When damages are ultimately awarded as a net figure, must pre-judgment interest be calculated on that 'net' figure from the outset? Or can interest run on a larger 'gross' amount for an earlier period, before recoveries, realised security or other deductions reduce the claimant's entitlement?

This was among the myriad issues argued in the assessment of damages in *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd* [2025] SGHC 232 ("***UOB v Lippo (HC)***") and *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd* [2026] SGHC(A) 21 ("***UOB v Lippo (AD)***").

Lippo Marina Collection Pte Ltd ("**Lippo**") had engaged in a conspiracy to inflate purchase prices of 38 condominium units ("**Units**") in a development known as the Marina Collection, to allow purchasers to procure inflated loans from United Overseas Bank Limited ("**UOB**"). The amount of the disbursed loans exceeded the actual purchase prices of the Units. Following the purchasers' defaults, UOB repossessed and rented out 37 units but had not sold them by the time of the assessment of damages. This led to arguments by Lippo that UOB failed to mitigate. Additionally, Lippo argued that pre-judgment interest could only be levied on the final judgment sum, *i.e.*, pre-judgment interest could not run on amounts representing the value of the Units as these had to be deducted from the judgment sum (even though the Units remained unsold).

THE RELEVANT PROVISIONS

In Singapore, the statutory provisions relating to pre-judgment interest are as follows:

<u>Section 12 ("**Section 12**") of the Civil Law Act 1909 ("**CLA**"):</u>

> "***Power of courts of record to award interest on debts and damages***
>
> *12.—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment."*

<u>Paragraph 6 ("**Paragraph 6**") of the First Schedule of the Supreme Court of Judicature Act 1969 ("**SCJA**"):</u>

> *"Power to direct interest to be paid on damages, or debts (whether the debts are paid before or after commencement of proceedings) or judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court".*

The relationship between these two provisions has been described as being "*obscure*" (see Law Reform Committee, Singapore Academy of Law, *Report of the Law Reform Committee on Pre- and Post-Judgment Interest* (August 2005)). Some light was shed on the interplay between the two provisions in *People's Park Development Pte Ltd v Tru-Mix Concrete (Pte) Ltd* [1981 – 1982] SLR(R) 242 ("***People's Park***"). The Appellate Division in *UOB v Lippo (AD)* has now provided further insight into how these provisions would interact where a claim for pre-judgment interest is made on a sum that is not the final sum payable after judgment is rendered.

THE ENGLAND EQUIVALENT

Historically, the common law provided no remedy in damages for the late payment of a debt or damages. Following the recommendation of the UK Law Revision Committee in 1934, the English Law Reform (Miscellaneous Provisions) Act 1934 ("**English 1934 Act**") was the first statute in England that gave the courts a general power to award pre-judgment interest in any proceedings tried before them. The equivalent of this power was introduced in Singapore by way of the Civil Law (Amendment) Ordinance (No. 30 of 1940). Today, it is contained in Section 12 of the CLA.

Following legislative reform in 1982, section 3(1) ("**Section 3(1)**") of the English 1934 Act was superseded by a new statutory provision inserted into the Supreme Court Act 1981 (c 54) (UK) as section 35A ("**Section 35A**"). The Supreme Court Act 1981 was subsequently renamed the Senior Courts Act 1981 (c 54) (UK) ("**English 1981 Act**"). Section 35A states that:

> *"Subject to the rules of court, in proceedings (whenever instituted) before the High Court for the recovery of a debt or damages there may be included in any sum for which judgment is given* ***simple interest****, at such rate as the court thinks fit or as rules of court may provide,* ***on all or any part of the debt or damages in respect of which judgment is given****, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and (a) in the case of any sum paid before judgment, the date of payment; and (b) in the case of the sum for which judgment is given, the date of judgment."*
>
> [emphasis added]

Section 35A of the English 1981 Act is now the operative statutory provision in England for pre-judgment interest.

DIFFERENCES BETWEEN SINGAPORE AND ENGLAND

There are material differences between Section 12 and Section 35A. Section 35A makes explicit that interest may only be awarded on damages "*in respect of which judgment is given*". No such limitation, however, exists in Section 12.

This proviso (*i.e.*, that interest may only be awarded on damages "*in respect of which judgment is given*") led the English Court of Appeal in *Blue Circle Industries PLC v Ministry of Defence* [1999] 2 WLR 295 ("***Blue Circle***") to limit the ambit of its powers to award pre-judgment interest. In *Blue Circle*, the English Court of Appeal held that the language of Section 35A limited the Court's power to award pre-judgment interest to damages in respect of which judgment was given.

The English position contrasts with the Singapore position not merely because of the differences in the language of Section 35A and Section 12. Singapore has a further provision on pre-judgment interest in Paragraph 6.

