

CITATION: *Reynolds v City of Darwin* [2026] NTSC 77

PARTIES: REYNOLDS, Carolyn Jane

v

CITY OF DARWIN

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2020-02980-SC & AP 13 of 2020
(22035126)

DELIVERED: 15 September 2026

HEARING DATE: 18 June 2026 (on the papers with final
evidence and submissions filed 4
September 2026)

JUDGMENT OF: Smyth A/AsJ

CATCHWORDS:

COSTS – Taxation of costs – Application to set aside taxation certificates – Whether procedural fairness was afforded – Rights of reconsideration and review – Insufficient medical evidence to substantiate non-compliance – Application dismissed

PROCESS AND PROCEDURE – Service – Whether actual notice of proceedings forgoes requirement for effective service – Insufficient evidence disproving effective ordinary service – Absence of evidence that proceedings went unnoticed – No prejudice met by Applicant – Applicant taken to have actual notice of proceedings

Supreme Court Rules 1987 (NT), rr 2.01, 2.03, 3.02, 6.01, 6.05, 6.06, 6.10, 6.13, 6.16, 63.36–63.38, 63.45, 63.54–63.55, 66.16, 82.03, 97.01

City of Darwin v Carolyn Reynolds [2020] NTLC 005; *Reynolds v City of Darwin* [2020] NTSC 69; *Reynolds v City of Darwin* [2021] NTCA 3; *Reynolds v Darwin City Council* [2023] NTSC 60; *Reynolds v Darwin City Council* [2023] NTCA 9; *Cameron v Cole* (1944) 68 CLR 571; *Taylor v Taylor* (1979) 143 CLR 1; *Autodesk Inc v Dyason (No 2)* (1993) 176 CLR 300; *Novikov & Novikov* [2024] FedCFamC1A 56; *Sabet & Abdoo (No 2)* [2025] FedCFamC2F 379, referred to.

REPRESENTATION:

Counsel:

Applicant:	Self-Represented
Respondent:	K Dixon

Solicitors:

Respondent:	Mills Oakley
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Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Reynolds v City of Darwin [2026] NTSC 77
No. 2020-02980-SC & AP 13 of 2020 (22035126)

BETWEEN:

CAROLYN JANE REYNOLDS
Applicant

AND:

CITY OF DARWIN
Respondent

CORAM: SMYTH A/AsJ

REASONS FOR DECISION

(Delivered 15 September 2026)

- [1] By summons filed on 10 June 2026, the Applicant sought interlocutory relief staying the execution of two warrants of seizure and sale, which were issued to enforce certain costs orders. The execution of those warrants was stayed pending the determination of this application. In this application the Applicant seeks orders in respect to taxation certificates issued following taxations conducted on 15 May 2023 in proceeding 2020-02980-SC ('the Supreme Court proceeding') and in Court of Appeal proceeding AP 13 of 2020 (22035126) ('the Court of Appeal proceeding'). Relevantly, the Applicant seeks orders that the Respondent provide an itemised bill of costs, that the costs be taxed or re-taxed on proper notice, or alternatively that

time be extended to permit her to seek reconsideration or review of the taxation decisions.

- [2] The Applicant's summons expressly relied upon rr 2.01, 2.03, 3.02, 63.36, 63.55, 66.16 and 97.01 of the *Supreme Court Rules 1987* (NT) ('the Rules'), together with the Court's inherent jurisdiction. The orders sought in the summons do not expressly require the setting aside of the taxation decisions; however, by implication and reference to r 2.01, given that the Applicant seeks orders that the Respondent re-file and serve the bill of costs together with a re-taxation, that is assumed. Such is made clear from the Applicant's filed submissions. The Applicant thus seeks either that the taxation decisions be set aside and the process be re-done or, in the alternative, that she be granted an extension of time to seek reconsideration or review of the taxation which was undertaken.
- [3] The Applicant principally relied on her affidavits made 10 June 2026, 17 June 2026, 30 July 2026, 31 July 2026 and 4 September 2026. The Respondent relied on the affidavit of Kirby Dixon made 13 August 2026. I take those affidavits and exhibits as read. In addition, I have had regard to the Court file insofar as it records the procedural conduct of the taxation proceedings, including listings, orders and correspondence copied to the parties. The Applicant also sought leave to rely on the affidavits of Gemma Baxter made 3 September 2026 and Michael Anthony made 2 September 2026. I address the application for leave to adduce that material below.

