a particular sum or contractual provision is a penalty by reference to the time the contract was entered into and not the date of the breach giving rise to the obligation to pay.

At present the statutory rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998 (the “Act”) is 8.5 per cent (i.e. 8 per cent over the current Bank of England base rate of 0.5 per cent). Arguably this case suggests that parties to construction contracts being entered into now may be able to agree higher rates of interest than those provided for in the Act if this can be justified in the circumstances. However, a word of caution should be sounded in that this decision was reached in light of the economic circumstances in July 2001 when, as emphasised by Longmore LJ, interest rates were much higher.