[2024] JMCA App 1

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE SHELLY-WILLIAMS JA (AG)

APPLICATION NO COA2023APP00205

BETWEEN	**DEBBIE-ANN GORDON (Trustee for Mystic Mountain, in Bankruptcy)**	**APPLICANT**
AND	**SYGNUS CREDIT INVESTMENTS LTD**	**RESPONDENT**

HEARD WITH

APPLICATION NO COA2023APP00247

BETWEEN	**DEBBIE-ANN GORDON (Former trustee of the Estate of Mystic Mountain Limited, a Bankrupt)**	**APPLICANT**
AND	**WILFRED BAGHALOO (Receiver, Mystic Mountain Ltd in Receivership)**	**1ST RESPONDENT**
AND	**SKY-HIGH HOLDINGS LIMITED (Bondholder & Agent of the Bondholder's Trustee, JCSD Trustee Services Limited)**	**2ND RESPONDENT**
AND	**MAJORITY OF COMMITTEE OF INSPECTORS**	**3RD RESPONDENT**
AND	**NINETEEN UNSECURED CREDITORS OF THE [BANKRUPT]**	**4TH RESPONDENT**

AND WITH

APPLICATION NO COA2023APP00248

BETWEEN	**DEBBIE-ANN GORDON (Trustee of the Bankrupt Estate of Mystic Mountain Limited, in Bankruptcy)**	**APPLICANT**
AND	**SKY-HIGH HOLDINGS LIMITED (As agent of JCSD Trustee Services Limited, the Bondholder's Trustee)**	**RESPONDENT**

Lemar Neale and Chris-Ann Campbell instructed by Nea|Lex for the applicant

John Vassell KC, Mrs Julianne Mais Cox and Mrs Trudy Ann Dixon Frith instructed by DunnCox for Wilfred Baghaloo

Miss Carlene Larmond KC and Ms Giselle Campbell instructed by Patterson Mair Hamilton for Sky-High Holdings Limited

Kwame Gordon and Chevant Hamilton instructed by Samuda & Johnson for the Majority of Committee of Inspectors and Sygnus Credit Investments Limited

Mrs Janet Morrison instructed by Hart Muirhead Fatta for the nineteen unsecured creditors of the estate of Mystic Mountain Limited

15, 16 January and 12 February 2024

Civil practice and procedure — Application for extension of time within which to apply for permission to appeal – Application for permission to appeal – Prospective appeal against an order for costs –Whether any real chance of success – Judicature (Supreme Court) Act s 28E(1) – Judicature (Appellate Jurisdiction) Act s 11(1)(e) – Civil Procedure Rules rr 64.6(4)

Civil practice and procedure – Application for stay of execution- Whether stay of execution should be granted

Insolvency – Circumstances in which costs may be awarded against trustee of bankrupt's estate personally – Whether conduct of trustee warranting such an order – Standard to be applied – Insolvency Act ss 284 and 286

BROOKS P

[1] Ms Debbie-Ann Gordon, the former trustee of the estate of Mystic Mountain Limited ('Mystic Mountain'), a bankrupt, has filed, in this court, applications seeking extensions of time within which to appeal and applications for permission to appeal the orders of Batts J ordering costs against her, personally, in three cases in the Supreme Court. Ms Gordon also seeks a stay of execution of those orders. This is a consideration of those applications. In this court, the applications have been respectively intituled COA2023APP00205, COA2023APP00247 and COA2023APP00248.

[2] The respondents in the respective applications (collectively referred to herein as 'the respondents') are as follows:

a. application number COA2023APP00205 - Sygnus Credit Investments Limited ('Sygnus'), which is a creditor of Mystic Mountain's bankrupt estate; and
b. application number COA2023APP00247 –
    i. Mr Wilfred Baghaloo ('Mr Baghaloo'), who is the receiver and manager of Mystic Mountain;
    ii. Sky-High Holdings Limited ('Sky-High'), which is a secured creditor of Mystic Mountain;
    iii. Majority of Committee of Inspectors ('the Inspectors'), who were appointed by Mystic Mountain's unsecured creditors; and
    iv. nineteen unsecured creditors of Mystic Mountain ('the 19'); and
c. application number COA2023APP00248 - Sky-High Holdings Limited (already identified above).

