



[2020] JMSC Civ 70

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2008 HCV 01887

BETWEEN	THE COMMISSIONER OF LANDS	CLAIMANT/APPELLANT
AND	HOMEWAY FOODS LIMITED	1st DEFENDANT/RESPONDENT
AND	STEPHANIE MUIR	2nd DEFENDANT/RESPONDENT

CHAMBERS

Miss Christine McNeil and Miss Carla Thomas instructed by the Director of State Proceedings for the appellant

Miss Carol Davis for the respondents

HEARD: 20 January and 24 April 2020

Compensation for mesne profits– Whether compensation includes the award of interest - Award of interest - Whether Registrar has discretion to award interest – Whether the compensation for mesne profits attracts interest payable on judgment debts - Judicature (Supreme Court) Act ss. 12 and 51. Judicature (Supreme Court) Additional Powers of Registrar Act ss. 3 (1) and 5 (1). Law Reform (Miscellaneous Provisions) Act. Civil Procedure Rules 12, 14 and 65.23.

EVAN BROWN, J.

Introduction and background

[1] This is an appeal from a decision of the Registrar of the Supreme Court of Jamaica in which she assessed mesne profits and awarded interest pursuant to a judgment under the ***Land Acquisitions Act***. The matter came before the Registrar by virtue of the following order of the learned trial judge (made on 31 July 2012):

“Homeway is entitled to compensation for mesne profits from the date of it relinquished possession until the date of recovery of possession. If not agreed within 60 days of this Order, these mesne profits are to be assessed by the Registrar of the Supreme Court”.

By notice of assessment, filed on 27 July 2018, the respondents applied to the Registrar for the assessment of mesne profits, pursuant to the above order. The sole ground of the application disclosed that the parties had failed to reach an agreement. The matter therefore came on for assessment before the Registrar on 11 February 2019.

[2] The details of the Registrar’s order appear below:

1. The parties agree to accept the average of the 2 assessors as the amount for mesne profits for the period May, 2006 to May 2016, at \$16,129,657.00.
2. The Registrar assessed the applicable interest rate on mesne profits at 15% per annum. The Registrar orders that that interest rate be applicable for the period May 2006 to May 2016.
3. The Registrar orders that the interest rate of 6% per annum be applicable on the assessed sum from today’s date to the date of payment.
4. The Registrar assessed that the sum due and owing to the defendants is \$39,024,875.00 with interest at 6% per annum from today’s date until the date of payment.

- [3] Issue was taken with two findings of law and one finding of fact. The contentious findings of law were, firstly, the applicable interest rate on the mesne profits is 15% per annum and two, the interest of 6% is applicable on the assessed sum from “today’s date”. The finding of fact under challenge was the sum due and owing to the defendants is \$39,024,875.00 with interest at 6% from today’s date until the date of payment.
- [4] Three grounds of appeal were argued, adumbrated alphabetically:
- (a) The Registrar erred in law in awarding an interest rate of 15% on the sums agreed as mesne profits as the Registrar had no jurisdiction to award interest.
 - (b) The Registrar erred in awarding an interest of 6% on the sums agreed as mesne profits as this was not a judgment debt.
 - (c) The Registrar erred in finding that the sum due and owing to the defendants is \$39,024,875,00 with interest at 6% per annum.

Issues

- [5] The substantive and overarching issue raised by this appeal is whether the Registrar has the power to award interest. Consequently, grounds (a) and (b) will be addressed together, for the most part. A second and subsidiary issue is whether it was competent to award interest of 6% per annum on the sum agreed as mesne profits. Ground (c) raises no point of law. The question of fact raised here is purely mathematical and its resolution depends on the answer to the first issue.

Ground (a)

- [6] Under ground (a), Miss Thomas submitted that the post of Registrar of the Supreme Court was created by statute and referred to sections 11 and 12(1) of the **Judicature (Supreme Court) Act**. Consequently, the Registrar can only perform duties provided for either under the **Judicature (Supreme Court) Act** or other

statutory instruments. It was further argued that the nature of the duties of the Registrar are all administrative. Here reliance was placed on the last clause of section 12(1). Additional fortification for these submissions was sought in the case of ***Jennifer Messado and Company v North America Holdings Company Limited*** [Consolidated] (unreported) Supreme Court Civil CI No.2011 HCV 0493 judgment delivered 20 June 2014 (***Jennifer Messado***).

