

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 36/2018

**BEFORE: THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE HARRIS JA**

**BETWEEN NATIONAL COMMERCIAL BANK OF APPELLANT
JAMAICA LIMITED**

AND LAMECH M E GOODEN RESPONDENT

Written submissions filed by Myers, Fletcher & Gordon for the appellant

Written submissions filed by Shelards for the respondent

5 March 2021

PROCEDURAL APPEAL

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

SINCLAIR-HAYNES JA

[1] I have read in draft the judgment of my learned sister, Straw JA and agree with the reasoning and conclusion.

STRAW JA

[2] This appeal is concerned with a single issue, namely whether the learned judge properly exercised his discretion when he ordered the appellant ("NCB") to pay the costs on an application made by the respondent ("Mr Gooden").

Background

[3] Sometime in 2015, Mr Gooden commenced a claim in the Supreme Court against Desseta Marsie-Hazen ("the executrix"), in her capacity as the executrix of the estate of Barbara Elaine De Castro ("Mrs De Castro"). This claim (assigned claim number 2015HCV05727) concerned Mr Gooden's interest in real property (registered at volume 1180 folio 297 of the Register Book of Titles) which he owned jointly with Mrs De Castro as tenants in common.

[4] On 5 March 1987, the same day that Mr Gooden and Mrs De Castro were registered on the title, a mortgage was registered in favour of the National Commercial Mortgage and Trust Limited. Based on a letter Mr Gooden received from National Commercial Mortgage and Trust Limited, dated 1 September 1997, it appears this entity was informed of Mrs De Castro's death, as there was a notation "(DEC'D)" beside Mrs De Castro's name in the heading. This mortgage was subsequently vested to NCB, which is how NCB came to be in possession of the duplicate certificate of title ("the title"). For completeness, it should be noted the mortgage was discharged on 19 August 2003.

[5] In respect of claim number 2015HCV05727, Mr Gooden obtained orders against the executrix who had failed to reseal the grant of probate obtained in Mrs De Castro's estate in the British Virgin Islands. Included in these orders granted by Daye J on 9 February 2017, were those permitting Mr Gooden to sell the property and directing how the proceeds of sale should be applied. It is also noted that, in the event that the

executrix refused, the Registrar of the Supreme Court was also empowered to sign all necessary documents to effect the sale of the property.

[6] The executrix filed a notice of appeal against these orders but her appeal was subsequently struck out and her attorneys-at-law removed their names from the record in respect of the appellate proceedings.

[7] In an effort to obtain the fruit of his judgment, Mr Gooden sought to recover the title from NCB. To this end, his attorneys-at-law wrote to NCB in May 2020. In order to facilitate this request, NCB requested an authorisation letter from Mr Gooden and his instructions to release any information or documentation to his attorneys-at-law. What followed was further correspondence between Mr Gooden's attorneys-at-law and NCB, in particular, a request from NCB for documentation in regards to Mrs De Castro. Up to July 2020, Mr Gooden was not able to satisfy NCB's request nor did he provide alternative documentation in order to recover the title.

[8] NCB had never been made a party to claim number 2015HCV05727, but was brought into the matter by virtue of an application for court orders filed 14 August 2020. This application sought two orders which were granted in practically identical terms by Daye J ("the judge") on 30 November 2020:

"1) The National Commercial Bank Jamaica Limited is hereby ordered to release the Duplicate Certificate of Title registered at Volume 1180 Folio 297 of the Registrar [sic] Book of Titles for the property located at Catherine Mount Estate, Lot 461, Westgate Hills, Montego Bay, St. James forthwith to Shelards, Attorneys-at-Law, for and on behalf of Lamech M.E. Gooden, registered proprietor.

2) Costs of the Application to the Applicant to be agreed or taxed...”

[9] NCB is aggrieved by the second order which requires it to pay the costs of Mr Gooden’s application (hereinafter referred to as “the costs order”). This forms the subject of the appeal at bar. On 10 December 2020, the judge granted leave to appeal to NCB.

The appeal

[10] By way of notice of appeal filed 22 December 2020, NCB is seeking to set aside the costs order and is seeking costs on its appeal as well as costs on Mr Gooden’s application. The precise orders sought are as follows:

“(1) The appeal is allowed.

