CITATION:	*Castronova v Tjung & Ors (No 3)* [2025] NTSC 8
PARTIES:	CASTRONOVA, Margaret Lesetta v TJUNG, Fatima and DANIUM INVESTMENTS PTY LTD (ACN 108 393 817) ATF THE DANIUM TRUST and DANIUM, Danny
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	2022-021412-SC
DELIVERED:	14 February 2025
HEARING DATES:	2 May 2024 to 8 May 2024 & 17 December 2024
JUDGMENT OF:	Burns J

Federal Court of Australia Act 1976 (Cth) ss 51A, 52
Federal Court Rules 2011 (Cth) r 39.06
Supreme Court Act 1979 (NT) ss 84, 85
Supreme Court Rules 1987 (NT) rr 36.07, 59.02, 60.01, 60.02, 60.03, 60.06, 60.08

Autodesk Inc v Dyason (No 2) (1993) 176 CLR 300; *Bailey v Marinoff* (1971) 125 CLR 529; *Castronova v Tjung & Ors* [2024] NTSC 55; *Castronova v Tjung & Ors (No 2)* [2024] NTSC 105; *Ceccon Transport Pty Ltd v Tomazos Group Pty Ltd (No 2)* [2017] NTSC 55; *Motor Accidents (Compensation) Commission v Motor Accidents Insurance Board (No 2)* [2023] NTSC 71; *R v Cripps; ex parte Muldoon* [1984] 2 All ER 705; *Re Suffield & Watts. Ex Parte Brown* [1896-90] All ER Rep 276; *Shaw v Commonwealth of Australia* [1995] NTSC 37; *The Texas Company (Australasia) Ltd v The Federal Commissioner of Taxation* (1940) 63 CLR 382, referred to.

REPRESENTATION:

Counsel:

Plaintiff:	H Baddeley
Defendants:	A McLaren

Solicitors:

Plaintiff:	HWL Ebsworth Lawyers
Defendants:	Kelly & Partners Lawyers

Judgment category classification:	B
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Number of pages:	14

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Castronova v Tjung & Ors (No 3) [2025] NTSC 8
No. 2022-021412-SC

BETWEEN:

MARGARET LESETTA CASTRONOVA
Plaintiff

AND:

FATIMA TJUNG
First Defendant

AND:

DANIUM INVESTMENTS PTY LTD (ACN 108 393 817) ATF THE DANIUM TRUST
Second Defendant

AND:

DANNY DANIUM
Third Defendant

CORAM: BURNS J

REASONS FOR JUDGMENT

(Delivered 14 February 2025)

Introduction

[1] On 28 June 2024, I gave judgment in favour of the plaintiff against the defendants on the plaintiff's claim and on a cross-claim lodged by the

defendants.[1] On 12 December 2024, I made orders concerning the liability of the defendants to pay the plaintiff's costs of the proceedings.[2]

[2] At the request of the plaintiff, the matter was relisted before me on 17 December 2024 to deal with two applications by the plaintiff:

(a) First, an application under r 36.07 ('the slip rule') of the *Supreme Court Rules 1987* (NT) ('SCR') to amend order (a)(iii) of the orders I made on 28 June 2024 to substitute "6 July 2020" for "6 July 2022". This is not opposed by the defendants.

(b) Secondly, an application that I determine the rate at which pre-judgment interest on the judgment sum is to be calculated. This was opposed by the defendants.

[3] With regard to the first application, r 36.07 of the SCR provides:

> **36.07 AMENDMENT OF JUDGMENT OR ORDER**
>
> The Court may at any time correct a clerical mistake in a judgment or order or an error arising in a judgment or order from an accidental slip or omission.

[4] It is clear that the reference to "6 July 2022" in order (a)(iii) made on 28 June 2024 is a typographical error. This is accepted by the defendants. I therefore order under the slip rule that order (a)(iii) in the orders made on 28 June 2024 be amended by substituting "6 July 2020" for "6 July 2022".

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1 *Castronova v Tjung & Ors* [2024] NTSC 55.

2 *Castronova v Tjung & Ors (No 2)* [2024] NTSC 105.