- [4] Very generally, the Applicant contends that she was not served with the summonses for taxation, the bills of costs or other documents required to bring the taxation proceedings to her attention and that, as a consequence, she was denied an opportunity to participate in the taxation process.¹ In the alternative, the Applicant submits that even if service is established, she was suffering from serious medical conditions which substantially impaired her ability to understand, respond to and participate in the taxation proceedings, and that the taxation decisions should be set aside in the interests of justice.²
- [5] The Respondent opposes the application. It submits that the Applicant was properly served, that she was aware of the taxation process and that there is no basis upon which the Court should set aside decisions made more than three years ago. The Respondent further submits that the medical material relied upon by the Applicant does not establish incapacity preventing participation in the relevant proceedings.³

Background

i. The substantive proceedings

- [6] The present application arises from litigation concerning premises at the Rock Centre, 20 Doctors Gully Road, Darwin. On 11 September 2019, the Respondent commenced proceedings in the Local Court seeking vacant

1 Affidavit of Carolyn Jane Reynolds made 10 June 2026; Affidavit of Carolyn Jane Reynolds made 30 July 2026 at [12]-[17], [32]-[45]; Affidavit of Carolyn Jane Reynolds made 4 September 2026 at [13]-[14], [15]-[29], [50], [54], [60].

2 Affidavit of Carolyn Jane Reynolds made 30 July 2026 at [32]-[45], exhibit 'CR-10'.

3 Affidavit of Kirby Dixon made 13 August 2026 at [13]-[18].

possession pursuant to the *Business Tenancies (Fair Dealings) Act 2003* (NT).⁴ Following a hearing, judgment was delivered on 26 August 2020 in favour of the Respondent and orders were made for possession of the premises.⁵

- [7] On 27 August 2020, the Applicant commenced an appeal in this Court against the Local Court decision (being the Supreme Court proceeding).⁶ The appeal was heard on 9 October 2020 and was dismissed.⁷ On 5 November 2020, the Applicant commenced a further appeal to the Court of Appeal.⁸ On 27 June 2022, the Court of Appeal dismissed the appeal and made costs orders in favour of the Respondent. Relevant to the present application, the Respondent was awarded its costs of the Local Court proceeding on a standard basis, its costs of the Supreme Court appeal on an indemnity basis and its costs of the Court of Appeal proceeding on an indemnity basis, to be agreed or taxed.

ii. The taxation proceedings

- [8] Following the Court of Appeal judgment, the Respondent prepared bills of costs in respect of both the Supreme Court appeal and the Court of Appeal proceeding. Summonses for taxation were filed in December 2022, together with the relevant bills of costs. The Respondent contends that those

⁴ Ibid at [4]-[6].

⁵ Ibid at [5]; *City of Darwin v Carolyn Reynolds* [2020] NTLC 005.

⁶ Affidavit of Kirby Dixon made 13 August 2026 at [7]-[8].

⁷ *Reynolds v City of Darwin* [2020] NTSC 69.

⁸ Affidavit of Kirby Dixon made 13 August 2026 at [9]-[11]; *Reynolds v City of Darwin* [2021] NTCA 3.

documents were served on the Applicant by email on 23 December 2022.⁹

The Applicant denies receiving them. The taxation proceedings were initially listed for first return of the summons in February 2023 but did not proceed on that occasion and were adjourned administratively to March 2023. The proceedings were listed before Luppino AsJ on 16 March 2023.¹⁰

On 14 March 2023, the Applicant emailed the Court requesting an adjournment on medical grounds. In that email, she claimed to suffer from various medical conditions, namely chronic migraine, hypertension and post-traumatic stress disorder ('PTSD'), and requested additional time or other accommodations to enable her to prepare and present her case. On 15 March 2023, the Court informed the Applicant that consent was not given to the adjournment and the matter remained listed for hearing on 16 March 2023. The matter was mentioned before Luppino AsJ on 16 March 2023, with the Applicant and the solicitors for the Respondent physically present.¹¹

On that date, orders were made concerning the future conduct of the taxation proceedings, including orders giving the Applicant further time within which to file and serve any objections to the bills of costs. The Applicant was afforded until 14 April 2023 to do so.¹²

9 Affidavit of Kirby Dixon made 13 August 2026 at [13], annexure 'KLD2'.

10 Court file correspondence dated 14, 15 and 16 March 2023, including the Applicant's email of 14 March 2023, emails from Chambers on behalf of Associate Justice Luppino dated 15 and 16 March 2023, and the Applicant's response of 16 March 2023.