(2) Numbered paragraph 2 of the Order of the Hon. Mr Justice C. Daye made on 30 November 2020 is set aside.

(3) Costs of the appeal and of the Respondent’s application in the Court below are awarded to the Appellant and are to be taxed, if not agreed.

(4) Such further and other relief as may be just.”

[11] NCB’s ground of appeal is as follows:

“1. The learned judge failed to properly direct himself on the applicable principles in the exercise of his discretion in awarding costs, in that he:

a. erred in not awarding the costs of Mr Gooden’s application to NCB having regard to the rule that it is the party to the proceedings who must pay the costs of the non-party where the party seeks an order from the court requiring the non-party to perform some act;

- b. erred in failing to appreciate that these were not circumstances in which NCB, being a non-party, should have been ordered to pay the costs of Mr Gooden's application as there was no wrong-doing by NCB necessitating his application to the court; and
- c. failed to consider factors militating against a costs award in Mr Gooden's favor, including his conduct before and during the hearing of his application, which conduct included several material non-disclosures."

The submissions on behalf of NCB

[12] Counsel for NCB submitted that the essential question on this appeal is whether the judge exercised his discretion judicially, having regard to all the circumstances, when he awarded costs to Mr Gooden. Reference was made to the principles recited in **Ivor Walker v Ramsay Hanson** [2018] JMCA Civ 19, and **the Attorney General of Jamaica v John Mackay** [2012] JMCA App 1.

[13] It was submitted that the judge did not properly exercise his discretion having regard to the following: (i) the exceptional nature of making cost orders against non-parties, such as NCB, (ii) there was no wrongdoing by NCB, and (iii) the conduct of Mr Gooden.

Costs orders against non-parties

[14] While part 64.9 of the Civil Procedure Rules, 2002 ("CPR") permits the making of costs orders against non-parties, it was submitted that such orders are quite exceptional. The fact that NCB has never been a party to claim number 2015HCV05727, meant that the request for an award of costs against it should have been considered exceptional based on the relevant principles and ought not to have been made. Rather,

the appropriate costs order would have been an award to NCB for having to appear in relation to Mr Gooden's application, in circumstances where the application was unnecessary and trespassed on the court's ability to allocate time and resources to other matters.

[15] It was submitted that the judge should have applied the principle, that where a non-party has been ordered by the court to perform some act at the instance of a party to proceedings, the non-party should be awarded its costs. Reliance was placed on the dictum of Morrison JA (as he then was) at paragraphs [21] and [23] of **Winston Finzi v Mahoe Bay Company Limited and anor** [2015] JMCA App 39A, where reference was made to an excerpt from Zuckerman on Civil Procedure, Principles of Practice. Counsel stated that the learned authors (in that excerpt), discussed circumstances where a party may be ordered to pay the costs of a non-party and gave as an example, that if a claimant required a bank to comply with a freezing order and provide information about a defendant's account or to freeze an account, the bank, being a non-party, will normally be entitled to look to the claimant for its costs.

[16] Following this example, it was submitted that, since Mr Gooden's request was for NCB to release the title to him in circumstances where the bank was already assisting him by requesting the documents necessary to action his request, it is he who should have been ordered to pay NCB's costs.

No wrong doing by NCB

[17] Counsel stated that Mr Gooden's application was based on the unsubstantiated allegation that NCB refused to release the title to him. On the contrary, it was submitted that NCB was assisting Mr Gooden, who was one of two joint proprietors to the property. NCB's records reflected that Mrs De Castro was still registered as a joint proprietor and there was nothing on the title which noted her death. NCB's position is that there was nothing improper about its request to Mr Gooden's attorneys-at-law to provide a letter of authorisation indicating that they acted for both proprietors, namely Mr Gooden and Mrs De Castro; that this was particularly so in circumstances where Mr Gooden's interest in the property was as a tenant in common with Mrs De Castro, which entitled him to a quantified proportion of the beneficial interest and made it impermissible for him to assert an interest to the whole.