The background to the applications

[3] On 8 February 2022, Mystic Mountain made an assignment in bankruptcy. On 8 August 2022, Ms Gordon was appointed trustee of its estate. Her duties, under sections

194 and 201 of the Insolvency Act ('the IA'), included examining all proofs of claim and proofs of security that were submitted against the estate. She was sued in each of the cases mentioned below and, after the abovementioned orders were made against her, she was removed as the trustee on 27 October 2023. Each of the cases has different facts and these will be outlined below.

Application No COA2023APP00205

[4] On 5 October 2022, Ms Gordon wrote to Sygnus requesting that it submit a proof of claim and supporting documents. She notified representatives of Sygnus of her concern that it was submitting a proof of claim despite it having third-party securities. Sygnus took the position that it would participate in the bankruptcy and call upon the third-party securities if there was a shortfall. Ms Gordon opined that it should be the other way around. Sygnus later submitted its proof of claim with supporting documents. Ms Gordon expressed concern that the proof of claim was incomplete and consequently, not proven. She also opined that Sygnus could not act as an inspector of Mystic Mountain's estate and had it removed.

[5] Although Ms Gordon had not issued a formal decision, Sygnus filed a claim against her in the Supreme Court contesting her position on those matters. Ms Gordon later disallowed Sygnus' proof of claim because of the insufficiency of the supporting material. Sygnus subsequently amended its claim, seeking, among other orders:

a. a declaration that Ms Gordon's decision to disallow its proof of claim was invalid; and
b. that she be replaced as the trustee of Mystic Mountain's estate.

[6] Curiously, when the amended claim came before Batts J, counsel for Ms Gordon conceded that the proof of the claim was adequate, but that Sygnus should, instead, rely on the third-party securities. On 21 July 2023, Batts J ruled in favour of Sygnus and set aside the disallowance of the proof of claim. The learned judge ordered that Ms Gordon pay 50% of Sygnus' costs, personally. He did not give written reasons for his

decision but indicated orally that Ms Gordon had no power to disallow a creditor's claim merely because that creditor may have recourse to third-party securities. He said that her action in disallowing the claim for the reason given, "suggests want of care at the very least". The learned judge also ruled that Ms Gordon had no power to remove Sygnus as an inspector. He said that that could only be done on an application to the court or by the creditors at any meeting of creditors.

Application No COA2023APP00247

[7] Mr Baghaloo is the Receiver-Manager of Mystic Mountain's business and assets. He was also a previous trustee of Mystic Mountain. On 24 January 2023, he filed proceedings in the Supreme Court to approve the sale of Mystic Mountain's assets and business. He named the trustee of Mystic Mountain and Sky-High as respondents to that claim. Batts J, before whom the parties appeared in the hearing, ordered that the Inspectors and the 19, be added as interested parties. On 18 August 2023, after eight days of hearing, he gave judgment in favour of Mr Baghaloo. Batts J also awarded the costs of three of the hearing days against Ms Gordon personally.

[8] It is important to note at this juncture that Ms Gordon initially filed this application, naming herself, "The Trustee of the Estate of Mystic Mountain Limited, A Bankrupt". Before this court, Mr John Vassell KC, appearing on behalf of Mr Baghaloo, highlighted that when she filed the application, she was no longer the trustee of the estate of Mystic Mountain, having been removed from the office. He submitted that the nomenclature is inappropriate since the effect is that the wrong party is named as the applicant. He argued that the applications in that case, should, consequently, be struck out. Counsel for the other respondents supported Mr Vassell's submission on this point.

[9] Mr Lemar Neale, representing Ms Gordon, acknowledged the defect and applied for it to be corrected. This court, in exercising its inherent jurisdiction, and having found that there would be no irremediable prejudice to the respondents, granted Mr Neale's application and changed the name of the applicant to "Debbie-Ann Gordon, Former trustee of the Estate of Mystic Mountain Limited, a Bankrupt".

Application No COA2023APP00248

[10] Before Ms Gordon was appointed the trustee, JCSD Trustee Services Limited ('JCSD'), as trustee for Sky-High, submitted a notice of security interest to the former trustee of Mystic Mountain. When she came to the post, Ms Gordon reviewed that documentation, along with other proofs of claim. She requested further information and documentation from JCSD relating to its claim. Sky-High's attorneys-at-law, informed Ms Gordon that it had chosen not to participate in the bankruptcy but would "enforce and realize the security contemplated by the Debenture" that it held. The attorneys-at-law informed her that since Sky-High would not be participating in the bankruptcy, her requests for further information were irrelevant.