11 Court file appearance record and correspondence dated 16 March 2023; Transcript of 16 March 2023.

12 Orders made on 16 March 2023 and court file correspondence of 16 March 2023.

- [9] The taxation hearing was then initially listed for 8 May 2023. Later, on 16 March 2023, the parties were advised that the relevant Taxing Master, Blanch R, would be unavailable on that date and alternate dates of 10, 15 or 23 May 2023 were proposed. The Applicant responded by email on even date to confirm that she was unavailable on 10 May 2023 but was available on both 15 May and 23 May 2023. Despite being afforded additional time by the Court, the Applicant did not file objections to either bill of costs at any time on or before 14 April 2023.
- [10] The taxation hearing was subsequently listed before Blanch R for 15 May 2023. No objections to either bill of costs had been filed by that date. On 12 May 2023, the Registry emailed the parties seeking confirmation of attendance for the taxation hearing on 15 May 2023 before Blanch R. The email was sent directly to the Applicant's email address. Later that day, the Applicant responded to seek an adjournment. She asserted that she was medically unfit to attend, that she required a litigation guardian and requested further information concerning the hearing. In response, the Registry advised the Applicant that an email dated 17 March 2023 had previously notified her of the hearing date and requested that any medical material be provided in a form capable of being reviewed. On the morning of 15 May 2023, the Applicant, or an unknown person on her behalf, sent further emails to advise the Court and the Respondent that she had been sent to hospital because of a hypertensive crisis and would not be attending the taxation hearing.

[11] The taxation proceeded before Blanch R on 15 May 2023, in the Applicant's absence. At that hearing, the Respondent filed an amended bill of costs in proceeding the Court of Appeal proceeding which related to items claimed in the preceding three months, to the value of an additional approximately \$4,700 over the original bill of costs. No affidavit of service of the amended bill of costs was filed with the Court nor is there any information indicating the Applicant was served with those amendments such that she had an opportunity to object to them. Following the hearing taxation certificates were issued in respect of both proceedings. In the Supreme Court proceeding, costs were allowed in the amount of \$71,229.60 together with GST and the taxing fee. This resulted in a total certified amount of \$83,694.78. In the Court of Appeal proceeding, costs were allowed in the amount of \$182,195.16 together with GST and the taxing fee. This resulted in a total certified amount of \$214,079.31. The combined effect of the taxation certificates was to certify costs of approximately \$297,774.09.¹³

[12] Following the taxation, the Applicant exercised her entitlement under r 63.55 of the Rules to seek reconsideration of the taxation determinations. On 13 June 2023, she filed an application seeking reconsideration and relied on medical material in support of an extension of time. The Applicant did not identify specific objections to individual items in the bill of costs. On that occasion, the Applicant did not indicate that she had not received the

¹³ *Reynolds v Darwin City Council* [2023] NTSC 60 at [4]-[19]; *Reynolds v Darwin City Council* [2023] NTCA 9 at [4]-[19].

summons for taxation or the bill of costs nor notice of the hearing and therefore was denied any opportunity to respond. Similarly, the Applicant made no mention as to the Court's previous orders for her to file objections by 14 April 2023. Her application sought reconsideration on the basis of her 'medical inability to respond' to the taxation assessment. Blanch R subsequently considered the application and delivered written reasons on 10 July 2023 dismissing it. The Registrar found that the Applicant had failed to identify any item in the bill to which objection was taken and had failed to provide a statement of objections complying with r 63.55(5). The Registrar published reasons in respect to both taxation matters.¹⁴ No review of either decision was sought by the Applicant.

