



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *Steers Group Limited v. Blackwood Contractors Limited*, 2026 NLSC 22

**Date:** March 6, 2026

**Docket:** 201304G0080

BETWEEN:

**STEERS GROUP LIMITED**

PLAINTIFF

AND:

**BLACKWOOD CONTRACTORS  
LIMITED**

FIRST DEFENDANT

AND:

**THE ESTATE OF BRIAN WELLON**

SECOND DEFENDANT

AND:

**PATRICIA WELLON**

THIRD DEFENDANT

---

**Before:** Justice Thomas J. Johnson

---

**Place of Hearing:**

Corner Brook, Newfoundland and Labrador

**Date of Hearing:**

December 10, 2024

**Summary:**

The issue before the Court was whether the Plaintiff is entitled to an award of pre-judgment contractual interest in circumstances where it delayed the prosecution of its action on a debt and an associated guarantee for over eight years. This involved two questions:

1. Does the Court have the authority to decline to award contractual interest?
2. If yes, should the Court decline to award contractual interest because of the Plaintiff's delay in prosecuting its action?

Held: The Court may depart from ordering contractual interest to a successful party in the exercise of its common law and equitable jurisdiction when special circumstances justify it. The Plaintiff's delay in prosecuting its action was excessive and constitutes special circumstances that justify a departure from contractual interest. The Court limited contractual interest to two years with pre-judgment interest at the statutory rate thereafter.

**Appearances:**

Adam Baker	Appearing on behalf of the Plaintiff
No Appearance	On behalf of the First Defendant
No Appearance	On behalf of the Second Defendant
Patricia Wellon	Appearing on her own behalf

**Authorities Cited:**

**CASES CONSIDERED:** *Page v. Newman* (1829), 9 B. & C. 378, 109 E.R. 140; *Costello v. Calgary (City)*, 1997 ABCA 281; *Bank of America Canada v Mutual Trust Co.*, 2002 SCC 43; *St. John's (City) v. Coady Construction and Excavation Ltd.*, 2005 NLCA 68; *Tribute (Springwater) Limited v. Atif*, 2021 ONCA 463; and *LeDrew Lumber Company Limited v. West Point Development Inc. et al*, 2009 NLTD 128

**STATUTES CONSIDERED:** *Judgment Interest Act*, R.S.N.L. 1990, c. J-2; *Courts of Justice Act*, R.S.O. 1990, c. C. 43; *Judicature Act*, R.S.N.S. 1989, c. 240

**RULES CONSIDERED:** *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

## REASONS FOR JUDGMENT

**JOHNSON, J.:**

### **INTRODUCTION**

[1] In this case, I must decide whether the Plaintiff is entitled to an award of pre-judgment contractual interest in circumstances where it delayed the prosecution of its action on a debt and an associated guarantee for over eight years.

### **BACKGROUND**

[2] On April 28, 2023, I granted the Plaintiff, Steers Group Limited (“Steers”), judgment of \$30,839.06 after a summary trial under Rule 17A of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D (the “Rules”) against the First Defendant, Blackwood Contractors Limited (“BCL”), and the Third Defendant, Patricia Wellon. I also awarded Steers pre-judgment interest pursuant to the *Judgment Interest Act*, R.S.N.L. 1990, c. J-2 (the “Act”) from November 9, 2012, being the date of default in payment on the account that BCL had with Steers for the supply of goods and services and on which Patricia Wellon was a guarantor.

[3] While Steers had claimed an entitlement to an award of contractual interest on its account with BCL of 2 percent per month (24 percent per annum) from the date of default of payment on the account to the date of judgment, I did not grant judgment in favour of Steers on the summary trial on its contractual interest claim. At the time of the hearing, its contractual interest claim stood at \$79,230 on a

principal amount owing of \$30,839.06. I held that the lengthy period that Steers' action had lain dormant, taken together with the disproportionate size of the contractual interest claim, gave rise to the issue of Steers' entitlement to its claim for contractual interest. I held that this issue was a genuine issue for trial which had not been fully addressed and argued. Accordingly, I granted Steers leave to set the matter down for a trial on this issue. The trial was subsequently held on December 10, 2024.