[11] On 12 April 2023, Ms Gordon disallowed JCSD's proof, saying that she was not satisfied that JCSD was a secured creditor in priority. Sky-High, acting as an agent for JCSD, appealed Ms Gordon's decision and sought to set aside the disallowance. Batts J heard the appeal and, on 18 August 2023, set aside Ms Gordon's decision to disallow the claim and ordered her to personally pay the costs of the appeal. A part of his reason in the substantive matter was that Sky-High had filed a proof of security and not a proof of claim. The distinction, he found, affected Ms Gordon's authority to disallow.

The order of considering the applications

[12] Ms Gordon is displeased with the orders of costs that Batts J made against her in each of the matters and seeks to appeal them. She sought his permission to appeal those orders, but he refused in each case. Her next step was to have applied for permission in this court, but she was late in filing the respective applications. Consequently, she was obliged to apply to this court, in each case, for an extension of time in which to apply for permission to appeal as well as for permission to appeal.

[13] The court heard all the applications together.

[14] Applications for permission to appeal have been addressed in several judgments of this court. Where an applicant for permission to appeal also requires an extension of

time in which to apply for that permission, it is usual for this court to first consider whether the applicant has a real chance of success in the prospective appeal. The reasoning is that if there is no such prospect of success, and, therefore, permission to appeal ought not to be given, it would be futile to grant an extension of time in which to apply for permission to appeal. That was the approach used in **Garbage Disposal & Sanitations Systems Ltd v Noel Green and Others** [2017] JMCA App 2, when F Williams JA, with whom the other judges on the panel agreed, said, at para. [17]:

> "In relation to addressing the question of what approach the court should adopt when hearing both these types of applications together, I am not without guidance. As recognised by Smith JA in the case of **Evanscourt Estate Company Limited v National Commercial Bank** SCCA No 109/2007, judgment delivered on 26 September 2008, if permission to appeal ought not to be given, it would be futile to enlarge the time within which to apply for permission. This, then, will be the primary rule that will guide the resolution of the application for the orders. The application for permission to appeal will be addressed first." (Bold as in original)

[15] Therefore, the applications for permission to appeal will first be considered.

Assessing the applications for permission to appeal

The relevant law

[16] This court will only grant permission to appeal if it considers that an appeal will have a real chance of success (rule 1.8(7) of the Court of Appeal Rules ('CAR')).

[17] An important principle in considering the chance of success in these cases is that it is beyond dispute that costs in any matter are awarded, or not, at the discretion of the judge presiding over the proceedings. Sections 28E(1) of the Judicature (Supreme Court) Act, rule 64.6 of the Civil Procedure Rules, 2002 ('CPR') and a plethora of decided cases from this court and others, all make that point. If that were not sufficiently clear, Parliament in section 284 of the Insolvency Act ('IA') reinforces the point concerning proceedings under the IA. The section states:

> "Subject to this Act, the costs of and incidental to any proceedings in Court under this Act shall be in the discretion of the Court."

[18] This court will not disturb that exercise of discretion unless it is demonstrated that the judge was plainly wrong in doing so, or the decision was "so aberrant that … no judge regardful of his [or her] duty to act judicially could have reached it" (see para. [20] of the judgment of Morrison JA, as he then was, in **The Attorney General of Jamaica v John MacKay** [2012] JMCA App 1).

[19] Another important principle to be considered in these unusual cases is that trustees are not to be held personally liable for costs in proceedings under the IA "unless the Court otherwise directs". Section 286 of the IA makes that clear:

> "Where an action or proceeding is brought by or against a trustee, or where a trustee is made a party to any action or proceeding on his application or on the application of another party thereto, **he is not personally liable for costs unless the Court otherwise directs**." (Emphasis supplied)

[20] The court, hearing the action or proceedings, must act judicially in making an order of costs against a trustee personally. Where a judge at first instance makes such an order of costs, and that order is contested, an appellate court must ascertain whether the judge followed the principle concerning awarding costs personally against the trustee. The reason for a costs order, at first instance, that is made personally against the trustee should, it would seem from these principles, be readily ascertainable, on a review by the appellate court.