PEOPLE'S PARK

In *People's Park*, the Singapore Court of Appeal held that although it had no power to award interest on the basis sought by the respondent under what was then-section 9 of the CLA (now Section 12), it had "*additional powers*" to award such interest under what was then-paragraph 7 of the First Schedule of the SCJA (now Paragraph 6), which read as follows:

> *"Power to direct interest to be paid on debts, including judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the Court."*

The decision marks the use of Paragraph 6 to supplement the limitations under Section 12 to award pre-judgment interest. It rejects the notion that Paragraph 6 merely declares the existence of the power to award interest, which is to be exercised in accordance with Section 12 and common law principles.

This interplay between Paragraph 6 and Section 12 was reiterated by the Appellate Division in *UOB v Lippo (AD)* when it observed that "*para 6 sets out additional powers granted to the High Court above and beyond what is contemplated in s 12 of the CLA*".

UOB v LIPPO (AD)

UOB v Lippo (AD) also puts the spotlight on another issue – whether Section 12 may be used to award interest on amounts that a claimant was kept out of but which would not feature in the judgment sum. This issue would arise in situations where a claimant is holding on to an object of value but that value has not been realised or monetised. However, when assessing damages, the value would nonetheless need to be deducted from the final judgment sum.

In *UOB v Lippo (AD),* the objects of value were the Units which remained unsold at the time of assessment of damages. Could UOB be awarded pre-judgment interest on the full amounts of the loans that it had disbursed or would the value of the Units have to be deducted from such amounts and pre-judgment interest levied only on the difference?

Before *UOB v Lippo (AD)*, this issue did not seem to have been the subject of any detailed discussion by Singapore Courts.

In *Li Jialin and another v Wingcrown Investment Pte Ltd* [2023] SGHC 256 ("***Li Jialin (HC)***") and *Li Jialin and another v Wingcrown Investment Pte Ltd* [2024] 2 SLR 372 ("***Li Jialin (CA)***") (collectively, "***Li Jialin***"), interest was awarded on moneys that had already been repaid before proceedings commenced. However, the question of whether such award of interest was permissible was not argued before the High Court or the Court of Appeal in *Li Jialin*.

In *UOB v Lippo*, UOB argued that *Li Jialin* demonstrated that pre-judgment interest could be levied on sums for which judgment was not given. The Appellate Division agreed with this argument, observing that "*neither a plain reading of s 12 of the CLA nor the 2005 LRC Report suggests that the court can only award interest on the final net judgment sum payable by one party to another*" (at [92]).

The Appellate Division pointed out that such an approach is "*eminently sensible*" as it "*furthers the underlying aim of pre-judgment interest*" (at [95]):

> "*The basis for an award of pre-judgment interest lies in the fact that the unsuccessful defendant had wrongfully kept the successful claimant out of moneys to which he has been shown to be entitled… It is for this reason that, as a matter of principle, claimants who have been kept out of pocket without basis should be able to recover interest on money that is found to have been owed to them from the date of their entitlement until the date it is paid…As the Judge rightly noted, a pre-requisite to a claim for pre-judgment interest is that the claimant must be entitled to the moneys on which pre-judgment interest is claimed and such an entitlement is decided by means of a judgment award…*"

The Appellate Division's view was that the Judge in *UOB v Lippo (HC)* had erred in stating that a judgment award "*would necessarily take into account any deductions which must be made*". The Appellate Division stated that this would be "*akin to treating the units as having been sold at the date of writ*", which would not adequately compensate UOB for the lost time value of money (at [96]).

The Appellate Division further observed that Paragraph 6 would in any event confer power on the Court to award pre-judgment interest on debts other than judgment debts. It affirmed the proposition that (at [98]):

> *"the court's power under para 6 is not even limited to the adding of pre-judgment interest to a judgment sum awarded by the court …[E]ven if the court's power under s 12 of the CLA is as limited as Lippo makes it out to be, the court would still have the power to award interest on a gross sum, before deductions, which a party is entitled to at a specific point in time pursuant to para 6 of the SCJA as "what cannot be done under the CLA power can be done under the SCJA power" (2005 LRC Report at para 40)."*

It bears noting that the observations of the Appellate Division on pre-judgment interest were *obiter* as the issue of the Court's power to award interest on a gross as opposed to a net sum did not arise, since the Appellate Division ultimately found that there was no net sum to speak of on the facts.

Nevertheless, the Appellate Division's comments serve as a useful elucidation of how the Singapore Courts are likely to approach the issue of pre-judgment interest and serve to remind practitioners that Paragraph 6 remains available as a source of power to award interest if a claimant is faced with the limitations of Section 12.

TKQP Law LLP successfully acted for UOB in the appeal before the Appellate Division.

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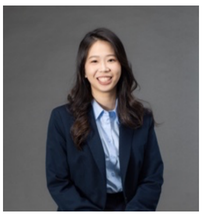

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