- [7] Continuing her submissions, it was urged that the Registrar may, however, make orders competent to be made by a Judge in Chambers but only as circumscribed and circumscribed by section 13 of the ***Judicature (Supreme Court) Act***. The powers of the Registrar are further delineated by section 3(1) of the ***Judicature (Supreme Court) Additional Powers of Registrar Act***.
- [8] Learned counsel then postulated that the duties of the Registrar are as prescribed by the foregoing provisions and if they do not confer on her the power to award interest on mesne profits under the ***Land Acquisition Act***, then the Registrar lacks jurisdiction. What the court said in ***Jennifer Messado***, supra, at paragraph 53, was cited in support of this submission.
- [9] It was learned counsel's contention that the award of interest is discretionary. This was especially so in this case where the respondent requested interest at the rate of 20% per annum. So that, the Registrar was called upon to exercise a discretion first, whether to grant interest and secondly, at what rate. In both instances, therefore, the Registrar was called upon to exercise a discretion. Reference was then made to the evidence of weighted loan interest rates obtaining at the commercial banks over the period January 1996 to May 2018 which was placed before the Registrar. Since the award of interest calls upon the Registrar to exercise discretion, it falls outside section 12 of the ***Judicature (Supreme Court) Act***. That is to say, it is not in the nature of a ministerial act. Furthermore, the award of interest does not fall within any of the functions set out in the schedule to the ***Judicature (Supreme Court) Additional Powers of Registrar Act***. The

inevitable conclusion, therefore, is that the Registrar erred when she awarded interest.

- [10] Learned counsel turned her attention to the duty of the Registrar to “make such investigations and take such accounts in relation to proceedings in the Supreme Court as the Court may direct ...”. The point urged here was that although it was the Court that ordered the Registrar to assess mesne profits, the order did not include a stipulation to award interest. Even if the court had done so, it would have been of no effect as a Judge could not have conferred on the Registrar a jurisdiction not stated in the legislative framework.

Ground (b)

- [11] Miss Thomas submitted that the award of mesne profits is not a judgment debt. It was a decision given by the Registrar. Therefore, the Registrar had no jurisdiction to award the accrual of 6% interest on the total award. Section 51 of the ***Judicature (Supreme Court) Act*** which prescribes an award of interest on judgment debt, was cited in support of this submission.

Ground (c)

- [12] The short submission was that this ground is the mathematical result of grounds (a) and (b). If it is that the Registrar had no jurisdiction to award interest, the sum due and owing would be the assessed mesne profits minus the awarded interest.

Respondents’ submissions

- [13] Learned counsel for the respondents did not point the court to any legislation which specifically authorises the Registrar to award interest. She submitted, however, that the assessment of compensation for mesne profits necessarily contemplates the assessment and award of interest. Counsel adverted to the duty of the Registrar under section 12 of the ***Judicature (Supreme Court) Act*** and submitted that the Registrar was particularly proceeding under the direction of a Judge. The Registrar, having been directed to assess compensation for mesne profits, in order

to put the aggrieved party in the position of recovering what has been lost pursuant to the principle of *restitutio in integrum*. Counsel insisted that that was what the Registrar did in this case.

- [14] Counsel then cited three cases to demonstrate the propriety of an award of interest at the commercial rate, and in circumstances where it had not been pleaded. In ***Jamaica Pre-Mix Concrete Limited v Othneil Lawrence (T/A Runaway Bay Communication Centre) and Alecia Lawrence (T/A Runaway Bay Communications Centre)*** [2014] JMSC Civ 71, at para 8, Batts J held that in commercial matters interest may be awarded as compensation for being kept out of one's money. ***Goblin Hill Hotels Limited v John Thompson and Janet Thompson*** (unreported) Court of Appeal, Jamaica, [Supreme Court] Civil Appeal No 57/2007 delivered 19 December 2008 was also cited to underline the point. The well-known case of ***British Caribbean Insurance Company Limited v Delbert Perrier*** (1996) 33 JLR119.
- [15] Miss Davis responded to the submission that the court ordered-assessment of mesne profits could not have envisaged interest as the Judge would not have been competent to confer a power on the Registrar outside of the legislative framework. Miss Davis contended that position ought properly to have been the subject of an appeal to the Court of Appeal.
- [16] Miss Davis argued that the award of interest falls within the power of the Registrar to "make such investigations and take such accounts as the Court may direct..." It would be peculiar, she said, if the Registrar can call witnesses, among other things, to use her discretion and apply the law to do what she had been directed to do. When the Registrar was so acting, that was different from "transacting all ministerial business of the Supreme Court". Her conclusion was, where the Registrar is proceeding to assess compensation, she is allowed to exercise a discretion to award interest and decide the rate.