[21] Although the IA is almost 10 years old, the jurisprudence that has flowed from it has been restricted to a few cases decided in the Supreme Court and a single case in this court. None has covered the ground that concerns the issue of costs against a trustee. As a result, the reliance by counsel for the respective parties, on decisions from Canada is not misplaced. The relevant legislation in that jurisdiction, the Bankruptcy and Insolvency Act ('the BIA') is not in identical terms as the IA but is sufficiently similar

for the decisions from the various courts in that jurisdiction to provide useful guidance in the assessment of the issues in dispute in these applications.

[22] Section 197 of the BIA, as quoted in **Asian Concepts Franchising Corporation (Re)** 2018 BCSC 1464, at para. [11] states as follows:

> "197 (1) Subject to this Act and to the General Rules, **the costs of and incidental to any proceedings in court under this Act are in the discretion of the court.**
>
> (2) The court in awarding costs may direct that the costs shall be taxed and paid as between party and party or as between solicitor and client, or the court may fix a sum to be paid in lieu of taxation or of taxed costs, but in the absence of any express direction costs shall follow the event and shall be taxed as between party and party.
>
> (3) **Where an action or proceeding is brought by or against a trustee, or where a trustee is made a party to any action or proceeding on his application or on the application of any other party thereto, he is not personally liable for costs unless the court otherwise directs**." (Emphasis supplied)

It would have been noticed that subsection (1) is very similar to section 284 of the IA and subsection (3) is identical to section 286.

[23] These subsections of section 197 of the BIA were considered in **Credifinance Securities Ltd (Re)** 2011 ONCA 160. The Court of Appeal for Ontario ruled, after reference to that provision, that:

a. leave to appeal a judge's costs decision is only granted in obvious cases; and
b. trustees of the estates of bankrupts would "only be [personally] liable in limited circumstances".

[24] LaForme JA, writing for the court, said, in this context:

> "[46] The general rule in these types of proceedings is found in the provisions of the BIA. Section 197(1) provides that the costs of and incidental to any proceedings in court under the BIA are in the discretion of the court. Section 197(3) provides that where an action or proceeding is brought by or against a trustee, or where a trustee is made a party to any action or proceeding, he is not personally liable for costs unless the court otherwise directs.
>
> [47] As this court held in *McNaughton Automotive Ltd. v. Co-operators General Insurance Co.* (2008), 95 O.R. (3d) 365 (C.A.) at paras. 23-26, **leave to appeal a costs decision is granted sparingly and only in obvious cases. This is because decisions as to costs are highly discretionary and are accorded a very high degree of deference. Generally, they will only be interfered with where it can be demonstrated that the decision maker is plainly wrong or has made an error in principle**.
>
> [48] **While trustees in bankruptcy are not exempt from liability for costs, the jurisprudence in the field suggests that they will only be liable in limited circumstances**: see *Farm Mutual Financial Services Inc.* (Re) (2010), 66 C.B.R. (5th) 85 (Ont. S.C.). I fail to see any such limited circumstances in this case. [The creditor] **has not met its heavy burden and has not satisfied me that this is an obvious case** [in which to grant leave to appeal]." (Emphasis supplied; italics as in original)

[25] In that case, the trustee appealed from an order by a judge at first instance. The Court of Appeal found that there were issues concerning the procedure used by the judge and the nature of the proceedings. It dismissed the trustee's appeal but did not find that its actions warranted costs against it.

[26] In **Asian Concepts Franchising Corporation (Re)**, Fitzpatrick J considered several cases in which the issue of awarding costs against a trustee personally was discussed. She found that adverse costs awards were made in cases where the trustee was found to have acted improperly, perversely or in an adversarial manner. Conversely, costs were not awarded against the trustee personally, where it was found

that the trustee had acted "conscientiously and in good faith with the aim of meeting its obligations and fulfilling its duties under the *BIA* and as an officer of the court" (see para. [21]).

[27] From the authorities cited above, it appears, at this stage, that Ms Gordon has the onus of demonstrating that she has a real chance of success in showing on appeal that Batts J improperly exercised his discretion in awarding costs against her.

