[2019] JMCA Civ 21

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 127/2018

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MR JUSTICE FRASER JA (AG)

BETWEEN	**ORVILLE SPENCE**	**APPELLANT**
AND	**FIRST GLOBAL BANK LIMITED**	**RESPONDENT**

Written submissions filed by Lemar Neale instructed by NEA/LEX for the appellant

Written submissions filed by Matthew Royal instructed by Samuda & Johnson for the respondent

8 and 19 July 2019

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4(3) of the Court of Appeal Rules 2002)

MORRISON P

[1] I have read in draft the judgment of my brother Fraser JA (Ag). I agree with his reasoning and conclusion. There is nothing that I wish to add.

SINCLAIR-HAYNES JA

[2] I too have read the draft judgment of my brother Fraser JA (Ag) and agree with his reasoning and conclusion.

FRASER JA (AG)

Introduction

[3] The broad issue raised in this appeal is whether the learned trial judge was correct in holding that, pursuant to rule 5.13 of the Civil Procedure Rules (CPR), the appellant Mr Orville Spence had, on 12 June 2013, been properly served with the claim form which commenced the claim of First Global Bank Limited (FGB) against Mr Spence and his wife Nadine Spence. How this issue is resolved, will determine the outcome of other sub–issues that will be addressed in the analysis.

The applicable rule

[4] Under the heading, "Alternative methods of service" rule 5.13 of the CPR provides as follows:

> "5.13 (1) Instead of personal service a party may choose an alternative method of service.
>
> (2) Where a party-
>
> (a) chooses an alternative method of service; and
>
> (b) the court is asked to take any step on the basis that the claim form has been served;
>
> the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

(3) An affidavit under paragraph (2) must –

(a) give details of the method of service used;

(b) show that –

(i) the person intended to be served was able to ascertain the contents of the documents; or

(ii) it is likely that he or she would have been able to do so;

(c) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents; and

(d) exhibit a copy of the documents served.

(4) The registry must immediately refer any affidavit filed under paragraph (2) to a judge, master or registrar who must –

(a) consider the evidence; and

(b) endorse on the affidavit whether it satisfactorily proves service.

(5) Where the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the registry must fix a date, time and place to consider making an order under Rule 5.14 and give at least 7 days notice to the claimant.

(6) An endorsement made pursuant to 5.13 (4) may be set aside on good cause being shown."

Analysis

The genesis

[5] The issue for decision arose in the following manner. FGB, on 11 March 2013, filed a claim against Mr and Mrs Spence to recover the sum of $491,313.44, together with interest accruing daily on the principal balance until payment. This sum was owed by the Spences to FGB, on a Visa Gold Credit Card it had issued to them on 28 June 2007.

[6] The affidavit of Mr Christopher Thompson, process server, reveals that, on 12 June 2013 he personally served Mrs Spence with the claim form and relevant accompanying documents. Mr Thompson also averred that he also served Mr Spence with these documents on the same date, having left them with Mrs Spence upon her indication that he could not see Mr Spence, but that she was willing to accept the documents on his behalf and would give them to him later that day.

[7] The Spences, having failed to file an acknowledgment of service and defence within the time allotted by the CPR, FGB sought and was granted default judgment against them by the Registrar of the Supreme Court on 22 August 2013. However, on 7 March 2018, on the application of Mr and Mrs Spence, the default judgment was set aside, on the basis, the appellant submits, that the sum included in the default judgment was inaccurate.

[8] On 22 March 2018, FGB filed an amended claim form and served it on both Mr and Mrs Spence on 4 April 2018. On 18 May 2018, Mr and Mrs Spence filed a defence to the amended claim. Then, on 30 May 2018, Mr Spence filed an application for summary

judgment against FGB, or in the alternative that the claim be struck out against him. On 18 June 2018, FGB in turn filed its own application for summary judgment. Both applications were listed for hearing on the same day. On the hearing day the court determined that it would hear Mr Spence's application first.