[4] BCL was not represented at the trial and provided no evidence. Patricia Wellon attended the trial but did not give evidence and did not file or make submissions, other than to state that she did not believe that she or BCL should have to pay contractual interest and that there was no money to pay it in any event.

## FACTS

[5] At the trial, Allan Kendall, a director and manager of Steers, testified on behalf of Steers. His evidence was not challenged and I found him to be a reliable and credible witness.

[6] Steers is engaged in the wholesale and distribution of, among other things, plumbing and heating products. It sells to building contractors, installers and retail stores.

[7] BCL, a contractor, entered into a Credit Application and Agreement with Steers on November 18, 2009. In it, BCL requested credit of \$50,000. In the terms and conditions signed by Patricia Wellon and her husband, Brian Wellon (since deceased), on behalf of BCL, the credit terms were bolded and underlined as follows:

4. **Credit Terms:** Purchase of goods will indicate the acceptance of Steers Group Limited's credit terms. **Steers Group Limited's credit terms are net 30 days from the date of this invoice, unless otherwise stipulated. Invoices not paid in accordance with the credit terms are in default and subject to a 2% service charge per month, or an annual equivalent rate of 24%. This account is not a revolving charge account; it must be paid when invoices become due.** If your

account should become delinquent, it will be placed on credit hold, without prior notice.

[8] Patricia Wellon and Brian Wellon signed a Personal Guarantee on November 18, 2009. They agreed as guarantors to be:

- a. . . . jointly and severally liable with the Customer, as principal debtor and not as surety, for the due payment of all monies payable to the Vendor by the Customer, including all service charges (2% per month or 24% per annum on amounts owing for more than 30 days) and other charges;

[9] Steers advised BCL that it was granted credit in a letter of January 8, 2010. As regards interest, the letter stated the following:

...

Your account terms are net 30 days. Interest charges of 2% per month or 24% per annum will be charged on all overdue accounts as per the terms and conditions outline in your credit application/agreement. We also request a copy of your company's annual financial statements. As well, please be aware that Steers Group Limited will NOT release any orders for shipment on overdue accounts.

...

[10] Steers sent six invoices to BCL as follows:

<b>DATE</b>	<b>AMOUNT (INCLUDING HST)</b>
June 6, 2012	\$29,391.30
July 10, 2012	\$85.26
July 17, 2012	\$3,435.20
July 18, 2012	\$135.60
July 20, 2012	\$99.16
November 14, 2012	\$2,307.46
<b>TOTAL</b>	<b>\$35,453.98</b>

[11] At the previous summary trial, Steers established that the principal amount owing was \$30,839.06. Mr. Kendall testified at trial that the June 6, 2012 invoice for \$29,391.30 was in relation to a special order for two water heaters. These were non-stock items that Steers purchased from a third party in order to fill BCL's order.

[12] Steers' solicitors (not present counsel) wrote a demand letter to BCL on November 9, 2012. The letter stated inter alia:

...

THIS LETTER IS FORMAL NOTIFICATION TO YOU that unless this account is paid in full **within ten (10) days of the date of this letter**, we have been instructed by our client to proceed at that time with legal action against you. In such legal action our client will be claim (sic) not only the amount outstanding, \$35,741.36, but also interest thereon, and costs.

We trust that such legal action will not be necessary and that the amount outstanding \$35,741.36, will be paid to our client **within ten (10) days of the date of this letter**.

[13] Steers issued its Statement of Claim on May 14, 2013. The Defendants filed their Defence on June 10, 2013, in which they denied the claim and put Steers to strict proof of its claim. Patricia Wellon pleaded *non est factum*, duress and lack of consideration in relation to the claim against her on the Personal Guarantee. Steers filed its List of Documents on June 27, 2013 but took no further steps in the litigation until November 24, 2020 when its current solicitor filed a Notice of Change of Solicitor and a Notice of Intent to Proceed. Steers subsequently filed an application for summary trial on September 17, 2021. The solicitor for the Defendants then filed an application to be removed as solicitors of record. An order removing the solicitor was granted on November 1, 2021.