Applying the principles to these cases

[28] Although these hearings were not the hearing of the appeals, they were strenuously contested, and many cases were cited by each party.

[29] Ms Gordon's position in each application was summarised by counsel on her behalf as follows:

Application No COA2023APP00205

[30] Ms Gordon complains that the learned judge erred:

a. "in applying an incorrect standard of review in relation to the appeal from [her] decision to disallow [Sygnus'] proof of claim";
b. "in failing to provide any or any adequate reasons for ordering [her] to personally bear half of [Sygnus'] costs"; and
c. "in making a personal costs order against [her] in her capacity as trustee". (See para. 23 of counsel's written submissions.)

Application No COA2023APP00247

[31] Ms Gordon has condensed her numerous proposed grounds of appeal from Batts J's judgment, to fall within three main issues, namely:

a. "whether the learned judge erred in failing to provide any or any adequate reasons for ordering [her] to personally bear the Respondents' costs of three trial dates";
b. "whether the learned judge erred in making a personal costs order against [her] in her capacity as trustee; and
c. "whether the learned judge erred in awarding costs to [Sky-High, the Inspectors and the 19]". (See para. 14 of counsel's written submissions.)

Application No COA2023APP00248

[32] Ms Gordon complains that the learned judge erred:

a. "in applying an incorrect standard of review in relation to the appeal from [her] decision to disallow [Sky-High's] proof of claim";
b. "in failing to provide any or any adequate reasons for ordering [her] to personally bear [Sky-High's] costs"; and
c. "in making a personal costs order against [her] in her capacity as trustee". (See para. 23 of counsel's written submissions.)

[33] Counsel for each of the respondents, in turn, contended that the learned judge did not err in his assessment and that the reason for the respective costs orders is readily ascertainable from the facts of the case or the learned judge's reasons for finding against Ms Gordon on the substantive issues.

[34] Given the novelty of the issues in this jurisdiction, it is tempting to delve into the assessment of the various issues, but this is not this court's mandate at this time. It will be sufficient at this juncture to say that there is a real chance of success in each case because:

a. the learned judge ought not to have made a costs order against Ms Gordon personally unless he found that she acted improperly, perversely or in an adversarial manner;
b. he did not give specific reasons for making those costs orders against her; and
c. whereas it may be said that Ms Gordon made errors in disallowing the claims by Sygnus and Sky-High and wasted the court's time in pursuing a futile course of trying to source evidence to be placed before the court in Mr Baghaloo's case, there is a real chance of success for the argument that it is not "obvious" that she breached the standard of acting "conscientiously and in good faith with the aim of meeting [her] obligations and fulfilling [her] duties".

[35] In addition, it may be said that:

a. there is no local judicial guidance on the standards to be used in ordering costs against trustees as against the estates that they are mandated to administer;
b. it is important for her and other people who will be called upon to act as trustees to understand the standard in this jurisdiction for trustees executing their statutory duties; and
c. a judgment from this court on those issues would provide the necessary guidance in this area.

Assessing the applications for the extension of time

[36] It is now well established that applications for the extension of time, within which to file an appeal, may be granted if the applicant satisfies the requirements set

out in **Leymon Strachan v The Gleaner Company Ltd and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered 6 December 1999 ('**Leymon Strachan**').

[37] Mr Neale submitted that Ms Gordon satisfied those requirements.

[38] The requirements are now, well known, and will be addressed individually in the context of these cases.

The length of the delay

[39] Mr Neale argued in each case that the delay was not inordinate. It was, at most, 60 days. He said that this court had allowed extensions in cases where the time was longer than that.

[40] Learned counsel for each of the respondents argued that the delay was inordinate as it was 60 days in two of the cases.

[41] The submissions of counsel for the respondents are to be preferred on this issue. In the Sygnus case, the application for permission to appeal should have been made on or before 4 August 2023. It was filed on 1 September 2023 or 28 days late. In the Baghaloo and Sky-High cases, Batts J made the order on 18 August. Ms Gordon filed those applications on 1 November 2023 or 60 days late. In the interim, she had applied to Batts J for permission to appeal but was refused. The delays are inordinate, but the court will nonetheless consider the other requirements.