The application by Mr Spence for summary judgment

[9] The basis of the application for summary judgment by Mr Spence was that he had not been properly served with the claim form on 12 June 2013, and had not since then acknowledged the debt. Therefore, by the time FGB had served the amended claim on him, the claim was statute barred pursuant to section 46 of the Limitation of Actions Act. The main basis on which he maintained that service on him was not established, was that the mandatory procedure set out in rule 5.13(4) of the CPR had not been complied with, as there was no endorsement by a judge, master or registrar on the affidavit of Mr Thompson, the process server, indicating that there had been satisfactory proof of service.

[10] The court, however, found that Mr Spence was duly served on 12 June 2013, and hence the amended claim form served on him on 22 March 2018, was not statute barred. Accordingly, as the purported irregularity of service was the sole ground on which he mounted his challenge, his application for summary judgment, or in the alternative, striking out of the claim against him, was dismissed.

The appeal

The grounds

[11] Mr Spence filed five grounds of appeal against the decision of the learned judge as follows:

> "a) The learned judge erred as a matter of fact and/or law in finding that the Appellant was duly served with the Claim Form on June 12, 2013.
>
> b) The learned judge, having accepted that the Appellant was not personally served with the Claim Form, erroneously concluded that the alternative method of service chosen by the Respondent to effect service on Appellant satisfied Rule 5.13 of the Civil Procedure Rules, 2002 (as amended) in circumstances where the affidavit of service was not endorsed by the court indicating satisfactory proof of service.
>
> c) The learned judge erred as a matter of fact and/or law in finding that the affidavit of service on which the default judgment was entered against the Appellant satisfactorily proved service in circumstances where:
>
> i) there was no endorsement on the said affidavit; and
>
> ii) the default judgment was set aside as of right with the result that there was no endorsed affidavit on which the learned judge could have concluded that service was effected by an alternative method.
>
> d) The learned judge erroneously ruled on the issue of satisfactory proof of service by way of an alternative method in circumstances where the Court [the learned judge] was not asked to take any step on the basis that the Claim Form was served since:

i) the default judgment was already set aside as of right; and

ii) what was before the learned judge was an application to strike out on the basis of limitation defence.

e) The learned judge misdirected herself on the law when she found that the requirement for the registrar to endorse the affidavit is a technical requirement purely for administrative purposes."

[12] Despite the number of grounds advanced, counsel for Mr Spence acknowledged that they overlap, and that the central question in the appeal was whether Mr Spence was properly served with the claim form by an alternative method.

The preliminary objection by FGB

[13] Counsel for FGB, in treating with the appeal, first raised a preliminary objection submitting that the matter should not proceed as a procedural appeal under rule 1.1(8) of the Court of Appeal Rules (CAR), but should be conducted instead, in accordance with rule 2.5(1)(b) of the CAR. Rule 1.1(8) defines a procedural appeal as "an appeal from a decision of the court below which does not directly decide the substantive issues in a claim...". In keeping with the decision in **Willowood Lakes Limited v The Board of Trustees of The Kingston Port Workers Superannuation Fund** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 98/2007, Motion No 12/2009, judgment delivered30 October 2009, which affirmed the court's earlier decision in **Leymon Strachan v The Gleaner Company Limited and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 54/1997,

judgment delivered 18 December 1998, counsel acknowledged that a matter can proceed as a procedural appeal, if it is one involving an interlocutory decision, rather than a final one. Therefore, a summary judgment application, being one where the outcome, "If given one way, [would] finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on", would be interlocutory.

[14] However, counsel argued that simply because a matter is interlocutory does not mean it should be conducted as a procedural appeal. In that regard, he cited **Craig Reeves v Platinum Trading Management Limited** (unreported), Court of Appeal, St Christopher & Nevis, Civil Appeal No HCVAP 2007/022, judgment delivered 25 February 2008, a decision of the Court of Appeal of St Christopher and Nevis, that considered the status of a procedural appeal under Part 62.1 of the CPR of that jurisdiction which bears substantial similarity to the definition under rule 1.1(8) of the CAR, for the proposition that, "…it is not all interlocutory orders that would be orders from which a procedural appeal lies…procedural appeals are a subset of interlocutory appeals."

[15] This proposition was significant for his contention that the nature of a summary judgment and striking out application was such that it could decide the substantive issues in a claim, and hence should not proceed as a procedural appeal under rule 1.1(8) of the CAR. Further, in the present appeal, the court was being asked to determine whether, based on the limitation defence, FGB had any standing to bring the amended claim form, a fundamental substantive issue on which, he submitted, it would be inappropriate to conclude the matter by means of a procedural appeal.