[17] As was said above, the primary issue raised by this appeal is whether the Registrar has the power to make an award of interest. It was accepted by both sides, tacitly or explicitly, that the Registrar is a creature of statute. That is to say, such powers as she can lawfully exercise are those conferred upon her by legislation (see section 12(1) of the **Judicature (Supreme Court) Act** and section 3(1) of the **Judicature (Supreme Court) Additional Powers of Registrar Act**). Neither side in argument sought to say that there is any express legislative gift to the Registrar to make such an award.

[18] Since this appeal is by way of a re-hearing, perhaps the more focused approach is to delineate the parameters of the learned trial Judge's instruction to the Registrar in order number 2:

"Homeway is entitled to compensation for mesne profits from the date it relinquished possession until the date of recovery of possession. If not agreed within 60 days of this Order these mesne profits are to be assessed by the Registrar of the Supreme Court".

The question is, what does 'compensation' mean in the context of the case from which the order emanated?

[19] Perhaps it will be more elucidating to first set out an understanding of mesne profits. Mesne profits, conceptually, comes from land law. It represents that sum of money paid to the landlord or proprietor who suffered a trespass upon his land. According to **Halsbury's Laws of England** 4th ed vol 27 (1) at para 258, the landlord may recover in a claim for mesne profits the damages he has suffered through being out of possession of his land. Mesne profits are therefore a type of damages for trespass. It is "the court's determination of a fair price for a notional licence" given to the wrongdoer: Kevin Gray and Susan Francis Gray **Elements of Land Law** 4th ed, at para 3.86.

[20] There are two methods to calculating mesne profits, the compensatory and the restitutionary approach. The compensatory approach is employed where the land involved was damaged. Mesne profits in this instance is calculated on one of two

bases. First, to defray the cost of any works reasonably required to reinstate the landowner's quiet enjoyment of the land. Second, if the damage to the land is such that reinstatement is impossible, the diminution in value of the land would be the measure of the mesne profits. Whichever of the two bases is used, *restitutio in integrum* is achieved. That is to say, the landowner is restored to the position in which he would have been had the trespass not been committed. (See ***Elements of Land Law***, *supra*, at para 3.84)

- [21] The restitutionary approach is used to calculate mesne profits where there is no complaint of damage to the land. This is sometimes called the 'user principle'. It is so called because the basis of the calculation is what a reasonable person would have been prepared to pay for the particular user, had he been required to be purchased. So that, in a vast number of cases, the measure of mesne profits is what the trespasser would have had to pay for his use and occupation of the land. (See ***Elements of Land Law***, *supra*, at para 3.85) Indeed, although mesne profits are assessed at the amount of the rent, if that is the fair value of the premises, if the real value is higher than the rent, then mesne profits are to be assessed at the higher value, per Denning J (as he then was) in ***Clifton Securities Ltd v Huntley and others*** [1948] 2 All ER 283, at page 284
- [22] It is therefore clear that the landlord or landowner would not have to prove that he himself would have occupied the land or let it at a commercially more viable rate. Neither is it necessary to advance proof that the tortfeasor gained any benefit from occupying the land. The tortfeasor becomes liable for mesne profits simply for keeping the person lawfully entitled to possession of the land, out of possession. (See ***Swordheath Properties Ltd v Tabet and others*** [1979] 1 All ER 240, at page 242) As with the compensatory approach, the aim of the restitutionary approach is *restitutio in integrum*.
- [23] And so we return to the meaning to be ascribed to compensation as it appears in order 2. As a legal principle, compensation means, per Lord Blackburn in ***Livingstone v Rawyards Coal Co*** (1880) 5 App Cas 25, at page 39:

“that sum of money which will put the party that has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation”.

Nearly a century later, in *Albacruz v Albazero* [1977] AC 774, at page 841, Lord Diplock restated the principle in this way, compensation is “*to put the person whose right has been invaded in the same position as if it had been respected so far as the award of a sum of money can do so*”.