[5] Turning to the plaintiff's second application, the defendants raised a preliminary objection that I had no jurisdiction to make the orders sought by the plaintiff. This objection was based upon the proposition that having determined the substantive claims raised by the parties and the issue of costs, I was *functus officio*. In my opinion, it is unnecessary to finally determine this issue for reasons I will address below, but I will briefly set out the reasons I would give for rejecting the submission were it necessary to do so.

[6] The ordinary rule is that judgments or orders which have been formally entered or recorded so as to become part of the record of the Court can only be varied on appeal. In *Bailey v Marinoff*,[3] Barwick CJ said, at 530:

> Once an order disposing of a proceeding has been perfected by being drawn up as the record of a court, that proceeding apart from any specific and relevant statutory provision is at an end in that court and is in its substance, in my opinion, beyond recall by that court. It would, in my opinion, not promote the due administration of the law or the promotion of justice for a court to have a power to reinstate a proceeding of which it has finally disposed.

[7] In the earlier case of *The Texas Company (Australasia) Ltd v The Federal Commissioner of Taxation*,[4] Starke J said, at 457:

> A superior court of justice, it may be remarked, has full power to rehear or review a case until judgment is drawn up, passed and entered: See *In re Suffield & Watts; Ex parte Brown*; *In re the Lyric Syndicate (Ltd)*; *The Turret Court*.
>
> (Footnotes omitted)

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3 (1971) 125 CLR 529.

4 (1940) 63 CLR 382.

[8] It will be noted that these authorities refer to the situation where the judgment "has been perfected" or "drawn up, passed and entered". When does that occur? In the present proceedings, counsel for the defendants submitted that judgment had been perfected at the time that the Court made its orders and published its reasons, presumably as to the issue of costs which was the last in time. In my opinion, that is not the case. While r 59.02(1) of the SCR provides that a judgment given or order made by the Court takes effect on and from the date it is given, the remainder of that Order addresses the assessment of post-judgment interest. This suggests that the Order is concerned with the effect of the judgment or order on fixing the rights of parties on issues such as post-judgment interest from the date of the judgment or order.

[9] Of greater significance in the present case, in my opinion, are the provisions of Order 60 of the SCR. Order 60 is titled "Authentication and filing of judgments and orders". By operation of r 60.01(1), unless the Court otherwise orders, a judgment or order of the Court cannot be enforced or an appeal heard from such a judgment or order until the judgment or order has been authenticated in accordance with Order 60 and filed.

[10] A judgment is authenticated when the form of the judgment, drawn up and settled in accordance with Order 60, is sealed by a Registrar with the seal of

the Court.[5] The form of a judgment or order, for the vast majority of cases, is that found in Forms 60A to 60L in Schedule 1 to the SCR.[6]

[11] The procedure by which the judgment or order is authenticated is found in r 60.03 and r 60.06 of the SCR. It requires the party seeking authentication to draw up the form of judgment or order and lodge it with the Registrar to be settled. Alternatively, the Registrar may, at the request of a party, draw up and settle the form of the judgment or order.

[12] The fact that a judgment or order of the Court cannot be enforced, or an appeal heard from the judgment or order, until this process of authentication and filing has been completed, establishes that the judgment or order cannot be said to have been perfected or entered into the record of the Court until that process has been completed. It also strongly supports the proposition that r 59.02(1) does not operate to perfect the judgments and orders made by me on 28 June 2024 and 12 December 2024.

[13] The position regarding reviewing judgments or orders, or reopening a case, where the judgment or order has not been perfected is different. A superior court of record (at least) retains jurisdiction to reopen the matter and to revise its judgment or orders where it is in the interests of justice to do so.[7] The jurisdiction to reopen such a matter is to be exercised with great caution

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5 r 60.02(1).

6 r 60.08.

7 *Autodesk Inc v Dyason* (No 2) (1993) 176 CLR 300, per Mason CJ at 301-302, Brennan J at 308; Gaudron J at 322.

because of the public interest in finality in litigation. This principle is longstanding.[8]

[14] I do not pretend that the above is anything but the briefest sketch of the law on this issue, but it will suffice for present purposes. If it were necessary to do so, I would find that I had jurisdiction to hear the plaintiff's application and determine it on its merits.

