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Pharos Offshore Group Ltd v Keynvor Morlift Ltd [2025] EWHC 2496 (TCC): Consequentials with Bite

Pharos Offshore Group Ltd v Keynvor Morlift Ltd [2025] EWHC 2496 (TCC)

Date: 1 October 2025

Judge: Mr Justice Constable

Key Words:

Consequentials, Finality of judgment, Accidental slip rule (CPR 40.12), Inherent jurisdiction, Judicial discretion, Pleaded case, Quantification of claims, Late Payment of Commercial Debts (Interest) Act 1998 (LPA), Qualifying debt, VAT element, Contract price, Statutory interest, Interest remission (LPA s.5), Interest on costs, Enhanced interest, Part 36 offer (CPR 36.17), Indemnity costs, Standard basis costs, Enhanced consequences, Settlement incentives, Litigation risk, Partial success, Opportunistic defence, Overstated counterclaim, Exigency of litigation (adjournment), Tactical litigation, Procedural precision, Commercial debt enforcement, 10% enhanced interest, 5% enhanced interest, Full costs pre–Part 36, Indemnity costs post–Part 36.

Summary

This consequentials judgment followed the main trial decision ([2025] EWHC 1764 (TCC)). Pharos Offshore Group Limited (Pharos) recovered a net principal sum (after Keynvor Morlift Limited's (KML) £113,214.63 counterclaim) inclusive of VAT [1].

Court's Key Decisions:

1. **Correction to Principal Sum:** KML's correction application rejected; finality upheld [3–9].
2. **Interest on VAT:** VAT held to form part of the 'contract price' for Late Payment of Commercial Debts (Interest) Act 1998 (**LPA**) purposes [10–17].
3. **Interest Period:** Adjournment was litigation exigency, not 'conduct' under LPA s.5 [18–20].
4. **CPR 36.17:** Enhanced interest (10% over base) on principal including VAT from 4 March 2025; 5% over base interest on costs [21–25].
5. **Pre-Part 36 Costs:** Pharos was awarded of its reasonable costs on a standard basis up to the end of the relevant period (4 March 2025), rejecting KML's argument for a reduction based on its partial success [26-29].

Key Themes:

The judgment focused heavily on matters of procedural law, statutory interpretation regarding commercial debt, and the exercise of judicial discretion regarding costs:

1. **Finality of Litigation:** The importance of the principle of finality of judgments, preventing corrections unless they constitute an accidental slip (CPR 40.12) or the inherent jurisdiction is appropriately engaged [3-9].
2. **Statutory Interest (LPA):** VAT forms part of a qualifying debt [10–17].
3. **Part 36 Incentives:** CPR 36.17 Incentives and enhanced consequences clarified [21–25].
4. **Judicial Discretion in Costs:** Partial success insufficient to displace costs rule [26–29].

Background

The judgment addresses five unresolved issues post-trial: correction, VAT interest, interest run date, CPR 36.17 consequences, and pre–Part 36 costs (see [1]–[2]).

Legal Issues and Analysis

Issue 1: Correction to Principal Sum [3–9]

KML claimed an invoice credit required correction under CPR 40.12 or inherent jurisdiction. The Court rejected this, finding no slip and affirming finality.

Issue 2: Interest Payable on VAT [10–17]

KML argued VAT was not part of the contract price. The Court held VAT was contractually due and therefore a qualifying debt under LPA.

Issue 3: Interest Period [18–20]

KML sought remission for the adjournment period. Rejected: adjournment was litigation exigency, not conduct justifying remission.

Issue 4: CPR 36.17 [21–25]

Pharos beat its Part 36 offer. Court awarded 10% enhanced interest on principal (incl. VAT) and 5% on costs.

Issue 5: Pre–Part 36 Costs [26–29]

KML sought cost reduction for partial success. Rejected: reduction modest, defence opportunistic, counterclaim overstated. Full costs to Pharos.

Conclusion

Consequentials fell decisively Pharos's way. Finality upheld; VAT attracts LPA interest; adjournments don't interrupt interest; Part 36 has bite; partial victories don't spare costs.

Key Takeaway:

- *VAT under LPA attracts statutory interest.*
- *Tactical defences and minor wins won't shield against costs or Part 36 consequences.*

Parting Thoughts

If the main trial was the symphony, this was the cymbal crash. KML's correction bid sank under finality, VAT was not spared, and Part 36 sharpened the sting. Partial success? A rounding error.