- [24] The compensation which the learned judge contemplated for the respondent was for being kept out of possession of its land. There was no complaint before the learned judge of damage to the land (see *The Commissioner of Lands v Homeway Foods Limited and Another* [2012] JMSC Civ 108 at paragraph 50). Accordingly, it is the restitutionary approach that was adopted and agreed before the Registrar. As I indicated above, compensation here encompasses *restitutio in integrum*. How was this to be achieved in the circumstances of what was before the Registrar?
- [25] In my opinion, compensation or *restitutio in integrum*, had to be approached by a two stage formula. First, the price of the notional licence had to be ascertained. Here there was no difficulty as the parties were on one accord. That agreement was struck three years after the respondent recovered possession of the property. So that, without indexation of the sum agreed, the respondent would have suffered a depreciation in the money value of the notional licence. That is the function of interest, the second stage of the formula. The “award of interest is ... granted on the basis of *restitutio in integrum*”, per Phillips JA in *Implementation Limited v Social Development Commission* [2019] JMCA Civ 46, at para 116. There is, therefore, much force in the submission by Miss Davis that the direction to the Registrar to assess compensation for mesne profits necessarily contemplated the restoration of the aggrieved party to the position ante by an award of interest. Without an award of interest, the respondent would have thereby suffered a diminution in the value of its notional licence.

[26] And so I come back to the nub of the problem presented by this appeal. The parties having agreed on what mesne profits for the period was, did the Registrar have the jurisdiction to go on to consider the award of interest as part of compensating the respondent? It is accepted that the explicit power to do so does not exist. There are, however, instances under the **Civil Procedure Rules 2002 (CPR)** in which the Registrar's order includes an "award" of interest.

[27] One such instance is on an application for judgment to be entered in default of the filing of an acknowledge of service and/or a defence where the claim is not against a State, minor or a patient, as defined under the **CPR** (see r. 12.3). The claimant applies for the default judgment by filing a request in form 8 (r.12.7). The registry is duty bound to enter judgment once the conditions set out in the **CPR** have been satisfied (r. 12.4 and 12.5). Where the claim is for a specified sum, together with interest at an unspecified rate, the claimant may do one of two things. In the one case the application for judgment to be entered can be for the sum claimed together with interest at the statutory rate from the date of the claim to the date judgment is entered. Secondly, the application for judgment to be entered can be for the sum claimed and for interest to be assessed (r.12.8(2))

[28] The award of interest on an application for default judgment to be entered is addressed under r.12.11. For ease of reference, I set out r.12.11 below:

"12.11 (1) A default judgment shall include judgment for interest for the period claimed where –

(a) the claim form includes a claim for interest;

(b) the claim form or particulars of claim includes the details required by rule 8.7 (3); and

(c) the request for default judgment states the amount of interest to the date it was filed.

(2) Where the claim includes any other claim for interest, the default judgment shall include judgment for an amount of interest to be decided by the court, or at the statutory rate".

[29] It seems to me that where the claimant chooses option one, the Registrar must act under r.12.11 (1). If that is correct, then the inclusion of interest in the default judgment requires no exercise of discretion on the part of the Registrar. The inclusion of interest is a mere manifestation of the imprimatur of the Registrar that the **CPR** has been in all relevant respects complied with. If the claimant elects the second option, that is, for interest to be assessed, the Registrar is deprived of jurisdiction and the matter proceeds under r.12.11 (2). That is to say, that aspect of the claim must be referred to a judge for assessment.

[30] The Registrar seems also to have the same administrative function in “awarding” interest on a judgment on admission. In claims where the only remedy sought is payment of a specified sum of money and the defendant admits the whole claim, without any request for time to pay, the claimant may apply to have judgment entered (r.14.6 (1)). The claimant files a request for the sum claimed, together with interest and fixed costs (r. 14.6 (2)). While the position regarding interest is not explicitly set out as in rule 12.11, the registry must enter judgment in accordance with the request (r.14.6 (3)). The interest that appears in the judgment is therefore the exercise of the Registrar’s ministerial powers. The same appears to be the case where there is a judgment on admission for a part of a claim for money (r.14.7 (4) and (5)).