[16] Counsel for the Mr Spence did not provide any submissions in response to the preliminary objection. However, based on counsel for FGB's acknowledgment that the matter at least technically qualifies to be addressed as a procedural appeal, and in light of the manner in which I intend to dispose of this appeal, I rule that the matter should proceed as filed, as a procedural appeal. I, however, offer no opinion on the general merits of the submissions of counsel for FGB, or how they should be viewed in different circumstances.

The application for extension of time by FGB

[17] In the event the court decided, as it has, to hear the procedural appeal, counsel for FGB sought an order extending the time within which to file submissions in this matter to 3 July 2019, the date they were filed. Rule 2.4(2) requires that any written submissions in opposition to the appeal ought to be filed within 14 days of receipt of the notice of appeal. Counsel explained that the submissions were late as, a) it had been thought that the court would have first determined its application on the procedural objection and then indicate the appropriate timelines to be followed, and b) at the time of service of the notice of appeal, it was not known that the appellant intended for the matter to proceed as a procedural appeal, as the appellant had filed and served a record of appeal, which is not required for procedural appeals.

[18] Counsel also submitted that FGB had a high probability of success in the appeal, and that the granting of the extension sought would be unlikely to cause the appellant any prejudice.

[19] The filing of the submissions were out of time by almost five and a half months, the notice of appeal having been received by the respondent on 3 January 2019, and the submissions having been filed on 3 July 2019. The preliminary objection was raised at the same time, in those written submissions. It was not unreasonable for FGB to have expected that the preliminary objection would be considered before it was decided whether the matter would actually proceed as a procedural appeal. I do not discern any risk of prejudice to the appellant if the extension is granted. Having assessed the matter, I also consider that FGB does have a high probability of success in the appeal. Accordingly, in my view, the extension sought should be granted as prayed.

The issues identified by FGB in the appeal

[20] Counsel for FGB submitted that the appeal raises the following issues of law:

i) whether the court erred in accepting the technical validity of the evidence as to service of the initiating documents; and

ii) whether the court erred in ruling in the respondent's favour on the issue of satisfactory service given that the application was concerned with a limitation defence.

Discussion

The absence of the endorsement

[21] Despite the various satellite points raised in the submissions, the nub of this appeal turns on whether the learned judge was correct to hold that the alternative method of service used to serve Mr Spence on 12 June 2013 was complete and effective, despite

the fact that no judge, master or registrar had, pursuant to rule 5.13(4) of the CPR, physically endorsed on the affidavit of the process server, that it satisfactorily proved service.

[22] Counsel for Mr Spence referred to **Insurance Company of the West Indies v Shelton Allen et al** [2011] JMCA Civ 33, in which Morrison JA (as he then was), after noting that personal service remains the primary method of service, outlined the framework of rule 5.13 of the CPR, which provides for an alternative method of service. Counsel focused on the observation made by Morrison JA at paragraph [55], where he said:

> "The plethora of references in rule 5.13 to the need for evidence of the likelihood of the claim form coming to the attention of the defendant by the claimant's choice of an alternative method of service seems to be to be a clear indication that the framers of the rule intended thereby to subject the option given to the claimant to the *tightest possible control*..." (Emphasis supplied)

[23] Counsel submitted that that observation was in keeping with his contention that the language of paragraph 4 of rule 5.13 is mandatory not directory. He highlighted what the court will style as a "trilogy of musts" in that paragraph, as it provides that, if the court is asked to take any step on the basis that the claim form was served pursuant to that rule, the registry must refer the affidavit to a judge, master or registrar who must consider the evidence, and must endorse on the affidavit whether it satisfactorily proves service.