The Applicant's Case

i. Issues

[13] The Applicant's primary contention is that she was not served with the summonses for taxation, the bills of costs and notices of hearing. It was her original evidence that she was entirely unaware of the taxation proceedings until June 2026, when she became aware of enforcement processes arising from the certificates.¹⁵ Subsequently it was her evidence that, upon consideration of the Respondent's filed evidence, she became aware of the

14 *Reynolds v Darwin City Council* [2023] NTSC 60; *Reynolds v Darwin City Council* [2023] NTCA 9. In respect to the former, there appears to be a typographic error at [1] which refers to an amended bill of costs. There was no amended bill of costs in this matter, though there was one filed in the latter.

15 Affidavit of Carolyn Jane Reynolds made 10 June 2026 at [6]-[8]; Affidavit of Carolyn Jane Reynolds made 30 July 2026 at [12]-[18].

taxation proceedings in about May or June 2023 when she sought reconsideration of the taxation decisions.¹⁶ The Applicant submits that because she had no notice of the taxation proceedings she was deprived of any opportunity to: file objections to the bills; challenge items claimed; seek reductions in the amounts claimed; appear or be heard at the taxation hearing or properly seek reconsideration or review of the taxation.¹⁷

- [14] The Applicant further submits that, had she been aware of the proceedings, she would have objected to a number of aspects of the bills including: the allowance of care and conduct uplifts; the recovery of GST; proportionality between the costs claimed and the subject matter of the litigation; alleged duplication between work claimed in different proceedings; the adequacy of supporting records; and the reasonableness of particular professional charges.¹⁸

ii. The Applicant's Evidence

- [15] In her affidavits which she principally relies upon, the Applicant asserts that she never received the taxation summonses or bills and was unaware of the taxations conducted on 15 May 2023.¹⁹ She further relies upon extensive medical material recording a history of, amongst other matters: migraines;

16 Affidavit of Carolyn Jane Reynolds made 4 September 2026 at [47].

17 Affidavit of Carolyn Jane Reynolds made 10 June 2026 at [10]; Affidavit of Carolyn Jane Reynolds made 4 September 2026 at [48(b)].

18 Affidavit of Carolyn Jane Reynolds made 30 July 2026 at [46]-[58]. However, the decision of Blanch R in respect to the taxation reconsideration is annexure 'CR2' to the affidavit of Carolyn Jane Reynolds made 17 June 2026. See also: Affidavit of Carolyn Jane Reynolds made 4 September 2026 at [50].

19 Affidavit of Carolyn Jane Reynolds made 10 June 2026; Affidavit of Carolyn Jane Reynolds made 30 July 2026 at [9]-[10].

episodes of malignant or uncontrolled hypertension; PTSD and anxiety-related conditions; neurological symptoms; and repeated presentations to hospital and specialist practitioners. Particular reliance is placed upon medical records relating to the period surrounding May 2023 and evidence showing an emergency department presentation on 15 May 2023, the date of the taxation hearing.²⁰ The Applicant submits this material demonstrates that, even if service occurred or taken to have occurred, she was not in a practical position to participate meaningfully in the taxation proceedings.

The Respondent's Case

i. *Issues*

- [16] The Respondent submits the application should be dismissed. It contends that the taxation process was conducted regularly and in accordance with the Rules. It further submits that the Applicant was properly served and that there is no evidentiary basis for concluding otherwise. The Respondent submits that the Applicant has a lengthy history of correspondence with the Respondent and the Court, and that the proposition that she remained unaware of the taxation process is inconsistent with the contemporaneous records. The Respondent further argues that the medical evidence falls well

²⁰ Medical records and exhibits annexed to the Applicant's affidavits. See, for example: Affidavit of Carolyn Jane Reynolds made 30 July 2026, where there are almost 200 pages of medical records of varying types. Despite those records and reference to a chronology of events prepared by the Applicant, there is no annexure containing a discharge summary from Royal Darwin Hospital dated 15 May 2023. There is however a medical certificate contained on the Court file, from Royal Darwin Hospital, for the dates 15-18 May 2023 indicating the Applicant was suffering from a medical illness but not otherwise specifying any fitness for duties or otherwise.

short of establishing any incapacity sufficient to justify disturbing final taxation decisions.

ii. The Respondent's Evidence

[17] The Respondent principally relies upon the affidavit of Kirby Dixon made 13 August 2026. That affidavit exhibits material said to establish service of the taxation summonses and bills by email on 23 December 2022.²¹ The Respondent also relies upon material relating to subsequent notices and correspondence arising from the taxation process.