[31] There exists one provision in the **CPR** which, at first blush, appears to be a departure from the Registrar “awarding” interest as an administrative act. This finds expression in the penalty regime for a dilatory receiving party. I quote the relevant part of r. 65.23:

“65.23 (1) Where points of dispute are served, the receiving party may apply for a taxation hearing by filing a notice of taxation.

(2) The receiving party must do so within three months of the service of the points of dispute.

(3) Where the receiving party fails to do so –

(a) the party paying may apply for an order that unless the receiving party applies for a taxation hearing by a specified date the registrar may disallow

all or part of the costs which the receiving party may otherwise be entitled to receive; and

(b) in any event the registrar may disallow all or part of –

(i) the costs of taxation; and

(ii) any interest that the receiving party would otherwise have been entitled to receive on the costs. (Emphasis added)

- [32] It appears that the Registrar is empowered to, either on the application of the party paying or on her own motion, disallow all or part of the interest accruing on taxation. Since the Registrar can either disallow or allow, all or a part of the interest, she is here exercising a choice between alternatives. In short, she is exercising a discretion. The discretion being exercised here, however, is in the weak sense of the word (*Jennifer Messado, supra*, at paras 65 and 66).
- [33] Perhaps the point is best made by an appreciation of the position of interest on taxation where the receiving party applies for the taxation hearing within the time allowed. Extrapolating from the penalty provisions above, the Registrar has no power to disallow all or part of the interest on taxation when the application for the taxation hearing is made within time. Therefore, the power given to the Registrar here is to punish the receiving party by withholding either all or a part of his entitlement to interest on taxation. It is not a power to award interest. If this is correct, then the exercise of the discretion to either disallow all or part of the interest is like unto that to include interest in a default judgment. In both cases it calls for no more than an exercise of the Registrar's ministerial functions. Put another way, in no instance is the Registrar called upon to decide the entitlement to interest.
- [34] It is settled law, as Miss Thomas rightly submitted, that the award of interest is discretionary: *Implementation Limited, supra*, at para 115. Furthermore, the language of section 3 of the *Law Reform (Miscellaneous Provisions) Act* makes this clear. I quote:

“In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, 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 the debt or damage for the whole or any part of the period between the date when the cause of action arose and the date of judgment”.

The exercise of discretion here is in the strong sense of the word. That is, it is not merely choosing between alternatives but a consideration of what is fair in all the circumstances, based on the applicable rules and principles.

- [35] Against this background, I cannot agree with the submission that the power to award interest is embedded in the Registrar’s functions to “*investigate and take such accounts in relation to proceedings in the Supreme Court as the Court may direct*”. It is palpable that the functions being exercised here are entirely procedural, in support of substantive matters before the Supreme Court. Any discretion exercised here is in the choice of instruments to effectuate the investigations or taking of accounts; namely, whether to issue advertisements, summon parties and witnesses etcetera. While I agree that the exercise of these functions sound in the vein of the quasi-judicial persona of the Registrar, there is no conferral of discretion in the strong sense of the word.
- [36] In the instant case, the Registrar was clearly of the view, correctly I might add, that compensation for mesne profits ought properly to include an award for interest, if *restitutio in integrum* was to be achieved. I accept, however, the submission that the learned judge’s order did not include the subsidiary direction to award interest. I agree also that that direction could not have lawfully been given as it would have amounted to an extra legislative conferral of jurisdiction upon the Registrar.
- [37] In order to make that award, the Registrar had to first decide whether interest should be granted and then at what rate. This was the exercise of a discretion in the strong sense of the word. Since the Registrar is a creature of statute, she could only properly exercise such a discretion if it fell within the ambit of her legislative remit. I am therefore constrained to agree that the Registrar erred when she

purported to exercise a discretion to award interest on the agreed sum for mesne profits.