[18] It was contended that it was this very principle, which informed the judge's finding (made orally on Mr Gooden's application) that NCB would not be exposed to liability, if it complied with the court's order to release the title to Mr Gooden after the court was satisfied that the executrix was served with the court orders and refused to comply. Counsel submitted that the supplemental affidavit of Christina Thompson filed on 27 November 2020, after the hearing of Mr Gooden's application had commenced, was for that very purpose. It provided details of the appellate proceedings initiated by the executrix and the orders emanating from this court.

The conduct of Mr Gooden

[19] Reference was made to rule 64.6 of the CPR and in particular the provision that courts may depart from the general rule that unsuccessful parties must be ordered to pay the costs of successful parties. Specifically, the court was referred to rules 64.6(2) and (3) which state that the court may order the successful party to pay all or part of the costs of an unsuccessful party or make no order as to costs, and that in deciding who should be liable to pay costs, the court must have regard to all the circumstances.

[20] The following circumstances, as set out in rule 64.6(4), were also highlighted to this court, (i) the conduct of the parties both before and during the proceedings, (ii) the reasonableness of a party in pursuing a particular allegation, (iii) the manner in which a party has pursued his case or a particular allegation, (iv) whether a claimant who succeeds has exaggerated his claim, and (v) whether the claimant gave reasonable notice of intention to issue a claim.

[21] On application of these principles, it was submitted that NCB should have been ordered its costs. This is so, because at the time NCB made the request of Mr Gooden by way of its letter dated 14 July 2020, it had no knowledge of Mrs De Castro's death and that Mr Gooden had obtained an order against the executrix of her estate. None of Mr Gooden's correspondence with NCB disclosed this information. Rather than complying with NCB's request for a letter of authorisation or disclosing the aforesaid information, Mr Gooden filed an application against NCB.

[22] Counsel contended that it was upon being served with Mr Gooden's application on 14 October 2020, that NCB became aware of Mrs De Castro's death and the order in Mr Gooden's favour. Further, it was contended that there were other matters that Mr Gooden did not disclose in his application, which were only revealed to NCB as a result of the judge's own enquiry which led to the supplemental affidavit referred to above being filed. These matters related to the following:

- a) the order in favour of Mr Gooden granted by Daye J on 9 February 2017 was appealed and that appeal was struck out;
- b) prior to the striking out of the appeal, the attorneys-at-law removed their name from the record as appearing for the executrix but no similar application was pursued in the Supreme Court; and
- c) the executrix was served personally with the orders emanating from this court.

[23] In all the circumstances, it was contended that Mr Gooden's application ought not to have been made and it was not enough for the judge to simply find that Mr Gooden was put to the expense of pursuing the application. The facts militated against an award of costs in Mr Gooden's favour and instead supported an award of costs in NCB's favour.

Preliminary point – application for extension of time

[24] The submissions on behalf of Mr Gooden were contained in bundle filed on 26 February 2021. This took place 52 days after being served with NCB's written submissions. An application for extension of time to file and serve the submissions with an affidavit in support were filed on 1 March 2021. The orders sought are as follows:

- "1) The Respondent be permitted an extension of time to file and serve his Written Submissions.
- 2) The Written Submissions on behalf of the Respondent filed on February 26, 2021 be allowed to stand as if filed in time;
- 3) The time for service of this Application be abridged;
- 4) Such further and/or other relief as the court shall deem just."

[25] This application is made pursuant to rule 1.7(2)(b) of the Court of Appeal Rules, 2002 ("CAR") which permits the court to extend or shorten the time for compliance with any rule, practice direction, order or direction of the court. The issues required to be addressed in examining applications for extension of time in which to comply with the rules of procedure in this court were set out in **Leymon Strachan v The Gleaner Co Ltd and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999. The relevant principles were summarised by Brooks JA (as he then was) at paragraph [31] of **RBC Royal Bank (Jamaica) Limited and others v Ocean Chimo Limited** [2016] JMCA App 22 as follows:

"...The relevant principles require the court to consider the length of the delay, the reason for the delay and the prospects of success of the proposed appeal. Those factors

are however to be considered in the overarching context of the prejudice to the other parties to the appeal and of the overriding objective of dealing with cases justly.”