[24] Counsel buttressed his submission by referring to another decision of Morrison JA (as he then was), this time relying on the case of **Hon Gordon Stewart OJ v Senator**

Noel Sloley Sr & Ors [2011] JMCA Civ 28. That matter interpreted Part 53 of the CPR which outlines the procedure governing committal for contempt of court, and confirmed that the requirement for a penal notice to be endorsed on an order to be served was mandatory and therefore a condition precedent that had to be satisfied before the court could convict for contempt. In his analysis, the learned judge of appeal relied on the English cases of **Vinos v Marks & Spencer plc** [2001] 3 All ER 984 and **Totty v Snowden** [2001] 4 All ER 577 and indicated at paragraph [54] that:

> "On the basis of these cases, it therefore seems to me to be clear that, although it is the duty of the court (as it is mandated to do by rule 1.2) to seek to give effect to the overriding objective when interpreting the rules or exercising any powers under the rules, the court is nevertheless bound, in cases in which the language of a particular rule is sufficiently 'clear and jussive', to give effect to its plain meaning, irrespective of the court's view of what the justice of the case might otherwise require."

[25] Then at paragraph [55] he went on to say:

> "So the question which naturally arises in the instant case is on which side of the line does the requirement in rule 53.10(1)(b) fall? It appears to me that, by the use of the word 'must', the framer of the rule intended to prescribe a mandatory requirement, which it is not open to the court to evade by reference to the overriding objective of the CPR. In other words, the court cannot sanction something which the rule plainly does not permit, by allowing an application for committal for contempt to be made by notice of application under Part 11, otherwise than as permitted by the express terms of rule 53.10(1)(b)…"

Counsel maintained that this case shows that the requirement for an endorsement is not new to the CPR on a whole.

[26] The reliance counsel for Mr Spence has placed on the case of **Hon Gordon Stewart OJ v Senator Noel Sloley Sr** is however misconceived. Counsel for FGB pointed out four things about the case which demonstrate that it cannot bear the weight of persuasion entrusted to it by counsel for Mr Spence. He pointed out that:

a) it concerns the endorsement of a notice under Part 53.3 of the CPR which dictates the exact wording of the notice that must be endorsed;
b) the endorsement is done by the litigant, as such any consequence of failing to do so is directly attributable to that litigant;
c) it requires endorsement on a document which must be served on the other party, demonstrating that the endorsement holds greater significance than administrative functions; and
d) it concerns a notice that puts the litigant on alert that an order may be made affecting his/her liberty or personal property.

[27] These are all significant distinctions from the situation that faced the registrar, who only had to consider whether Mr Spence had been properly served, thus enabling a default judgment to be entered against him assuming all else was in order. Unlike Part 53, rule 5.13 does not prescribe the manner and form of the endorsement and the failure to strictly comply with the rule did not prejudice the appellant. These telling observations were made in the instant case by Edwards J (as she then was), at paragraphs [37] and [50] of her judgment respectively.

The reliance on the purposive rule of interpretation

[28] I therefore agree with counsel for FGB that Edwards J was correct in holding at paragraph [43] of her judgment that, "a purposive approach must be taken in interpreting these rules" and in concluding at paragraph [44] that:

> "[I]t is the grant of the request to the registrar which actually signifies her satisfaction that service is satisfactorily proven and not the technicality of manually writing or even stamping on the affidavit."

[29] The case of **McMonagle v Westminster City Council** [1990] 1 All ER 993, relied on by counsel for FGB, outlines what this court considers to be the correct approach to determining whether the purposive rule should be employed in statutory interpretation. In **McMonagle,** the appellant challenged his conviction under a statute that required licensing of a "sex encounter establishment". He argued that his establishment was not captured by the legislation, as the statute mandated licensing of establishments, "which are not unlawful" and the acts occurring at his establishment amounted to serious public indecency that was criminalised at common law. The English Court of Appeal, in making short shrift of his argument, adopted a purposive approach to determine the intention of parliament. At page 997, the court stated:

> "It seems to me manifestly absurd to suppose that the intention of the legislation was to subject to licensing control only those establishments conducted in the least offensive way and to leave those which pander more outrageously to the taste of the voyeur immune from any control or legal restraint save such as might be imposed by the possibility of conviction by a jury of a public indecency offence.
>
> For these reasons I entertain no doubt in my own mind that we should be giving effect to the true intention of the legislature if we

> could avoid this absurdity by treating the phrase 'which is not unlawful' in each of the sub-paragraphs of paragraph 3A where it appears as mere surplusage.
>
> ...
>
> The presumption that every word in a statute must be given some effective meaning is a strong one, but the courts have on occasion been driven to disregard particular words or phrases when, by giving effect to them, the operation of the statute would be rendered insensible, absurd or ineffective to achieve its evident purpose."