[14] Steers' summary trial application was called on December 10, 2021 on a return date (i.e. a date to set a date) but the Defendants did not appear. The summary trial application was scheduled for May 20, 2022 with an order that notice of the filing dates and hearing date was to be served on the Defendants. When the summary trial was called on May 20, 2022, the matter did not proceed because Steers had not

served notice of the hearing on the Defendants. The matter was called on June 28, 2022 and set over to August 3 for status to allow Patricia Wellon a further opportunity to seek legal advice. On August 3, 2022, Patricia Wellon stated she would be representing herself and BCL would not be represented. The summary trial application was set for and subsequently heard on March 7, 2023. I gave judgment as set out in para. 2 herein on April 28, 2023.

[15] At the trial, Mr. Kendall addressed Steers' delay in prosecuting its action. He testified that Steers' original solicitor in the proceeding left the law firm at which he had been practicing and there was delay associated with confirming who was going to take carriage of Steers' file. Mr. Kendall quite candidly acknowledged that the action did not progress because "life got in front of us". He stated there was renewed interest in the action when Steers learned from a collection agency that other creditors of BCL had been paid in 2018 or 2019.

## **POSITION OF STEERS**

[16] Steers submits that the terms of the Credit Application and Agreement and the Personal Guarantee are clear and straightforward and the rate of interest in the parties' agreements (i.e. 2 percent per month, or 24 percent per annum) is a commercially reasonable rate for an unsecured credit account.

[17] Steers submits that Courts routinely order contractual interest as part and parcel of their function in relation to enforcement of contracts. Steers states that it is not fair that it should have supplied goods to BCL, which it used and had the benefit of, while Steers was deprived of the capital value of those goods for over a decade. Steers submits that there is no basis under the law of contracts or equity to decline to order judgment for Steers on what it bargained for.

## THE ISSUE

[18] The overall issue is whether Steers is entitled to an award of contractual interest of 2 percent per month (24 percent per annum) from the date of default in payment on November 9, 2012 to the date of judgment on April 28, 2023.

[19] To determine this, I must answer two questions: Does the Court have the authority to decline to award contractual interest to a successful party? If yes, should the Court do so in this case because of Steers' delay in advancing the litigation?

## ANALYSIS

### **Does the Court have the authority to decline to award contractual interest?**

[20] For the reasons below, I have determined the Court may depart from ordering contractual interest to a successful party in the exercise of its common law and equitable jurisdiction where special circumstances justify doing so.

[21] Interest has long been granted when provided for by agreement of the parties (*Page v. Newman* (1829), 9 B. & C. 378, 109 E.R. 140; *Costello v. Calgary (City)*, 1997 ABCA 281; *Bank of America Canada v Mutual Trust Co.*, 2002 SCC 43).

[22] The Court of Appeal in *St. John's (City) v. Coady Construction and Excavation Ltd.*, 2005 NLCA 68 indicated that a court could depart from awarding contractual interest. In *Coady*, the appellant (City) submitted that the trial judge erred by awarding the respondent (Coady) interest at the contractual rate of 9 percent rather than at the *Judgment Interest Act* rate. In their contract, the parties had agreed that if payment was not made within 60 days of issuance of a certificate for payment, the City would be liable for interest on the amount owing at a rate of 9 percent per

annum. Having found the City in breach by refusing to pay, the trial judge determined that the contract rate of interest rather than the *Judgment Interest Act* rate applied because to do otherwise would be to reward the City unfairly as it had the use of a substantial sum of money which ought to have been paid to Coady. In a *per curiam* judgment of Cameron, Roberts and Mercer, J.J.A., the Court of Appeal agreed with the conclusion of the trial judge, stating at para. 24, “. . . It would be a highly unusual circumstance where, the contract being found to have been breached, the successful party should not be entitled to interest at the agreed upon rate.”

[23] While indicating that a court in a highly unusual circumstance could decline to award interest at the agreed upon rate, the Court of Appeal did not elaborate upon the source of a court’s authority to do so or what might constitute a highly unusual circumstance. As I will explain, however, the Ontario Court of Appeal subsequently had occasion to discuss the source of the court’s jurisdiction to depart from awarding contractual interest and to refer to certain circumstances when it would be appropriate to exercise it. Because the Ontario Court of Appeal in doing so referred to statutory provisions similar to those in the *Act*, I will first reference provisions of relevance in the *Act*.

[24] Pursuant to subs. 3(1) of the *Act*:

3(1) When a person obtains a judgment for the payment of money or a judgment that money is owing, the court shall award interest on the judgment calculated in accordance with the *Act*.

