

CAYMAN ISLANDS GRAND COURT

Tempo Group Ltd. -v- Fortuna Development Corporation Cause No. FSD 82 of 2011, per Henderson J (24 February 2012)

COMPANIES - DIVIDENDS - PRE-JUDGMENT INTEREST ON UNPAID DIVIDEND

Application was brought to determine whether the Court was able to award pre-judgment interest when it grants judgment to a shareholder for unpaid dividends, notwithstanding that the articles of association of the Company state that no dividend shall bear interest against the Company.

While there is non-binding authority for the proposition that the court is not empowered to award interest on a dividend debt where the articles contain the usual provision that dividends do not bear interest, the better view is that the court retains the discretion to award interest but it should be exercised so as to give effect to the agreement of the shareholders, which is evidenced by the articles. Looking to the intention of the parties as memorialized in the articles, the Shareholders clearly surrendered any right to interest on a dividend during the period between its declaration and the date set for its payment. There is nothing in the articles to suggest that the Shareholders were giving up the right to claim interest on dividend debt litigation against the Company. Such litigation was entirely outside the contemplation of the parties when they reached their agreement.

As such, the Court exercised its discretion to award pre-judgment interest on the amount of the Judgment from the date that litigation to force payment of the dividend was commenced.

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