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IN THE HIGH COURT OF NEW ZEALAND

M. 1160/80

AUCKLAND REGISTRY

**No Special  
Consideration**

1622  
IN THE MATTER of the Companies Act,  
1955

- a n d -

IN THE MATTER of the HIBISCUS COAST  
MARINE CENTRE LIMITED  
(IN LIQUIDATION)

Judgment: 13 DECEMBER 1984

Hearing: 30 August 1984 and written submissions

Counsel: R.B. Stewart for Liquidator  
R.K. Hawk for Westpac Banking Corporation

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FURTHER JUDGMENT OF CASEY J.ON INTEREST

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On 30th August 1984 I dismissed an application by Westpac Banking Corporation under s.311A of the Companies Act for an order that a disposition made to it by the above company was not voidable under s.309. I directed that the disposition be set aside as from that date in terms of s.309(3)B and made an order for payment of the sum of \$35,500 by the Bank to the Liquidator reserving questions of costs and interest for further submissions. In due course these were received and on 10th October I awarded the Liquidator \$1,000 for costs and disbursements, and asked whether Counsel preferred me to delay judgment on the interest question until the outcome of a pending appeal against the judgment of Quilliam J. in Nangeela Properties Ltd. v. Westpac Banking Corporation (Napier M. 34/82; 21st June 1984). He awarded interest to the Bank in virtually the same circumstances as those present in this case.

A Memorandum from the Liquidator's Counsel of 31st October indicated that the question of interest might not be raised in the appeal and I was asked to deal with the question

of interest now. I should explain that the delay has been due to my other commitments including a lengthy absence from Auckland.

The claim for interest is based on the well known provisions of s.87(1) of the Judicature Act, 1908, providing that in proceedings for the recovery of any debt or damages, the Court has a discretion to include in the sum for which judgment is given interest at such rate within the prescribed maximum as it thinks fit. I am satisfied that the Liquidator's action under s.311A(1) in filing notice in Court of his wish to set aside the disposition, and the subsequent application by the Bank under subsection (2) and the hearing and orders made therein for payment of the amount involved to him are "proceedings". This seems to have been accepted without question in the Nangeela Properties case. Quilliam J. followed Re F.P. & C.H. Matthews Ltd. (1982) 1 All E.R. 338, dealing with corresponding provisions in England. Lawton L.J. held a Liquidator's application that payments to a Bank be treated as a fraudulent preference constituted proceedings for recovery of a debt and having regard to the special position of a Bank, whose business is dealing in money, he held it liable for interest from the date it received the payment.

Quilliam J. found this reasoning persuasive and so do I, notwithstanding the earlier reservations I felt about a claim for interest in these circumstances. There is no suggestion in those judgments that the Bank connived at or encouraged the preferential payment and it is also clear that in each of them the Court initially felt reservations about the power to award interest. I can see no reason for taking a different view and I make an order for payment by the Bank to the Liquidator of simple interest at eleven percent per annum on the sum of \$35,500 from 1st April 1980 to the date of

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this judgment. There will be no order for further costs.

*Mr. Casey*

Solicitors:

Grierson Jackson & Partners, Auckland, for Liquidator  
Jackson Russell Tunks & West, Auckland, for Westpac Banking  
Corporation