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WHERE a bank wrongfully freezes and debits its customer's accounts, what compensation can the customer claim from the bank? Can the customer claim damages for the loss of the use of its money and, if so, how is that loss to be quantified? These were the questions at the heart of the appeal in *Sagicor Bank Jamaica Ltd. v YP Seaton and others* [2022] UKPC 48.

Mr. Seaton and two companies in his control had operated various accounts, including five foreign currency bank accounts held by Mr. Seaton, with Sagicor Bank. In the early 1990s, the bank settled a claim brought against it by a third party and sought to recover the sums it had paid in the settlement from Mr. Seaton. It did so by debiting the sum of JM$15,254,585.69 on 16 October 1992 from Mr. Seaton's and his companies' accounts and by freezing Mr. Seaton's foreign currency accounts at some point prior to 6 August 1993.

The bank issued proceedings in 1993 seeking a declaration that it had been entitled to debit and freeze the accounts. Mr. Seaton commenced his own claim shortly thereafter seeking repayment of the sums debited from the accounts, plus accrued interest, and an order for an account to be taken of the sums due to him. The consolidated trial of both claims did not take place until September 2011. Judgment was handed down by Sykes J. in 2014, dismissing the bank's claim. Sykes J. ordered the bank to repay the sum of JM$15,254,585.69 and for an account to be taken of the sums due in respect of the foreign currency accounts. He held that compound interest should be paid on the foreign currency accounts at the rate of 27.3 per cent between 1992 and 2014, this being the average interest rate for borrowing Jamaican dollars over that period, because simple interest would not compensate Mr. Seaton for the loss of the use of the monies.

The Jamaican Court of Appeal allowed Sagicor Bank's appeal. It ordered that simple interest should instead be payable: first, at the rate of 27.3 per cent on the sums improperly debited from the accounts; and, second, at such rate as the parties could agree (or the court would subsequently determine) on any sums found due after the accounting exercise. Mr. Seaton appealed that decision to the Privy Council. He argued that he was entitled to compound interest as compensation on three bases, being: (1) compound interest at the contractual rate on the sums wrongfully withdrawn by the bank; (2) compound interest at the average borrowing rate representing his loss of the use of the funds that had been wrongfully withdrawn; and (3) compound interest representing his loss of the use of the funds that had been wrongfully frozen. Mr. Seaton acknowledged that he was not entitled to claim both the contractual rate and the borrowing rate in full,

and that to the extent that the latter was higher than the former, he was only entitled to claim the difference between the two on top of the contractual rate.

Lord Hodge delivered the unanimous advice of the Board. The Board's starting point was to distinguish between: first, the claims for return of the monies wrongly debited by the bank, and for compound, contractual interest on those sums; and, second, the claims for compound interest in respect of the loss of the use of both the debited and frozen monies. The former were claims in debt, whereas the latter were claims in damages. In other words, to borrow from Lord Diplock's seminal judgment in *Photo Production Ltd. v Securicor Transport Ltd.* [1980] 2 W.L.R. 283, the former claims involved enforcement of the bank's primary obligation under the contract with Mr. Seaton to pay on demand the sums held in his account, plus the interest which the bank had promised to pay on those sums. The latter involved the bank's secondary obligations to pay compensation in respect of the breaches of its primary obligation to repay on demand the sums deposited by Mr. Seaton.

The Board had no trouble in concluding that Mr. Seaton was entitled to compound interest on the debt claims at the contractual rate. As the Board pointed out (at [21]), the court was simply reconstituting Mr. Seaton's account by "*adding back*" in the sums which had been withdrawn without authorisation and then calculating the accrued monthly interest that Mr. Seaton would have earned under his contract with the bank if the sums had remained in his account. So far so good for Mr. Seaton. However, the Board considered that his claim for compound interest in respect of the damages claims (i.e. for his loss of the use of sums wrongfully debited and frozen) was more problematic.

Mr. Seaton attempted to rely on the House of Lords' decision in *Sempra Metals Ltd. (formerly Metallgesellschaft Ltd.) v Inland Revenue Commissioners* [2007] UKHL 24, [2008] 1 A.C. 561 in support of his claim for damages representing the loss of the use of his money. *Sempra Metals* had confirmed that, as a matter of principle, there was no reason why a claimant could not recover interest as damages for breach of contract. However, that did not help Mr. Seaton where, as the House of Lords had emphasised in *Sempra Metals*, the burden was still on the party claiming interest as damages to properly plead and prove their loss.

Here, the Board referred to the "*exiguous*" nature of Mr. Seaton's pleadings and evidence in relation to his claim for interest as damages. He had not included in his statement of case any claim for interest as damages and the evidence in support of his (unpleaded) claim was (at [30]) "very limited". Faced with those difficulties, Mr. Seaton attempted to rely on the decision in *Equitas Ltd. v Walsham Bros & Co. Ltd.* [2013] EWHC 3263 (Comm), [2014] Lloyd's Rep I.R. 398 for the proposition that the court could infer a loss of income in the absence of

supporting evidence. In that case, Males J. considered there was a "*starting point*" that, where a claimant is kept out of their money in a commercial context, they were entitled to recover, as compensation, interest calculated by reference to the cost of borrowing those sums at a conventional rate.

The Board expressly disapproved this "starting point", holding that it was inconsistent with *Sempra Metals*. The correct position (summarised at [37]) was that, whilst the court may infer that a claimant has suffered loss by being deprived of the use of their money, there must still be both a pleading and evidence from which that loss can be inferred, and the claimant must prove their loss on the balance of probability. Mr. Seaton's failure to either plead or provide evidence from which such a loss could be inferred was fatal to his claim for compound interest on the lost use of his money.

Whilst the concept of claiming interest as damages is often considered a complex and distinct area of law, the Privy Council's decision in *Sagicor Bank* is to be welcomed in refocusing the enquiry on pleading and evidential proof. In reality (as Lord Hope expressly recognised in *Sempra Metals*), there is nothing exceptional about claiming interest as damages. Rather, such claims are subject to the same rules of causation, remoteness, mitigation, pleading and evidential proof as any other claim for damages flowing from breach of contract.

In this respect, the Board's express disapproval of the "*starting point*" articulated by Males J. in *Equitas Ltd.* must be correct. Males J.'s dictum effectively introduced a legal presumption that loss had been suffered in relation to one specific type of damage which was conceptually no different from any other financial loss. It effectively reversed the burden of proof and drew an artificial distinction between damages representing the use value of money and all other types of damages for financial loss. This was, as the Board rightly recognised, inconsistent with the decision in *Sempra Metals.*

Claims for interest as damages will often give rise to difficult questions of evidential proof. A claimant might need to prove a counterfactual, such as where the monies would have been invested in a particularly lucrative asset. Historical rates of borrowing may not be available to determine whether a claimant has mitigated their loss by borrowing replacement money at a reasonable rate. However, similar evidential difficulties exist in other areas (such as claims for loss of a chance) and do not by themselves justify the introduction of legal presumptions or conceptual distinctions between different types of financial loss. The proper vehicle through which such difficulties are resolved is the general law of evidence, and in particular the rules governing the drawing of inferences of fact.

Although Males J. was concerned in *Equitas Ltd.* to promote commercial certainty and avoid excessive disclosure and evidence, the presumption he formulated came at the expense of doctrinal coherence. Hard cases make bad

law and practical advantages rarely justify the undermining of consistent legal doctrine. The Privy Council's decision in *Sagicor Bank* is a welcome victory in favour of the latter.

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