Issue # 2

- [38]** For ease of reference I repeat the question raised here. Was it competent for the Registrar to have ordered that interest at the rate of 6% per annum was applicable on the assessed sum from the date of her order to the date of payment? The essence of the appellant's submission is that this was not a judgment but an order of the Registrar, therefore it was wrong in any event to make this order. Miss Davis' position was, if the Registrar lacked jurisdiction to award interest generally, then this is a moot point.
- [39]** It appears to me that the Registrar treated the matter before her as analogous to a default judgment. As was said above, a claimant is entitled to include in his application for default judgment, a claim for interest at the statutory rate or for interest to be assessed. I have already decided that the "award" of interest in this circumstance is administrative. Therefore, if the learned judge's order included an order for interest on the assessed mesne profits it would have been lawful for the Registrar to impose it.
- [40]** This takes me back to the appellant's submission. Respectfully, it is misconceived to characterize the assessed mesne profits as an order of the Registrar. The basis of that argument appears to be, mesne profits is the order of the person who calculates the actual amount. It was, however, the learned Judge who made the order that the respondent was entitled to compensation for mesne profits. All that remained to effectuate that order was the mathematical calculations. That was to be achieved in one of two ways: either agreement between the parties within 60 days or assessment by the Registrar. What would be the characterization had the parties agreed within the sixty days? If the appellant's counsel's approach were to be accepted, then the resultant agreed mesne profits would have to be described as the order of the parties. That would clearly be absurd.

[41] I therefore disagree with the major premise of the submission that the assessed mesne profits did not attract the rate of interest payable on judgments for the sake of it being an order of the Registrar. It most certainly was not an order of the Registrar. It was an order of the Judge. By virtue of section 51 (2) of the **Judicature (Supreme Court) Act**, “order” is included in the expression “judgment”. Under section 51 (1) of that Act judgment debts in the Supreme Court attract interest. I quote:

“Every judgment debt shall in the Supreme Court carry interest at the rate of six per centum per annum or such other rate per annum as the Minister may by order from time to time prescribe in lieu thereof, from the date of entering up the judgment, until same shall be satisfied, and such interest may be levied under a writ of execution on such judgment”.

[42] That said, to analogize the provisions under the **CPR** dealing with default judgment, for the Registrar to include in the order that interest was applicable on the assessed sum from the date of the order until payment, she needed the precedent authority of the Judge. No such authority was conferred. And, since she did not have the discretion, generally, to award interest, there was no jurisdiction to make the further award of interest on the assessed mesne profits. This ground therefore succeeds also.

Issue # 3

[43] This issue addresses the sum that is due and owing to the respondent. As earlier indicated, the resolution of this question of fact depends on the answer to the first issue. I decided that the Registrar did not have the discretion to award interest of 15% per annum on the agreed amount for mesne profits of \$16,129,657.00. It was the award of this 15% interest which increased the sum due and owing to the respondent to \$39,024,875.00. Having found that the Registrar erred in awarding interest of 15%, the sum of the award plus the interest of 15% clearly cannot stand. I am compelled to say the Registrar erred in finding that the sum due and owing to the respondent is \$39,024,875.00.

Conclusion

[44] So then, the Registrar was without authority in making both awards of interest. The proper course open to the Registrar was a referral to a judge, preferably the learned Judge who made the order for assessment of mesne profits. This conclusion rests on two propositions. The first premise is the acknowledgement that the respondent could not be fully compensated without an award of interest. Secondly, the Registrar could go no further with the assessment of mesne profits, once the parties agreed on the sum of the mesne profits, since she lacked the jurisdiction to consider and award interest. Thirdly, where the Registrar has authority to award interest on judgments, the antecedent authority is conferred under the **CPR** so that in making the “award” she exercises only a ministerial function.

[45] The legislative authority for such a referral is set out under the **Judicature (Supreme Court) Additional Powers of Registrar Act**, in section 5 (1). The relevant part of the provision is quoted below:

“Where under this Act the Registrar is empowered to exercise jurisdiction in relation to any matter but, on such matter coming before him, he considers that it is desirable by reason either of the nature of the matter, or of the importance of the principles involved, or of the difficulty of the legal problems connected therewith, or for any other reason, whether similar to the foregoing or not, so to do, he may refer the matter to a Judge”.

In this case it was desirable to refer the matter to a Judge under the rubric of either the nature of the matter or the importance of the principles involved.

[46] Since that was the Registrar’s option, the **CPR** authorises me to make a like order. I cite r. 62.8 (1):

“In relation to an appeal the judge may exercise any power that might be exercised by the registrar whose decision is being challenged”.

Disposal

[47] The decision made by the Registrar on 11 February 2019, at numbers 2, 3 and 4 are set aside. The matter is referred back to the learned judge for a determination on the question of the award of interest. The costs of the appeal are awarded to the appellant, to be agreed or taxed.