[26] The length of delay, while not insignificant, cannot be described as inordinate. The reason for the delay, which was advanced by way of the affidavit of Christina Thompson, related to disruptions in the operations of the law office as a result of the COVID-19 pandemic. In particular, a member of staff and some clients tested positive for the virus which resulted in the office not being fully operational and necessitated persons to enter quarantine. In light of the circumstances of this pandemic affecting the island at this time, the explanation can be regarded as reasonable. Further, it cannot be said that any prejudice accrued to NCB, who were not hindered by any delay attributable to the filing and serving of submissions out of time.

[27] I would observe, as Edwards JA did in **Sean Greaves v Calvin Chung** [2019] JMCA Civ 45 (at paragraph [18]), that respondents to procedural appeals are not obliged to file and serve written submissions in opposition. Rule 2.4(2) of the CAR, provide that respondents may file written submissions in opposition within 14 days of receiving the appellant’s submissions. Where respondents file submissions out of time and no application for extension of time has been made, there will be no regard to the submissions. Having regard to the overriding objective of dealing with cases justly and the circumstances existing in this case, the application for extension of time to file and serve written submissions is granted and regard will be had to them in the disposal of this appeal.

The submissions on behalf of Mr Gooden

[28] The essence of the submissions on behalf of Mr Gooden is that the learned judge did not err in the exercise of his discretion. It was emphasised that the judge had an unparalleled understanding of the matter, as he presided over the claim and was familiar with Mr Gooden's hardships in trying to realise his interest in the subject property.

[29] It was submitted that NCB was aware of Mrs De Castro's death from as far back as 1997. This was evidenced by way of letter dated 1 September 1997, where NCB wrote to Mr Gooden and Mrs De Castro was referred to as deceased. This letter was exhibited to the affidavit of Christina Thompson filed 8 December 2020. Further, it was submitted that NCB knew of the claim against the executrix, as the affidavit of Christina Thompson filed 14 August 2020, referred to the previous orders of Daye J permitting Mr Gooden to sell the property.

[30] It was also contended (merely through submissions with no affidavit evidence in that regard) that there was some verbal communication by way of telephone conversations between Christina Thompson and Litrow Hickson (counsel for NCB), that no authorisation could be obtained either from Mrs De Castro or the executrix who refused to act in the estate. Mr Hickson was also informed that there was a court order, allowing the Registrar of the Supreme Court to sign on behalf of Mrs De Castro's estate for the purpose of selling the property.

[31] Further, it was disputed that the supplemental affidavit of Christina Thompson filed on 27 November 2020 was ordered by the learned judge. Rather, it was submitted that counsel for NCB failed to take action to satisfy himself, that the executrix was properly served and that counsel for Mr Gooden opted to file this affidavit, purely to assist in moving the matter forward. It was emphasised that the learned judge made the order (on 30 November 2020) that the title be released to Mr Gooden and that counsel for Mr Gooden did not pursue any order for costs; and that it was counsel for NCB who asked the judge to address the issue of costs and requested an order in its favour. It was at this time, counsel contended, the judge refused and ordered costs to Mr Gooden, having regard to all the circumstances.

[32] It was submitted that, in all the circumstances, it was NCB who acted unreasonably in requiring a letter of authorisation from Mrs De Castro, knowing she was deceased. Counsel contended that Mr Gooden had no choice but to seek an order from the court for the title to be released to him. As such, this court should not lightly interfere with the judge's exercise of discretion which could not be described as aberrant.

[33] Reference was made to the **Ivor Walker** case (also relied on by NCB) in support of the contention that the judge had an unfettered discretion in making costs orders and that there was no legal principle which the judge wrongly applied.

[34] In relation to NCB being a non-party to the claim, it was submitted that Mr Gooden had to proceed against NCB as a party to the application, on the basis that NCB

refused to release the title to him despite its mortgage being discharged by him decades earlier. Finally, there was an attempt to distinguish the case of **Winston Finzi** on which NCB relied. Counsel submitted that Asset Securities Limited (“ASL”) had requested the court to consider costs; that ASL was merely an interested party and the contention that its costs should be paid was not accepted. Counsel stated that this factor was to be contrasted with NCB, who was named as a 2nd respondent in the application. A further point of distinction was that, in **Winston Finzi**, the applicants were seeking an injunction against the respondent to prevent the sale of their property under a power of sale, pending the appeal and the injunction was refused. Counsel submitted that in the present case, Mr Gooden repeatedly requested that the title be returned to him and NCB refused, despite the fact that it had no interest in Mr Gooden’s title. It was against this background, counsel contended, that the judge exercised his discretion to order that NCB pay Mr Gooden’s costs of having to go to court in order to obtain his title.