The reason for the delay

[42] Ms Gordon gave two main reasons for the delay in filing the applications for permission to appeal. Firstly, she said that she thought that she had a right to appeal and 42 days in which to file her appeal since Batts J's decisions were final. She said that it was only when she retained new legal representation that she realised that since she was only appealing against the orders for costs, she had to seek permission to appeal,

and she only had 14 days in which to apply for that permission. In addition, she said that her new counsel was "travelling" at the time of engaging him and thereafter the process of getting all the cases organised caused further delay.

[43] Counsel for the respondents argued that these are not good reasons. They contended that being an attorney-at-law, Ms Gordon should have known the relevant period, and the various applications should not have taken as long as they did.

[44] It may be said that these are not good reasons, but the inadequacy of a reason at this stage is not usually determinative of these applications.

Whether the proposed grounds of appeal are arguable

[45] This criterion has already been assessed above with the conclusion that Ms Gordon's proposed appeals have a real chance of success.

The degree of prejudice to the other party

[46] There will be no irremediable prejudice to any of the respondents if permission to appeal is given and Ms Gordon is unsuccessful in her bid to overturn Batts J's decisions.

The decision that justice requires

[47] Given the absence of clear authorities that are based on the IA, and the opportunity that the proposed appeals present for providing certainty for the parties and other concerned members of industry, justice requires that the appeals should be heard.

The application for a stay of execution

[48] The requirements for an application for a stay of execution to be granted are, essentially, that the applicant must show that he or she has a real prospect of success on appeal and that the grant of a stay of execution is likely to result in less injustice

than a refusal of the application. The authorities for those principles are well established and have been cited in several cases in this court, following the judgment in **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065 (see, in particular, the judgment of Phillips JA in **Peter Hargitay v Ricco Gartmann** [2015] JMCA App 44 at para. [60]).

[49] As mentioned above, Ms Gordon has shown that she has an arguable appeal. In terms of injustice, it appears that without a stay of execution, Ms Gordon would be obliged to pay several million dollars in total costs, whereas the delayed payment that a stay would cause to the individual respondents would be much less.

[50] The circumstances suggest that there would be less injustice caused by the grant of a stay of execution.

Conclusion

[51] Taking all the circumstances of these cases into account, Ms Gordon has demonstrated that she has an appeal with a real chance of success. Her delay in making these applications has not caused irremediable prejudice to the respondents and a stay of execution would cause the least injustice.

[52] Based on the above the applications should be granted in each case.

Costs

[53] Whereas Ms Gordon should be ordered to pay the costs of the applications for the extension of time in which to file the appeals, it would be difficult to disaggregate some of those costs from the costs incurred by the applications for permission to appeal and for the stay of execution, which should be costs in the appeal.

[54] The most convenient order would be for Ms Gordon to pay one-third of the costs of each respondent to these applications. However, Sky-High should be restricted to

recover costs in only one application, namely no COA2023APP00247 (being the more extensive of the two involving it), to prevent duplication.

F WILLIAMS JA

[55] I have read the draft judgment of Brooks P. I agree with his reasoning and conclusion and have nothing further to add.

SHELLY-WILLIAMS JA (AG)

[56] I too have read the draft judgment of Brooks P and agree with his reasoning and conclusion.

BROOKS P

ORDER

1. The application for an extension of time in which to apply for permission to appeal is granted in each case.
2. The application for leave to appeal is granted in each case. The applicant shall file and serve her respective notices and grounds of appeal on or before 23 February 2024.
3. There shall be a stay of execution of the orders of Batts J made on 21 July 2023 and 18 August 2023, respectively, pending the outcome of these appeals.
4. The Registrar shall schedule a case management conference for the appeals as soon as possible.
5. The appeals shall be heard together.
6. The applicant shall pay the respondents one-third of the costs of the respective applications. The remaining two-thirds of the costs are to be costs in the corresponding appeal.
7. For these applications, Sky-High Holdings Limited shall be limited to one-third of its costs in application No COA2023APP00247.

8. If any party contends that a different costs order should be made, that party shall, within 14 days of the date of this order, file and serve written submissions in that regard. The other parties shall be at liberty to file and serve submissions in response within seven days of receiving the submissions concerning a different costs order.

9. The court will consider the submissions on paper and rule thereon.

10. In the absence of submissions within the 14 days, the costs orders shall stand.