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A is pursuing B, perhaps for demurrage or diversion costs, unpaid hire, defective goods, damage or shortage, GA contribution, policy proceeds or supply debt. The context is a charterparty, B/L, sale contract, letter of indemnity, insurance policy or service agreement. Issues are raised, positions taken and extensions repeated. Time passes, interest accrues and costs mount.

Suddenly B concedes and pays the claimed principal. After years of sparring he is sure of losing, and now wants to close the matter and offset the interest saving against his own legal tally. As usual for the defending side, this is a lot less than that of A, who has finally got his money, but without interest and net of an unpalatable bill, and after delay that involved much management time and could have meant cashflow problems. Irritated that B has caused all this before doing what he should have done long ago, A wants further redress.

How might he stand?

B is probably on stronger, but by no means unassailable, ground in a claim for sums at large, such as for defective goods, cargo loss or damage, and *perhaps* in some cases under an insurance policy - though there is now a statutory remedy there, as noted below. B would urge that he has admitted liability and paid the claim in full, so A no longer has a cause of action and cannot validly start proceedings, and with no provision for interest and no agreement for B to pay it, or A's legal costs, he need not.

That might work in a wholly fact-specific case, but perhaps not where the meaning of key contract terms or policy wording is in issue, and A suggesting pressing ahead with a declaratory action could provide leverage in precedent risk that B might not want to run. However, this presupposes that A's (or his insurers') wider interest is large enough to make such worthwhile, or at least that A's side could convincingly present that.

A claim under a sale, supply or similar contract could offer A some scope. Clauses retaining title until full payment carry their own, separate remedies, but provisions for interest on "*all sums due under* [the] *contract*" might help, here. B owes the principal plus the interest on it. Until that is paid he remains in breach, so A retains a cause of action. He might sue for all, giving credit for the on-account payment of principal, and seeking also to recover as much as possible of his pre-action costs.

(The insurance policy remedy is the new section 13A of the Insurance Act 2015. As discussed in our 6 April article "*To boldly go"*, this creates a right of action for losses due to culpable late payment of an insurance claim. It might include the legal costs of rightful prior pursuit.)

But even if A could still pursue B, his problems might be:

1. an argument that the payment was in full and final settlement, including interest and costs. The outcome would largely depend on what the parties wrote, said and did, and an unwary claimant might have to resort to implied terms, estoppel or even course of dealing; and

2. his own resolve, especially if the interest amount was small, or, though large, the costs were not significant alongside the claim; or there was no precedent involved; or technical hurdles

(perhaps service overseas, or foreign law issues) had to be overcome; or the claim was unsecured.

A claimant in any of these circumstances might think hard before committing more cost and time to such a venture.

It is better to avoid rather than tackle this problem, and while all will depend on the individual matter here are some possible steps:

i. a Part 36 or similar offer, so interest is addressed and costs consequences are triggered by acceptance. Skilful drafting might even allow argument that ambush payment of principal was acceptance;

ii. progressive correspondence markers that costs are now *x*, accrued interest is *y* and any settlement will involve payment of both. That would not necessarily prevent a manoeuvring defendant seeking to neuter a cause of action, but it should prevent any argument that payment was full and final;

iii. in an appropriate case, taking formal action and then arranging a stay (on suitable terms, especially as to review) while discussions continue. This carries risks, but will start an indisputable interest clock running; ensure that consideration of costs is bound into every stage; and send a clear message that both must be addressed however the matter is concluded.

With interest unusually low and increasing focus on managing costs, a claimant should avoid having to contemplate becoming a *Claimant* in order to recover them. Parties and their advisers should be alert to the nature and context of a claim and to rollover time extensions amid lengthy attrition, and take protective steps where possible and action when necessary.

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