Discussion and analysis

[35] In civil proceedings, the making of an order for costs is indubitably an exercise of a judge’s discretion (see: section 28E(1) of the Judicature (Supreme Court) Act). As such, in reviewing the exercise of Daye J’s discretion, this court must have regard to what is often called the Hadmor principle (from **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042). Morrison JA (as he then was) summarised the principle at paragraph [20] of the **Attorney General of Jamaica v John Mackay** [2012] JMCA App 1 thus:

“[20] This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be shown to be demonstrably wrong, or where the judge’s decision ‘is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it.’”

[36] The correspondence exhibited to the affidavit of Christina Thompson filed 14 August 2020, between Mr Gooden’s attorneys-at-law and NCB, tends to support NCB’s contention that it was not made aware that Mrs De Castro was deceased nor of the court proceedings and orders of the court in relation to the executrix. There are four letters exchanged between 14 May 2020 and 14 July 2020. Two of these were from Mr Gooden’s attorneys-at-law (under the hand of M Martina Shelton) and two in response from NCB’s legal counsel (under the hand of Miguel Williams).

[37] There is no mention of the death of Mrs De Castro in any of the letters from Mr Gooden’s attorneys-at-law. Save for the acknowledgment that Mr Gooden is one of the registered proprietors in the initial request letter (dated 14 May 2020), nothing is said of Mrs De Castro at all. There is no mention of her executrix or even that there was a claim which resulted in an order being made on 9 February 2017, with respect to the subject property.

[38] Mrs De Castro is first mentioned in the correspondence of 14 July 2020, where NCB’s legal counsel states “[a] search of the Bank’s records revealed that we are in possession of the captioned duplicate Certificate of Title. However, our observation of the Title revealed that Barbara Elaine De Castro is also one of the registered proprietors

recorded as tenants in common on the Title". The letter continues by indicating that NCB would require an authorisation letter from both registered proprietors advising that Shelards was acting on their behalf and their instructions to deliver the title to the firm. Further, a request was made for photo identification of Mrs De Castro (Mr Gooden's own having already been received by NCB). It is also noted that NCB was not satisfied with the authorisation letter that it received from Mr Gooden, as it did not state that the title could be delivered to Shelards. A new authorisation letter was therefore requested and the letter ended with an assurance that, once NCB received the documentation requested, it would communicate further regarding Mr Gooden's request for the delivery of title.

[39] After this letter (dated 14 July 2020) was received by Shelards on 22 July 2020, it appears that the next move by the attorneys for Mr Gooden was to file the notice of application and supporting affidavit of Christina Thompson (on 14 August 2020) which gave rise to this appeal. There is no dispute that it is this affidavit which referred to the 2017 court order of Daye J. There is no mention of that order in any of the correspondence between M Martina Shelton and Miguel Williams. Further, it is apparent that NCB retained external counsel, Myers, Fletcher & Gordon, once the matter became litigious. As such, it would appear that even if the court could consider any verbal correspondence which supposedly took place between Christina Thompson and Litrow Hickson, this would have taken place after the application had been filed. Thus, it could not be said that NCB knew of the state of affairs before it was served with the notice of

application, as this information was certainly not communicated by M Martina Shelton in any of her letters.

[40] Further, the letter dated 1 September 1997 exhibited to the affidavit of Christina Thompson filed 8 December 2020, which supposedly shows that NCB was aware of Mrs De Castro's death, cannot be regarded with much weight. This is because the said letter was from NCB Trust and Merchant Bank Limited (a member of the NCB group of companies) the original mortgagee. It would be recalled that the mortgage was vested to NCB from NCB Trust and Merchant Bank Limited. It cannot be said with any certainty, that the knowledge of a separate legal entity in 1997, could be properly attributed to another entity some 28 years later. In any event, there was ample opportunity for Mr Gooden's attorneys-at-law to inform or restate the state of affairs and make full disclosure of same to NCB. NCB cannot be said to have acted unreasonably or be recalcitrant in processing Mr Gooden's request.