[30] The same principle is applicable to the interpretation of rules. I therefore agree with counsel for FGB that Edwards J was correct to find (at para. [41] of her judgment), that interpreting rule 5.13(4) to mean that the endorsement must be written on the affidavit would be contrary to the intention of the drafters. It is useful to quote, *in extenso,* paragraph [44] of Edwards J's judgment, where the learned judge fully disclosed her mind on the intention of the drafters. She stated:

> "To my mind, Rule 5.13 (5) goes further to show that what the drafters were concerned with, ultimately, was the fact that, on the affidavit, it is demonstrated that there was actual service of the documents, meaning that there is clear evidence that the documents have and or will be brought to the attention of the intended party. This intention is made clear by the fact that, if the court does not approve the method of alternative service, the parties are given another opportunity, although at the judge's discretion, to serve the documents by substituted service. It is clear that the real intention is to dispel any doubts that the documents have been brought to the defendant's attention. It is the grant of the request made to the registrar which actually signifies her satisfaction that service is satisfactorily proven and not the technicality of manually writing or even stamping on the affidavit. Most importantly, a literal approach to the interpretation of the word 'endorse', in this context, does not operate to further the overriding objective, of dealing with cases justly."

[31] Thus, I agree with the submission of counsel for FGB that, "[t]he court…applied the meaning which most closely adheres to that purpose. The court avoids the hardship litigants would face in the event that their judgments (a thing of value) would be taken away by an error that they could neither prevent nor commit".

[32] Finally, on the issue of the learned trial judge's utilisation of the purposive rule of interpretation, counsel for Mr Spence argued that it is well known that a court will not exercise its discretion in favour of a claimant when to do so would deprive a defendant of a limitation defence. He relied on **Morris v Muir** (1979) 28 WIR 131 for that statement of principle. The short answer to that contention is found in the submission of counsel for the FGB with whom I agree. The principle in **Morris v Muir** has absolutely no relevance to this situation, as, in applying the purposive rule of interpretation, Edwards J was not exercising her discretion but applying the legal rule of interpretation that was most appropriate in the circumstances of the case.

The effect of setting aside a default judgment as opposed to setting aside an endorsement / Did the issue of service properly arise in the application to strike out the amended claim?

[33] Apart from arguing that the court should have applied the literal mandatory interpretation of rule 5.13, counsel for Mr Spence submitted that Edwards J confused setting aside the endorsement with setting aside the default judgment. Further, he advanced that the learned judge was wrong to have ruled on the issue of satisfactory proof of service while hearing the appellant's application to strike out, as the court was not then being asked to take any step on the basis that the claim form was served. That step, counsel argued, had already been taken by the registrar when she granted FGB's

request for default judgment. He further submitted that in this case, the default judgment was set aside for a reason other than non-service, hence that issue remained live.

[34] However, counsel noted, Mr Spence was unable to challenge that by applying under rule 5.13(6) as there was no endorsement to set aside. Counsel maintained that it would be in an application under rule 5.13(6) that Mr Spence would have put forward the evidence supporting the likelihood that the claim form never came to his attention. Therefore, Mr Spence had been denied and deprived of that opportunity or right by not being able to apply to set aside the endorsement. This in a context where counsel advanced that, without the use of the endorsement, it was difficult to differentiate alternative methods of service from personal service and it would make rule 5.13(6) useless.

[35] The submissions of counsel for FGB are a complete answer to these complaints. As advanced by counsel, I accept that the only likely circumstance where an endorsement of service would need to be set aside is where it is successfully proven that the relevant document(s) was (were) not in fact served.