[15] My preference is to resolve the application by use of the slip rule. It is not disputed that the slip rule applies in circumstances where the Court would otherwise be *functus officio*.[9]

[16] In my judgment delivered 28 June 2024 I gave judgment, relevantly for present purposes, as follows:

> (a) Judgment for the plaintiff against the defendants in the following sums:
>
> (i) $550,000.00 together with pre-judgment interest pursuant to s 84(1) of the *Supreme Court Act 1979* (NT) from 21 December 2020 to the date of judgment;
>
> (ii) $55,468.49 together with pre-judgment interest pursuant to s 84(1) of the *Supreme Court Act 1979* (NT) from 2 September 2019 to the date of judgment;
>
> (iii) $142,394.52 together with pre-judgment interest pursuant to s 84(1) of the *Supreme Court Act 1979* (NT) from 6 July 2022 to the date of judgment.

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8 See *Re Suffield & Watts. Ex Parte Brown* [1896-90] All ER Rep 276 at 278 per Fry J.

9 *R v Cripps; ex parte Muldoon* [1984] 2 All ER 705, cited in *Shaw v Commonwealth of Australia* [1995] NTSC 37.

[17] The three judgment components were each awarded together with pre-judgment interest pursuant to s 84(1) of the *Supreme Court Act 1979* (NT) ('SCA'). That section provides:

> **84 Interest up to judgment**
>
> (1) In any proceeding in respect of a cause of action that arises after the commencement of this Act the Court may 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 that sum for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

[18] No submissions were made to me in the course of the hearing of the matter that the appropriate rate of interest for the purposes of s 84(1) was in dispute. I assumed, wrongly it seems, that this was a matter on which the parties were in agreement. The failure to specify the rate of interest was an error in the judgment by reason of an accidental omission. I am satisfied that the slip rule allows me to rectify that omission.

[19] I now turn to the merits of the application. The plaintiff submits that I should award interest at the same rate as applied at the time to post-judgment interest. The plaintiff referred me to the decision of Blokland J in *Motor Accidents (Compensation) Commission v Motor Accidents Insurance Board (No 2)*,[10] where her Honour said, at [6]-[9]:

> [6] As the respondent emphasises, the question of whether interest is to be awarded and if so at what rate, is principally governed by s 84(1) of the *Supreme Court Act 1979* (NT). Section 84(1) states the Court 'may order that there shall be included in the sum for

10 [2023] NTSC 71 ('*MAC*').

which judgment is given, interest at such rate as it thinks fit on the whole or any part of the sum for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

[7] The discretion is plainly wide, and must be exercised judicially. There is significant coalescence among Northern Territory decisions dealing with the exercise of the discretion as it applies to pre-judgment interest. All relevant decisions accept the principle that the purpose of pre-judgment interest is 'to compensate the plaintiff for the loss or detriment which that party has suffered by being kept out of its money during the applicable period.'

[8] While it is by no means a fixed starting point, this Court has generally applied the post-judgment rate of interest governed by the *Supreme Court Rules* (NT).The series of cases which have dealt with the issue of pre-judgment interest have invariably acknowledged that while upon proof, commercial rates may be awarded, significant regard is to be had to fixing interest at the post-judgment rate. This is because generally the successful party will have been 'kept out of its money' during the trial period.

[9] Rule 59.02(3) of the *Supreme Court Rules* (NT) fixes post-judgment interest at the per annum rate set out under s 52(2)(a) of the *Federal Court of Australia Act 1976* (Cth). Section 52(2)(a) refers to the *Federal Court Rules 2011*. Rule 39.06 of the *Federal Court Rule*s, fixes the prescribed rate under s 52(2)(a) as 6 percent above the Reserve Bank cash rate prior to 1 January to 30 June in any year and 6 percent above the Reserve Bank cash rate, prior to 1 July to 31 December in each year. No issue is taken with the correctness or otherwise of the mathematical calculations of the rates set out in the 'Plaintiff's supplementary submissions on interest'. However, the defendant argues the post judgment rate should not be applied and suggests a number of alternative ways to calculate interest in this particular case.

(Footnotes omitted)

[20] The defendants sought to distinguish the present case from *MAC* by suggesting that *MAC* was directed to the setting of pre-judgment interest in "commercial cases" and that neither the plaintiff nor the first and third defendants are commercial entities. It is unnecessary to determine whether the defendants' submissions are correct.