[41] There are no reasons available to this court from the learned judge as to how he reached the decision to grant costs to the respondent, but in all the circumstances as set out and considered, it is plainly unjust, as the inference can be drawn that there has been a failure to properly exercise his discretion. This is so, because NCB was a non-party to the claim and it is apparent that the learned judge failed to take relevant material into consideration, in particular, factors set out in part 64 of the CPR. It is therefore open to this court to review the circumstances and make its own determination.

[42] Rules 64.6(3) and (4) of the CPR provide:

“(3) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(4) In particular it must have regard to –

(a) the conduct of the parties both before and during the proceedings;

(b) ...

(c) ...

(d) whether it was reasonable for a party –

(i) to pursue a particular allegation; and/or

(ii) to raise a particular issue;

(e) the manner in which a party has pursued –

(i) that party’s case;

(ii) a particular allegation; or

(iii) a particular issue;

(f) ...

(g) ...”

[43] The factual matrix reveals that NCB did not arbitrarily refuse to deliver the title to Mr Gooden, but merely requested appropriate documentation in the matter in order to process the request. This could have been easily achieved, if the attorneys-at-law acting for Mr Gooden had responded in a reasonable manner. They failed to do so. They could have sent all the relevant documentation to NCB, including the history of the claim against the executrix. There is merit in the submissions of counsel for NCB

regarding the fact that there was no wrongdoing on the part of NCB. This has not been contradicted by the evidence that would have been before the learned judge.

[44] The words of Phillips JA in **Ivor Walker v Ramsay Hanson** are particularly apt:

“[42] ... There is no entitlement to costs. The order for costs always remains within the complete unfettered discretion of the court, although of course the discretion must be exercised judicially. There are so many factors that are open to the consideration of the court when the order of costs is being contemplated. They are set out in detail in parts 64 and 65 of the CPR and they always include a consideration of the conduct of the parties.”

[45] When one considers the untimely and unreasonable application by Mr Gooden that brought NCB before the court, the proper conclusion would be that costs should have been awarded to NCB.

[46] In reflecting on all the circumstances, however, it is clear that Mr Gooden should not have to bear the consequences of the unreasonable actions of his attorneys-at-law. I am therefore of the opinion that a wasted costs order should be considered against Shelards pursuant to rule 64.14 of the CPR (which applies by virtue of rule 1.18 of the CAR).

Notice regarding wasted costs

[47] In that event, notice is hereby given in accordance with rule 64.14(3) of the CPR. The grounds on which I am minded to disallow costs against Mr Gooden and direct his attorneys-at-law to pay wasted costs are contained in paragraphs [36] to [40] and [43].

The costs that would be incurred by Mr Gooden are as a result of the unreasonableness in the conduct of Shelards in failing to provide NCB with material information in the course of their correspondence, prior to filing the application in the Supreme Court.

[48] Further, in accordance with rule 64.14(5), the attorneys-at-law for the respondent are permitted to attend before this court on the date and time as set out in the orders below to show cause why a wasted costs order should not be made.

HARRIS JA

[49] I have read in draft the judgment of my learned sister, Straw JA. I agree with her reasoning and conclusion and have nothing useful to add.

SINCLAIR-HAYNES JA

ORDER

- 1) The appeal is allowed.
- 2) The order of Daye J at paragraph 2 made on 20 November 2020 is set aside.
- 3) Costs of the appeal and in the court below to the appellant.
- 4) The court is considering to make a wasted costs order pursuant to rules 64.13(1) and 64.14(1)(b) of the Civil Procedure Rules for the attorneys-at-law for the respondent to pay the costs to the appellant in the appeal and in the court below.

- 5) The attorneys-at-law for the respondent are to file and serve written submissions on or before 16 March 2021 showing cause why a wasted costs order should not be made.

- 6) A hearing in relation to the wasted costs order is set for 25 March 2021 at 2:00 pm via Zoom video conference.