[25] However, subs. 3(2) goes on to provide that:

(2) The court shall not award interest:

. . .

(h) when there is an agreement between the parties respecting interest; or

(i) when interest is payable by another rule of law.

[26] Subsection 3(3) does not speak to the Court's power to depart from the parties' contractual terms on interest. Instead, that subsection deals with the Court's power to exercise discretion as to an award of interest under the *Act*:

3(3) Where it is proven to the satisfaction of the court that it is just to do so having regard to the circumstances, the court may, with respect to the whole or a part of the amount for which judgment is given,

- (a) refuse to award interest under this Act; or
- (b) award interest under this Act at a rate or for a period or both other than a rate or period determined under section 4.

[27] In *Tribute (Springwater) Limited v. Atif*, 2021 ONCA 463, the Ontario Court of Appeal considered similar provisions in the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 when it determined whether a court had jurisdiction to depart from contractual interest. Ontario's statute provides:

128. (1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order.

...

(4) Interest shall not be awarded under subsection (1),

...

(g) where interest is payable by a right other than under this section.

129.(1) Money owing under an order, including costs to be assessed or costs fixed by the court, bears interest at the postjudgment interest rate, calculated from the date of the order.

...

(5) Interest shall not be awarded under this section where interest is payable by a right other than under this section.

130.(1) The court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 128 or 129,

- (a) disallow interest under either section;
- (b) allow interest at a rate higher or lower than that provided in either section;
- (c) allow interest for a period other than that provided in either section.

[28] In *Tribute*, the Atifs signed an agreement of purchase and sale in relation to a home to be built by Tribute. The Atifs failed to close on the closing date of December 17, 2018 and Tribute terminated the agreement in January of 2019 and commenced an action in February claiming damages for breach of contract. Tribute, however, delayed in marketing the property for resale until nine months after it terminated the agreement. Tribute sold the property on November 2, 2019 to a third party for less than the price that had been agreed with the Atifs and shortly after applied for summary judgment. The motion judge ordered pre-judgment interest to Tribute at prime plus 2 percent and post-judgment interest at a rate of 4.45 percent instead of at the higher contractual rate of prime plus 5 percent.

[29] In its cross-appeal, Tribute submitted that the motion judge had no jurisdiction to depart from the contractual rate of interest in awarding pre- and post-judgment interest. In reasons delivered by Justice van Rensburg (with whom Strathy C.J.O. and Feldman, J.A. concurred), the Court disagreed with Tribute and dismissed its cross-appeal. The Court found that the Court had the jurisdiction to depart from awarding contractual interest in special circumstances and Tribute's nine-month delay in marketing the property constituted special circumstances. At paras. 26-29, van Rensburg, J.A. explained as follows:

**26** Section 127 of the *Courts of Justice Act* ("*CJA*") provides for prejudgment and postjudgment interest at prescribed rates. A court "shall not" award prejudgment interest under s. 128 or postjudgment interest under s. 129 where "interest is payable by a right other than under" either statutory provision: ss. 128(4)(g) and 129(5). These provisions preclude the court from ordering prejudgment and postjudgment interest in accordance with the statutory interest rates under the *CJA* if interest is otherwise payable in some other way (such as by virtue of a contract). Section 130(1) provides for the court's discretion to disallow interest under either s. 128 or s. 129, to allow interest at a rate higher or lower than provided under either section, or to allow interest for a period other than that provided in either section. Section 130(2) sets out the factors relevant to the exercise of such discretion.

**27** The motion judge reduced the interest rate, relying on her "inherent jurisdiction". Contrary to the respondent's argument, I do not agree that s. 130,

which speaks to discretion to depart from prejudgment and postjudgment interest under ss. 128 and 129, is exhaustive of the court's discretion, and that there is no discretion to depart from a contractual rate of interest. In the exercise of the court's common law and equitable jurisdiction, the departure from a contractual rate of interest can be justified by "special circumstances": *Gyimah v. Bank of Nova Scotia*, 2013 ONCA 252, at para. 10; *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 S.C.R. 601, at paras. 46-50. The contractual rate of interest has also been disallowed in circumstances where it is "extremely onerous or unfair" and adequate notice of the contractual term was not provided: see *Tilden Rent-A-Car Co. v. Clendenning* (1978), 18 O.R. (2d) 601 (C.A.); *MacQuarie Equipment Finance Ltd. v. 2326695 Ontario Ltd. (Durham Drug Store)*, 2020 ONCA 139, at paras. 23, 37-38; *Forest Hill Homes v. Ou*, 2019 ONSC 4332, at paras. 19-20.

