IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1994] SGCA 49

CA 162/1992

Between

ECICS Holdings Ltd (formerly known as Export Credit Insurance Corp of Singapore Ltd)

… *Appellant*

And

TKM (Singapore) Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Insurance — Pecuniary loss insurance; Insurance — Pecuniary loss insurance; Insurance — Pecuniary loss insurance

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

ECICS Holdings Ltd (formerly known as Export Credit Insurance Corp of Singapore Ltd) v TKM (Singapore) Pte Ltd

[1994] SGCA 49

CA 162/1992
Karthigesu JA; L P Thean JA; Yong Pung How CJ
24 March 1994

1 The appellants, ECICS Holdings Ltd (formerly known as Export Credit Insurance Corporation of Singapore Ltd) (`ECICS`) appealed against the judgment of GP Selvam JC [as he then was] given on 14 September 1992 in favour of the respondents, TKM (Singapore) Pte Ltd (`TKMS`) on claims by TKMS under an export credit insurance policy with ECICS covering the confirmation by TKMS of exports from Belgium to Nigeria. At the end of the hearing of the appeal we dismissed it and indicated we would give our reasons in writing later. This we now do.

2 The facts out of which the claim arose were somewhat involved and complex. They have been dealt with comprehensively and, if we may say so, with admirable detail in the very carefully considered judgment of the learned judicial commissioner which is reported at [1993] 1 SLR 1041 . In summary, the salient findings of fact made by him were as follows. For convenience we use the same terms and expressions used by him.

> (1) TKM-UK confirmed, on behalf of TKMS, exports of Caterpillar spare parts from Belgium to a customer in Nigeria.

> (2) TKM-UK had carried out this business on its own behalf since 1971. TKM-UK obtained export insurance credit insurance from ECGD in London. However, when ECGD extended the waiting period before which a claim would not be accepted for delay in transfer of funds from a buyer, the business was transferred to ECICS.
>
> (3) ECICS accepted the Nigerian business, and under the terms of the policy, the waiting period for a transfer was 180 days from the date of local payment until maturity. The business had to be carried out through Singapore and was therefore transferred to TKMS. The business continued to be carried out by TKM-UK on behalf of TKMS under an agency agreement which had been approved by ECICS in advance.
>
> (4) The customer in Nigeria made local currency deposits, but, due to foreign currency shortages in Nigeria, sterling remittances were not made under bills of exchange. Four claims were made by TKMS under the policy.
>
> (5) Although debt rescheduling arrangements were agreed with the Nigerian government (`the Paris Club agreement`) under which payments of principal and interest were to be made by instalments, at the date of trial TKMS had not been paid the amounts outstanding except:
>
> (a) one payment of principal of which the relevant proportion of 85% was Â£456,964.49 equivalent to S$1,383,140.11;
>
> (b) interest in respect of the period 1 January 1987 to 30 June 1991; and
>
> (c) one payment of capitalized interest referable to the period prior to 1 January 1987 for which credit was given in the interest calculation.

3 The learned judicial commissioner found that ECICS` defence was essentially to put TKMS to proof of its claim. This was no defence at all. On the evidence, he had no difficulty in coming to the conclusion that ECICS had encouraged the transfer of business from TKM-UK to TKMS. In his judgment, he said:

> *... in the circumstances, the plaintiffs` [TKMS`] case that they had suffered loss under the policy was firmly established and they are entitled to a decision on the question of liability.*

Version No 1: 29 Oct 2026 (23:45 hrs)

4 He went on to say:

> *The purpose of the policy with which this case is concerned is protection of the policy-holder against delay in payment. The loss caused by the delay is primarily financing costs - namely interest charged by a bank. Those financing costs would be incurred whilst the plaintiffs were kept out of the principal amount. That was the loss covered under the policy and that was the essence of the obligation of ECICS. ECGD was only prepared to give cover for a waiting period of 12 months. That being unacceptable, the business was transferred to ECICS in the name of TKMS because ECICS agreed to a waiting period of six months. No further delay was in the minds of the parties. As ECICS failed to pay on time, the plaintiffs, in all justice, should be suitably compensated for the failure of ECICS to pay on time.*

5 The purpose of the policy and proceedings, therefore, was to put TKMS in the same position as if the moneys had been paid on due date, for it was clearly envisaged that if the claim was not paid on time, the plaintiffs would have to continue to bear the borrowing costs of the insured bills.

