

## **CONTRACTUAL INTEREST CLAUSES: DO YOU NEED THEM?**

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It is important that the parties to a contract clearly set out their respective duties, rights and obligations under that contract, including the obligation to pay interest on unpaid amounts under the contract.

Generally, courts will not infer or imply a contract to pay interest in the absence of proof of a clear intention of the parties that interest would be payable.<sup>2</sup> The best way to demonstrate that intention is to have a clear contractual interest term expressly included in the contract.

A right to charge interest cannot be established based simply on a unilateral assertion in an invoice and nothing more.<sup>3</sup> Accordingly, merely sending an invoice which sets out an interest rate on overdue accounts after a contract has been entered into in which there has been no previous agreement on interest likely will not suffice. Where, however, there is no express agreement to pay interest in a contract, agreement may be inferred from a course of conduct or an acknowledgement by the debtor subsequent to the contract being entered into (e.g. where interest is set out in invoice and is charged to the debtor and the debtor pays the interest charge without dispute).<sup>4</sup>

That being said, it is not recommended that the parties to a contract rely on a course of conduct to establish an interest provision dealing with unpaid accounts as the cases in this province reflect a tendency in recent years to be less willing to imply a contract to pay interest in the absence of proof of a clear intention between the parties.<sup>5</sup> Simply put, the courts no longer see any reason to stretch the concept of implied contract to create a basis for awarding interest.<sup>6</sup> Accordingly, where the parties have clearly agreed to a term concerning interest on unpaid amounts, that term is enforceable (subject to the provisions *Criminal Code* dealing with criminal interest rates and the *Interest Act* dealing with interest being expressed as a yearly rate or percentage).

It is therefore incumbent on the parties to clearly agree on an interest provision at the outset and have that provision expressly included in the contract. If not, the parties run the risk of there being no contractual interest provision at all, regardless of what is printed in an invoice.

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<sup>2</sup> *Hardwoods Specialty Products LP v. Rite Style Manufacturing Ltd.*, [2006 BCCA 139](#)

<sup>3</sup> *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, [1999 BCCA 775](#)

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<sup>5</sup> *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, [1999 BCCA 775](#)

<sup>6</sup> *Hardwoods Specialty Products LP v. Rite Style Manufacturing Ltd.*, [2006 BCCA 139](#)