**28** There may be other circumstances that would justify an award of prejudgment or postjudgment interest at a rate other than the rate prescribed by the parties' contract, however we did not have the benefit of full argument on this issue. It is sufficient for the purpose of this cross-appeal that there were special circumstances to justify a departure from the contractual rate of interest in this case: Tribute did not expose the property to the market for nine months after it terminated the APS. During this period of inaction, interest accrued on the full outstanding purchase price, and carrying costs were incurred.

**29** In these circumstances I would not interfere with the motion judge's decision to award prejudgment interest at the prime rate, plus 2% per year and postjudgment interest at an annual rate of 4.45%.

[30] I would similarly hold that the *Act* in s. 3(3) which speaks to discretion to depart from pre-judgment interest under s. 3(1) is not exhaustive of the Court's discretion and that in the exercise of this Court's common law and equitable jurisdiction, the departure from a contractual rate of interest can be justified by special circumstances.

### **Should the Court decline to award contractual interest to Steers?**

[31] I hold that Steers' delay in prosecuting its action was excessive and constitutes special circumstances justifying a departure from contractual interest. After filing its List of Documents on June 27, 2013, Steers took no further substantive steps in the litigation for more than eight years until it filed an application for summary trial on

September 17, 2021. During this period, contractual interest was accruing on the overdue invoices at a rate of 24 percent per annum.

[32] In *Bank of America*, a loan breach case cited by van Rensburg, J.A. in *Tribute*, Major, J. for the Supreme Court of Canada stated at para. 49 “. . . Absent exceptional circumstances, the interest rate which had governed the loan prior to breach would be the appropriate rate to govern the post-breach loan. The application of a lower interest rate would be unjust to the lender.” I find that it would not be unjust to Steers to apply a lower interest rate than agreed upon in the circumstances. There was no duty upon the Defendants to bring the matter to trial. The onus to bring a matter to trial lies with a plaintiff. Here, Steers let its action languish for years. Steers, not the Defendants, delayed its judgment day.

[33] The parties did not agree that the contractual rate of interest would apply post-judgment. From and after Steers’ judgment, the contract containing the interest terms became merged in that judgment (see *LeDrew Lumber Company Limited v. West Point Development Inc. et al*, 2009 NLTD 128, at para. 43). Therefore, Steers is entitled to post-judgment interest in accordance with the statutory rate pursuant to the *Act*. If Steers were to be awarded contractual interest from the date of default on November 9, 2012 to the date of judgment on April 28, 2023, this would lead to inequity and reward Steers financially for delaying the litigation. Steers’ delay in obtaining judgment would have the financial effect of it being awarded a contractual rate of interest well beyond the time it should have taken to bring the case to judgment, following which post-judgment interest pursuant to s. 5 of the *Act* would be payable.

[34] In the exercise of my discretion, I will not totally deny the Plaintiff contractual interest but I will limit the period to which it will apply. Accordingly, I order that the Plaintiff is entitled to pre-judgment interest on the judgment amount of \$30,839.06 at the contractual rate of 2 percent per month (not compounded) from the date of default on November 9, 2012 to November 9, 2014, and pre-judgment interest pursuant to subs. 3(1) of the *Act* thereafter to and including the date of judgment on April 28, 2023.

**ORDER**

[35] The Plaintiff is entitled to pre-judgment interest on the \$30,839.06 judgment I granted on April 28, 2023 at the rate of 2 percent per month (not compounded) from November 9, 2012 to November 9, 2014 and pre-judgment interest pursuant to the *Act* from November 10, 2014 to April 28, 2023.

[36] Steers shall have its costs of the trial taxed on Column III of the Scale of Costs in the Appendix of Rule 55 of the *Rules*.

[37] Order accordingly.

---

**THOMAS J. JOHNSON**  
Justice