6 We entirely agree.

7 The learned judicial commissioner accordingly found ECICS liable under the policy to indemnify TKMS against the loss suffered, and ordered, inter alia, payment of:

> (i) the principal sum of S$14,901,212;
>
> (ii) interest on the principal amount from 1 July 1991 to the date of judgment at the rate of 11% pa in the sum of S$1,981,757.45; and
>
> (iii) interest on 85% of the amounts of the four claims under the policy at the rate of 11% pa commencing from one month after the respective dates of the presentation of each of the claims until 31 December 1986 in the sum of S$4,597,892.43.

Version No 1: 29 Oct 2026 (23:45 hrs)

8 It should be noted that under the policy the currency of payment was in Singapore dollars. It should also be noted that TKMS did not claim interest for the period 1 January 1987 to 30 June 1991 as the interest for that period had been received from the Central Bank of Nigeria on behalf of the customer under the debt rescheduling arrangements.

9 ECICS appealed only against that part of the judgment which awarded interest. In short, that the learned judicial commissioner had erred in awarding interest, which was in his discretion under s 9 of the Civil Law Act (Cap 43, 1988 Ed), at the rate of 11% pa, and that he had erred in the assessment of the interest which ought to be paid to TKMS having regard to payments of an interest nature received from Nigeria. TKMS countered with a respondent`s notice. However, since we dismissed ECICS` appeal and confirmed the entirety of the learned judicial commissioner`s judgment and his reasons therefor, no mention need be made to the respondent`s notice.

10 It was not disputed by ECICS, and, indeed, it could not have been disputed by them, that the court has a discretion both as to the rate of interest as well as to the period for which interest will be awarded under s 9 of the Civil Law Act. See ***Lim Cheng Wah v Ng Yaw Lim*** per L P Thean J (as he then was) and ***BP Exploration Co (Libya) Ltd v Hunt (No 2)*** under the English parallel provision of s 3(1) of the Law Reform (Miscellaneous Provisions) Act 1934. This discretion is subject only to the caveat that it must be applied judicially: per Robert Goff J in ***BP Exploration Co (Libya) Ltd v Hunt (No 2)*** at p 846. Furthermore, it is now well settled that an appellate court will only interfere with the exercise of discretion at first instance on limited grounds. These were summarized by Lord Diplock in ***Hadmor Productions Ltd v Hamilton*** at p 220 as follows:

Version No 1: 29 Oct 2026 (23:45 hrs)

> *The function of the appellate court is initially one of review only. It may set aside the judge`s exercise of his discretion on the ground that it was based upon a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges ... may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge`s decision ... is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge`s exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own.*

11 We respectfully agree with these observations of Lord Diplock.

12 Before us, ECICS contended that the learned judicial commissioner, in awarding interest at 11% pa, had done so by reference to the 1984 London Interbank Offered Rate (`LIBOR`) of interest instead of, at not more than, 8% pa which was the rate of interest applied by Thean J in ***Lim Cheng Wah*** as an appropriate rate of interest in Singapore under s 9 of the Civil Law Act. Thus the learned judicial commissioner had applied a sterling rate of interest in respect of a judgment in Singapore dollars. This, it was contended by ECICS, was wrong in principle as there was a clear presumption that interest should be awarded at the rate of interest applicable to the currency of the judgment unless there were compelling reasons for doing otherwise. We were referred to ***Cheshire and North`s Private International Law*** (11th Ed), at pp 96-97, and to ***Dicey and Morris on The Conflict of Laws*** , (11th Ed), Vol 2, at p 1337, both of which stated the prima facie rule to be that interest should be awarded at the rate applicable to the currency of the judgment. We were also referred to

Version No 1: 29 Oct 2026 (23:45 hrs)

The Pacific Colocotronis; Shell Tankers (UK) v Astro Comino Armadora SA at p 46, where Waller LJ, after referring to Bristow J`s judgment in ***Miliangos v George Frank (Textiles) Ltd (No 2)*** and Kerr J`s judgment in ***Helmsing Schiffahrts GmbH & Co KG v Malta Drydocks Corp*** said:

> *... The discretion is a wide one and should be dealt with with a broad brush.*

13 But the effect of this, in my view, is that, where there is a contract specifying the currency which has to be paid, prima facie, the rate of interest applicable should be related to that currency and to the judgment, if the judgment is in that currency. It does seem inconsistent to award a sterling rate on a dollar contract with a judgment in dollars.

14 It was the view of Mr Justice Bristow that prima facie the rate should be that which is the rate of the contract.

15 Secondly - and this emerges from the ***Helmsing*** case - that, other things being equal, the interest rates should be those of the currency which are used by the claimants, that is to say, if the contract was in dollars and the claimants at any rate had part of their currency in dollars, then that should be the currency which determines the rate.

