1997 S.H. No. 142151

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

LACHLAN J. HARGROVE and RONALD A. FRANCIS

PLAINTIFFS

-and-

MALCOLM S. SWIM

DEFENDANT

SUPPLEMENTAL DECISION

WRITTEN SUBMISSIONS:	Supplemental Decision to Decision dated October 6, 1999 of Justice David W. Gruchy
RELEASE OF SUPPLEMENTAL DECISION:	October 25, 1999
COUNSEL:	Joseph M.J. Cooper, Q.C. for the Plaintiff Michael J. O'Hara for the Defendant

GRUCHY, J.:

Subsequent to the filing of the decision herein counsel for the defendant has asked that I consider a submission with respect to the calculation of interest accruing after October 1, 1997, the date on which the plaintiffs demanded payment of the promissory note. Both counsel are agreed that the court has jurisdiction to revise or modify its decision prior to an Order being entered, and I agree with that position. (see *Sackville Manor Limited v.Halifax (County)*, [1998] N.S.J. No. 521.

The defendant has submitted that "...unless loan documentation makes explicit and express reference to the charging of interest after demand (or maturity) the law does not imply such provision". He has referred me to Waldron's "The Law of Interest in Canada", 1992, at page 190 where the author states:

> The legal presumption is that if the contract fails to provide expressly for interest after maturity, it will not be implied. The court will not presume that the parties intended to provide for default on the contract. Using the words interest "until paid" does not displace this presumption. The drafter must state that the agreed interest rate will apply to the outstanding principal balance and be compounded at the agreed upon intervals both before and after maturity of the loan.

The defendant then goes on to cite *St. John v. Rykert*, (1884), 10 S.C.R. 278 and *Toronto Dominion Bank v. Mr. Klean Enterprises Limited*, (1987), 37 D.L.R. (4th) 717. The defendant concludes that in this case none of the loan documentation - the promissory note, collateral mortgage or chattel mortgage - provides for interest at the 11% rate after demand or maturity and therefore submits that the plaintiffs are not entitled to the contract

rate of 11% interest after October 1, 1997.

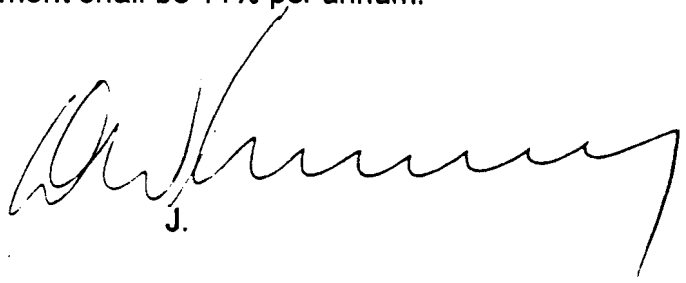
The plaintiffs, however, have referred me specifically to Section 41(i) of the *Nova Scotia Judicature Act* which reads:

> In every proceeding commenced in the court, law and equity shall be administered therein, according to the following provisions:
>
> > i. In any proceeding for the recovery of any debt or damages, the court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period between the date when the cause of action arose and the date of judgment after Trial or after any subsequent appeal.

I conclude that the court has the right, and indeed the duty, to include in its judgment interest for the period at issue.

The parties are all experienced businessmen. They made a bargain wherein the defendant promised to pay interest at 11% per annum. Undoubtedly, that interest rate was an integral part of the overall bargain between the parties. I do not consider it advisable or equitable now to tinker with any one particular aspect of the bargain reached by the parties.

The interest rate to be applied to the debt for the period from the date of demand, October 1, 1997, to the date of judgment shall be 11% per annum.



J.