In short:
• Finality means finality.
• VAT gets no free pass.
• Adjournments aren't interest holidays.
• Part 36 bites.
• Partial victories don't save costs.

A judgment that reads like a quiet but devastating closing argument — and a reminder that, in litigation, consequential hearings are often where the real bruising happens.

#ConstructionLaw #Adjudication #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal #LatePaymentAct #Part36 #InterestOnVAT #ContractLaw #Costs #LitigationStrategy

Authorities

Case Law:

1. Finality and Correction of Judgments (CPR 40.12 / Inherent Jurisdiction)

- ***In re L*** **[2013] UKSC 8** *(see [5]–[7]) — High threshold to reopen judgments.*
- ***AIC Ltd v Federal Airports Authority of Nigeria*** **[2022] UKSC 16** *(see [5]–[7]) — Compelling factors required to overcome finality.*
- ***Tata Consultancy Services Ltd v Disclosure and Barring Service*** **[2024] EWHC 2025 (TCC)** *(see [5])— Recent TCC application of slip rule and inherent jurisdiction, reinforcing that not every alleged error justifies revisiting a concluded judgment.*

2. Statutory Interest under the Late Payment of Commercial Debts (Interest) Act 1998

- ***Lancaster v Bird*** **(1998) 73 Con LR 22** *(see [15]) — Contract prices deemed VAT-inclusive*

3. Enhanced Interest on Costs (Part 36 Consequences)

- ***Dunlop Haywards (DHL) Ltd v Erinaceous Insurance Services Ltd*** **[2009] EWHC 3479 (QB)** *(see [24]) — Discretion to set lower interest.*
- ***Greenwich Millennium Village Ltd v Essex Services Group plc*** **[2014] EWHC 1099 (TCC)** *(see [24])— 4% uplift common.*
- ***Barnett v Creggy*** **[2015] EWHC 1316 (Ch)** *(see [24])— 4% uplift trend.*
- ***BXB v Watch Tower Bible and Tract Society of Pennsylvania*** **[2020] EWHC 656 (QB)** *(see [24]) — Reinforces range.*
- ***OMV Petrom SA v Glencore International AG*** **[2017] 1 WLR 3465** *(see [25]) — Key CPR 36 discretion factors (**CPR 36.17(4)**).*

Legislation:

1. Statutory Interest on Commercial Debts

- ***Late Payment of Commercial Debts (Interest) Act 1998*** *(see [10]–[20])*

– ***Core statutory framework*** *for determining whether interest is payable on unpaid sums, including VAT.*
– ***Section 3(1)*** *defines a "qualifying debt" as one arising from a contractual obligation to pay the contract price.*
– ***Section 4(1)*** *provides that statutory interest runs on qualifying debts.*
– ***Section 5*** *allows remission of interest if the supplier's conduct makes it unjust to apply it, which the Court rejected in relation to the trial adjournment.*
– ***Section 8(1)*** *renders void any contract terms that exclude statutory interest unless an adequate contractual remedy exists.*
– Applied decisively to hold that VAT ***forms part of the contract price****, and that interest* ***continues to accrue despite adjournment****.*

2. Procedural Rules – Slip Rule and Part 36

- ***Civil Procedure Rules 1998****,* ***CPR 40.12*** *(see [5]) — Accidental slip rule*
- ***Civil Procedure Rules 1998****,* ***CPR 36.17*** *(see [21]–[25])*
  – Sets out the ***consequences of failing to beat a Part 36 offer****, including enhanced interest and costs on an indemnity basis.*
  – Applied to grant Pharos ***10% enhanced interest*** *on the principal (including VAT) and* ***5% enhanced interest on costs****, reinforcing the settlement incentive purpose of Part 36.*

3. Judicial Interest – Alternative Basis

Senior Courts Act 1981*,* ***section 35A*** *(see [14])*
– Provides for ***discretionary court interest*** *on debts and damages as an alternative or supplement to statutory interest.*
– Cited by Pharos as a fallback claim if the Court declined to award interest on VAT under the LPA (ultimately unnecessary as VAT was held to be part of the qualifying debt).

Legal Texts & Commentary:

No legal textbooks or secondary commentaries were cited in this judgment. The Court's reasoning rested entirely on case law and statutory interpretation (principally the Late Payment of Commercial Debts (Interest) Act 1998 and CPR 36.17 and 40.12).

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