16 This being the prima facie rule, ECICS further contended that there was no compelling reason for the learned judicial commissioner to have departed from it. The currency of the policy was Singapore dollars and the judgment was in Singapore dollars. Furthermore, both ECICS and TKMS were Singapore parties, the forum of the proceedings chosen by TKMS was Singapore, the proper law of the contract of insurance was Singapore law, the contract was entered into in Singapore, the credit limit under the policy was in Singapore

Version No 1: 29 Oct 2026 (23:45 hrs)

dollars, the money of payment under the policy was in Singapore dollars, the place of payment was Singapore, the claim in the proceedings was made in Singapore dollars and, finally, the interest claimed was under a Singapore statute, s 9 of the Civil Law Act. Thus, there were no compelling reasons whatsoever for departing from the prima facie rule.

17 TKMS, on the other hand, contended before us that the learned judicial commissioner had indeed applied the correct principles of law and had also exercised his discretion correctly having regard to the factors he referred to in his judgment, the material portions of which we have already referred to above. In essence, what the learned judicial commissioner said in his judgment was that the purpose of the insurance was to protect TKMS against delay in payment. The risk of any delay borne by TKMS was, primarily, financing costs, namely, interest charged by the bank incurred whilst receipt of the funds was awaited. This was the loss covered by the policy and was the essence of ECICS` obligation. ECICS well knew that the business was transferred to them from ECGD precisely because ECGD was only prepared to give cover for a waiting period of twelve months as against the six months agreed to by ECICS. No further delay was in the contemplation of the parties. Prompt settlement by ECICS was necessary to avert the interest costs. All this, in our judgment, was indisputable.

18 Further, in our judgment, in exercising discretion under s 9 of the Civil Law Act, the actual commercial loss suffered, as contemplated by the parties, should be taken into account. After all, as stated by the learned judicial commissioner, the insurance was intended as an indemnity and interest should be awarded on the indemnity principle. The currency of loss in this case, as also found by the learned judicial commissioner, was in sterling. ECICS knew that

Version No 1: 29 Oct 2026 (23:45 hrs)

TKM-UK carried out this business from London on behalf of TKMS. ECICS also knew that this was how the TKMS group operated and, as already stated, the learned judicial commissioner found as a fact that ECICS encouraged TKMS to conduct their business in this way.

19 The further factors which the learned judicial commissioner took into account in exercising his discretion on the rate of interest, having factually found them to exist, can be simply enunciated as follows:

> (1) The financing was known to ECICS to be by TKM-UK, on behalf of TKMS, in sterling.
>
> (2) ECICS knew that the bills were drawn and the exports were paid for in sterling.
>
> (3) ECICS knew that the obligation of the customer was to pay in sterling in London.
>
> (4) The liability which TKMS had to its agent, TKM-UK, which funded the credit to the customer was in sterling.
>
> (5) TKMS did not repay TKM-UK and could not repay TKM-UK until receipt from the customer or until receipt of funds from ECICS.

20 TKMS relied strongly on the judgment of Kerr J in ***Helmsing*** for the proposition that where a plaintiff suffers loss incurred in a foreign currency, interest may be awarded by reference to rates applicable to that currency even though the currency of account between the plaintiffs and the defendant may be on different currency. In our opinion, this is a good and sound proposition and we had no hesitation in accepting the judgment of Kerr J.

21 The following passages from Kerr J`s judgment at p 448 particularly commend themselves to us:

Version No 1: 29 Oct 2026 (23:45 hrs)

> *The English principles governing an award of interest are clear. The jurisdiction is discretionary under s 3 of the Law Reform (Miscellaneous Provisions) Act 1934 (the equivalent of our s 9 of the Civil Law Act). The discretion is normally exercised on the basis that the successful party is to be compensated by an award of interest for being kept out of his money by the losing party from the time when the money should have been paid until judgment. The rate of interest awarded is usually based on commercial borrowing rates prevailing during this period.*

22 ...

23 The prime facie loss to the plaintiffs due to the failure by MDC (the defendants) to pay this sum in 1972 was that they had to find the equivalent sum from other sources in Germany. From the point of view of MDC, this was the foreseeable measure of loss to the flowing from MDC`s failure to pay until 1976.

24 ECICS attempted to distinguish ***Helmsing*** by contending that the transaction in that case was a cross-border transaction whilst this transaction was not. We found that submission had no merit and was not supported by the facts. In fact the learned judicial commissioner found that this transaction had the characteristics of a cross-border transaction. We agreed with him, as well, with his finding that TKM-UK were for all intents and purposes the agents of TKMS, a finding which ECICS sought to dispute.