[36] There is also no inconsistency in the possibility of a default judgment being set aside and an endorsement still being valid and extant. As pointed out by counsel for FGB, a defendant served initiating documents by an alternative method and against whom a default judgment was obtained, may seek to set aside that judgment on the basis of his or her prospect of success or on other discretionary grounds. In that event, the default judgment would be set aside and the endorsement would still be in effect. If a defendant

maintained that he or she was not served, that point should be taken in an application to have the judgment set aside. Mr Spence, therefore, did not lack a forum or mechanism to challenge the method of service. In fact, he did just that in his application to set aside the default judgment as of right, albeit he was successful for a reason other than that which he had advanced. Consequently, Mr Spence suffered no impediment to challenging the service on him by the fact that he could not utilise rule 5.13(6) due to the absence of a physical endorsement on the process server's affidavit.

[37] Concerning the submission that the issue of service was not before the court in the application to strike heard by Edwards J, that assertion is untenable. As submitted by counsel for FGB, the central contention grounding the application which spawned this appeal, is that the matter was statute barred as a result of non-service of the initiating documents rendering the subsequent service of the amended documents nugatory. The learned judge could not have properly ruled on the appellant's application without examining the very basis of that application, that is, whether the initiating documents were indeed not properly served. The learned judge was not herself taking a step under rule 5.13(2)(b) but was considering whether the registrar did have a proper basis to take the step of issuing the default judgment when she did, having regard to the absence of the endorsement on the affidavit, and that the default judgment had been set aside for a reason other than non-service. The appellant's submission on this point is wholly without merit.

The alternative finding that the requirement for the registrar to endorse the affidavit is a technical requirement purely for administrative purposes

[38] Counsel for Mr Spence contends that the learned trial judge erred when she found that the endorsement process was purely technical, as the rule indicates that the endorsement can also be done by a judge or master who perform judicial and not administrative functions. With respect, that reasoning is flawed on at least two bases. Firstly, because judges or masters carry out judicial functions does not mean that they cannot also carry out administrative functions that support the discharge of those judicial functions. Secondly, by reverse logic if counsel is correct it would mean that whenever the registrar is mentioned as being able to do something that a judge or master can also do, it would mean *ipso facto* that the registrar was carrying out a judicial function. I do not believe either proposition is supported by the relevant legislation or rules. Further, in any event, the particular action that is under consideration is the principal determinant of whether the step being taken is administrative or judicial.

[39] There is no need to go outside the findings of the learned trial judge on this issue, which I hold to be correct. Three quotations from her judgment are apt at this point. At paragraphs [49] – [50] she stated:

> "[49] A registrar has administrative duties as set out in section 12 of the Judicature (Supreme Court) Act including to 'enter satisfaction and assignments of judgments'. As was said by Rattray P in **Moncure v Delisser** [1997] 34 JLR 423 at 425 paragraph I, the registrar carries out administrative, rather than adjudicatory functions when entering a default judgment. Although this was a pre CPR decision, I venture to say the CPR has not changed that position. The grant of default judgment by the registrar under the CPR still remains purely an administrative act.

> [50] To my mind, therefore, in the case of the grant of a request for default judgment after service, pursuant to Rule 5.13, it is the grant of the request by the registrar which truly shows that the registrar is satisfied that the affidavit of service is compliant with the requirements of that rule. The requirement for the registrar to endorse the affidavit is a technical requirement purely for administrative purposes. No prejudice to a defendant accrues from the failure to make such an endorsement."

[40] Then at paragraph [58] she indicated:

> "…The litigant cannot be held accountable for the failure of the registrar to carry out a technical, mechanical and administrative act of writing on the back of the affidavit, if indeed that is what the rules require. For the endorsement serves no other purpose than to signify satisfaction that service was proved, since there is no requirement for this endorsement to be served on anyone…"

[41] I therefore accept the submissions of counsel for FGB and adopt the reasoning of the learned judge to the effect that the failure of the registrar to endorse on the affidavit, if indeed she was mandated so to do, was merely a technical administrative matter that occasioned no prejudice whatsoever on the appellant. This challenge also fails.

Conclusion

[42] Based on the analysis conducted, it is clear that the appellant's appeal cannot succeed. I agree with the analysis of the learned trial judge when she indicated that the application before her amounted only to "tactical posturing". The appeal should be dismissed, with costs to the respondent to be agreed or taxed.

MORRISON P

ORDER

1) Time within which to file respondent's submissions in this matter extended to 3 July 2019, the date they were filed.

2) Appeal dismissed.

3) Costs to the respondent to be agreed or taxed.