[21] What does emerge clearly from *MAC* is that the award of pre-judgment interest is compensatory and is intended to compensate the successful party from being kept out of its money. This, however, does not assist greatly in determining the appropriate rate of interest which should be awarded. Undoubtedly, as was recognised by Hiley J in *Ceccon Transport Pty Ltd v Tomazos Group Pty Ltd (No 2)*,[11] the post-judgment rate of interest prescribed by s 85 of the SCA may provide a useful guide. Section 85 provides:

> **85 Interest on judgments**
>
> Except as provided by any law in force in the Territory, a judgment debt carries interest, from the date of the judgment:
>
> (a) at such rate as is fixed by the Rules; and
>
> (b) until a rate is so fixed, at 8% per annum.

[22] Rule 59.02(3) of the SCR provides that the judgment debt owed by the defendants attracts interest from the date of judgment at the rate per annum fixed for s 52(2)(a) of the *Federal Court of Australia Act 1976* (Cth) ('FCA') from time to time. This is the rate that the plaintiff submits should be applied in the present case.

[23] The legislative intent found in s 85 of the SCA is to align the rate of post-judgment interest awarded by this Court with that which is awarded by the Federal Court of Australia. It is instructive to consider the legislative framework which governs both pre and post-judgment interest in the Federal

11 [2017] NTSC 55.

Court. The relevant provisions of the FCA are ss 51A(1) and 52. These provide:

> **51A Interest up to judgment**
>
> (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) in respect of a cause of action that arises after the commencement of this section, the Court or a Judge shall, upon application, unless good cause is shown to the contrary, either:
>
> (a) order that there be included in the sum for which judgment is given interest at such rate as the Court or the Judge, as the case may be, thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date as of which judgment is entered; or
>
> (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which judgment is given a lump sum in lieu of any such interest.
>
> **52 Interest on judgment**
>
> (1) A judgment debt under a judgment of the Court carries interest from the date as of which the judgment is entered.
>
> (2) Interest is payable:
>
> (a) at such rate as is fixed by the Rules of Court; or
>
> (b) if the Court, in a particular case, thinks that justice so requires – at such lower rate as the Court determines.

[24] For the purposes of s 52(2)(a) of the FCA, the relevant Rule is r 39.06 of the Federal Court Rules, which provides:

> **39.06 INTEREST ON JUDGMENT**
>
> The prescribed rate at which interest is payable under section 52(2)(a) of the Act is:
>
> (a) for the period from 1 January to 30 June in any year – the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the period commenced; and

(b) for the period 1 July to 31 December in any year – the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the period commenced.

[25] A General Practice Note ('the Note') was published by the Chief Justice of the Federal Court (Allsop CJ) on 18 September 2017 providing guidance to legal practitioners and litigants regarding interest on judgments arising under ss 51A and 52 of the FCA. The relevant part of the Note regarding pre-judgment interest states:

> **2. PRE-JUDGMENT INTEREST**
>
> 2.1 Section 51A(1)(a) of the Federal Court Act and s 547(2) of the Fair Work Act provide for the making of orders for the inclusion of interest in judgments.
>
> 2.2 Parties and their lawyers should expect that when, pursuant to s 51A(1)(a), interest in respect of a pre-judgment period is to be included in a judgment, the Court will have regard to the following rates, being rates agreed upon by the Discount and Interest Rate Harmonisation Committee established following a referral by the Council of Chief Justices of Australia and New Zealand:
>
> (a) in respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
>
> (b) in respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.
>
> (Footnotes omitted)

[26] The Federal Court of Australia website sets out a table (most recently updated in December 2024) of the interest rates as determined in accordance with s 52 of the FCA and as would be applicable in accordance with the Note:

2011 to 2020

Effective Dates	RBA cash rate target as at 1 Jan or 1 Jul (Per cent)	Pre-judgment interest – Cash rate plus 4% (Per cent)	Post-judgment interest – Cash rate plus 6% (Per cent)
1 Jan 2011 to 30 Jun 2011	**4.75**	8.75	10.75
1 Jul 2011 to 31 Dec 2011	**4.75**	8.75	10.75
1 Jan 2012 to 30 Jun 2012	**4.25**	8.25	10.25
1 Jul 2012 to 31 Dec 2012	**3.5**	7.50	9.50
1 Jan 2013 to 30 Jun 2013	**3.00**	7.00	9.00
1 Jul 2013 to 31 Dec 2013	**2.75**	6.75	8.75
1 Jan 2014 to 30 Jun 2014	**2.50**	6.50	8.50
1 Jul 2014 to 31 Dec 2014	**2.50**	6.50	8.50
1 Jan 2015 to 30 Jun 2015	**2.50**	6.50	8.50
1 Jul 2015 to 31 Dec 2015	**2.00**	6.00	8.00
1 Jan 2016 to 30 Jun 2016	**2.00**	6.00	8.00
1 Jul 2016 to 31 Dec 2016	**1.75**	5.75	7.75
1 Jan 2017 to 30 Jun 2017	**1.50**	5.50	7.50
1 Jul 2017 to 31 Dec 2017	**1.50**	5.50	7.50
1 Jan 2018 to 30 Jun 2018	**1.50**	5.50	7.50
1 Jul 2018 to 31 Dec 2018	**1.50**	5.50	7.50
1 Jan 2019 to 30 Jun 2019	**1.50**	5.50	7.50
1 Jul 2019 to 31 Dec 2019	**1.25**	5.25	7.25
1 Jan 2020 to 30 Jun 2020	**0.75**	4.75	6.75
1 Jul 2020 to 31 Dec 2020	**0.25**	4.25	6.25

2021 to 2025

Effective Dates	RBA cash rate target as at 1 Jan or 1 Jul (Per cent)	Pre-judgment interest – Cash rate plus 4% (Per cent)	Post-judgment interest – Cash rate plus 6% (Per cent)
1 Jan 2025 to 30 Jun 2025	**4.35**	8.35	10.35
1 Jul 2024 to 31 Dec 2024	**4.35**	8.35	10.35
1 Jan 2024 to 30 Jun 2024	**4.35**	8.35	10.35
1 Jul 2023 to 31 Dec 2023	**4.10**	8.10	10.10
1 Jan 2023 to 30 Jun 2023	**3.10**	7.10	9.10
1 Jul 2022 to 31 Dec 2022	**0.85**	4.85	6.85
1 Jan 2022 to 30 Jun 2022	**0.10**	4.10	6.10
1 Jul 2021 to 31 Dec 2021	**0.10**	4.10	6.10
1 Jan 2021 to 30 Jun 2021	**0.10**	4.10	6.10

[27] The provisions of s 51A(1) of the FCA are of similar effect to those of s 84(1) of the SCA. Each grants the respective Court a broad discretion regarding the award of pre-judgment interest including the rate at which such interest is to be calculated. The Note is not intended to supplant the provisions of s 51A(1) or to bind the Federal Court's discretion. It is simply a guide. What is apparent from the above, however, is that it is considered appropriate in the Federal Court to generally allow pre-judgment interest at a slightly lower rate than that which is applicable for post-judgment interest.

[28] The likely rationale for this approach is acceptance that considerations may inform the prescribed rate for post-judgment interest that are not relevant (or as relevant) to determining the rate of pre-judgment interest. After judgment has been delivered, the judgment debtor is no longer in any doubt as to their liability to pay, and the amount which is owing to the judgment creditor. In addition, it is probable that the rate of post-judgment interest is set so as to provide a judgment debtor with an incentive to pay promptly and, conversely, with a disincentive to delay.

[29] Of course, in any particular case, the Federal Court would be at liberty to award pre-judgment interest at such rate as the Court considered appropriate.

[30] The legislative intention that post-judgment interest rates in this Territory should align with those applicable in the Federal Court, together with the implicit acknowledgment that post-judgment interest rates in that

jurisdiction should be slightly higher than pre-judgment rates, are considerations relevant to the exercise of my discretion under s 84(1) of the SCA in the present case.

[31] In my opinion, the appropriate order is that the pre-judgment interest on the amounts awarded to the plaintiff is to be calculated based on the Reserve Bank of Australia Cash rate as applicable from time to time plus 4%.

[32] In my opinion, each party should bear their own costs of this application.

Orders

[33] I make the following formal orders:

a) Order (a)(iii) of the orders I made on 28 June 2024 is varied to substitute “6 July 2020” for “6 July 2022”.

b) Pre-judgment interest on the amounts awarded to the plaintiff in paragraph [346] of my judgment of 28 June 2024 is to be calculated based on the Reserve Bank of Australia Cash rate as applicable from time to time plus 4%.

c) Each party is to pay their own costs of this application.