25 For these reasons, we did not see any reason to interfere with the learned judicial commissioner`s exercise of discretion in awarding TKMS interest at the rate of 11% pa which he determined was the average LIBOR for 1984.

26 Before leaving this ground of appeal we would also record our agreement with the contention put forward by TKMS that if ECICS only paid interest to TKMS at a lower rate than 11% it would make a profit through having

Version No 1: 29 Oct 2026 (23:45 hrs)

delayed payment of a just claim. This was because the Central Bank of Nigeria had agreed under the Paris Club agreement to pay TKMS interest in respect of the late receipt of the amounts due from the customer. This rate was LIBOR plus 0.5%, which, at the relevant period, averaged 11%. Once ECICS had paid TKMS` claim, they would be entitled to 85% of such recoveries, which would include interest payments calculated at the sterling rate and would have, therefore, received more than what they had paid out. This was another reason for not interfering with the learned judicial commissioner`s award of interest at 11% pa.

27 We now turn to the period for which the interest payments were allowed.

28 As in the case of the rate of interest, the period for which the interest was allowed was also a matter within the discretion of the learned judicial commissioner. The same principles we have discussed above equally applied here. The following factors, which cannot be disputed, were relevant.

> (1) The terms of the agreement with the Central Bank of Nigeria concerning payments of money owed to TKMS (the Paris Club agreement) was that the Central Bank of Nigeria promised to make payments in respect of interest on outstanding payments and, subsequently, the principal itself.
>
> (2) At the time of the judgment, TKMS had received, by virtue of this agreement, payments of interest in respect of the periods January 1987 to 30 June 1991.
>
> (3) TKMS had not received any interest payments in respect of the period after 30 June 1991.
>
> (4) TKMS had only received partial payment of interest in respect of the period prior to 1 January 1987.

29 It should be borne in mind that TKMS claimed interest only for those periods for which no interest payments were received as TKMS accepted that,

Version No 1: 29 Oct 2026 (23:45 hrs)

in respect of the other period, namely, for 1 January 1987 to 30 June 1991, interest payments had been received from the Central Bank of Nigeria. The learned judicial commissioner calculated the interest on this basis and he allowed interest only in respect of the periods in respect of which TKMS had not received any interest or had received only partial payments of interest. In the latter case, he took into account the interest which TKMS had received and, accordingly, reduced ECICS` liability therefor and he was careful not to award interest for the period 1 January 1987 to 30 June 1991 for which period TKMS had received the interest.

30 TKMS submitted to us that this was entirely just and was within the learned judicial commissioner`s discretion. However, ECICS submitted that the correct approach would have been for the interest to have been calculated for the whole period, even in respect of those periods for which TKMS had received the interest, and to have deducted therefrom the total amount of interest received by TKMS. We could not see the justice of this. The very fact that if this exercise had been carried out it would have resulted in reducing ECICS` liability of the interest payments demonstrated the injustice of that approach.

31 The reason why it would have resulted in a reduced liability to ECICS was because the Central Bank of Nigeria had paid interest on behalf of TKMS` customers at a higher rate of interest than that ECICS was prepared to pay. But the fact was that this higher rate of interest was no more than the genuine loss suffered by TKMS. We saw no reason why ECICS should benefit from the interest payments made by the Central Bank of Nigeria which only represented the actual economic loss that TKMS had suffered for the period for which the Central Bank of Nigeria had paid the interest. There was no reason why ECICS should not pay interest at the rate determined by the learned judicial

Version No 1: 29 Oct 2026 (23:45 hrs)

commissioner for the period for which TKMS had received no interest in order to compensate them for their commercial loss.

32 We were not persuaded that the learned judicial commissioner had proceeded on any wrong principle. We were not persuaded that he had taken factors into account which he should not have or that he had omitted to take any relevant factor into account. Accordingly, we saw no reason to interfere with the learned judicial commissioner`s exercise of discretion in respect of the periods for which he allowed the interest at the rate determined by him.

33 For these reasons we dismissed the appeal with costs and, in the exercise of our discretion under O 59 r 19 of the Rules of the Supreme Court 1990, certified that the respondents shall be allowed the costs of two solicitors.

34 Appeal dismissed.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

James Goudie QC and Cecilia Thomas (Shook Lin & Bok) for the appellants
Peter Goldsmith QC and Molly Lim (Wong Yoong Tan & Molly Lim) for the respondents

Version No 1: 29 Oct 2026 (23:45 hrs)