[18] In relation to the medical evidence, the Respondent relies upon findings previously made by the Local Court and by Blanch R concerning deficiencies in the Applicant's medical evidence and the absence of material demonstrating an inability to participate in legal proceedings during the relevant periods.

Applicable Provisions

i. Jurisdiction

[19] Before considering the factual issues raised by the application, it is necessary to identify the source of the Court's power to grant the relief sought.

21 Affidavit of Kirby Dixon made 13 August 2026 at [13]-[18].

[20] As noted above, the Applicant sought interlocutory relief staying execution of two warrants of seizure and sale. She also sought substantive relief, including orders that the Respondent provide an itemised bill of costs, that the costs be taxed or re-taxed on proper notice or, alternatively, that time be extended to permit her to seek reconsideration or review of the taxation decisions. The summons expressly relied upon rr 2.01, 2.03, 3.02, 63.36, 63.55, 66.16 and 97.01 of the Rules, together with the Court's inherent jurisdiction.

[21] The Respondent did not contend that the Court lacked jurisdiction to entertain the application. Rather, it opposed the application principally on the factual bases that the Applicant had been served with the relevant documents, was aware of the taxation process and had not established any sufficient basis to disturb the taxation decisions.

[22] Although parts of the Applicant's submissions focus upon the grant of a stay, the substantive relief sought is directed to reopening or setting aside taxation outcomes determined on 15 May 2023. Additionally, if there is to be no re-opening/setting aside the relevant orders, the Applicant seeks an extension of time (r 3.02) to seek reconsideration or review of the taxation which was undertaken (r 63.55). The Court must therefore identify whether it possesses power to grant such relief before considering whether the factual foundation for the application has been established.

[23] The Applicant's case proceeds upon the contention that she was never served with the summonses for taxation, bills of costs other documents informing her of the taxation proceedings. She submits that she was thereby deprived of any opportunity to object to the bills, appear at the taxation hearing, properly seek reconsideration of the Taxing Master's determination or otherwise be heard before substantial liabilities were fixed against her. If those allegations were made good, the issue would not merely concern non-compliance with procedural requirements prescribed by the Rules; rather, it would engage the more fundamental principle that a person whose rights or property may be adversely affected by a judicial determination is entitled to notice of the proceeding and a reasonable opportunity to be heard before the determination is made. The Applicant relies upon that principle and upon authorities recognising the power of courts to set aside orders made in circumstances involving a denial of procedural fairness.

[24] In my opinion, the Court's jurisdiction to entertain the application is sourced from four related powers. First, rr 2.01 and 2.03 which preserve the Court's ability to address procedural irregularities occurring in proceedings before it. The Applicant contends that a failure to comply with the requirements governing service of taxation documents constitutes such an irregularity. Whether any such irregularity occurred is a matter going to the merits of the application, but the Rules provide a procedural foundation for the relief sought. Second, the Rules expressly provide a mechanism for reconsideration and review of taxation determinations. The Applicant seeks,

in the alternative, an extension of time under r 3.02 to pursue review processes arising under r 63.55. Whether such relief should be granted is again a separate question, but the Rules recognise an ongoing supervisory role of the Court in relation to taxation decisions. Third, superior courts possess an inherent jurisdiction to ensure that their processes are not used in a manner productive of substantial injustice and to set aside orders obtained in circumstances involving a denial of natural justice. If the Applicant were able to establish that the taxation proceedings occurred without service or notice to her, the Court would possess jurisdiction to consider whether the resulting taxation determinations should stand.

[25] Finally, the Court's power to grant relief is informed by r 46.08 of the Rules, which confers a discretion to set aside or vary an order affecting a person where the application was made in the person's absence or without notice. The existence of that discretionary power is consistent with the Court assessing the practical consequences of any irregularity and determining whether the interests of justice require the taxation determinations now to be disturbed. Rule 46.08 applies to applications for costs to be taxed on summons.²²

[26] It follows that the Court has jurisdiction to determine the present application. The real controversy between the parties is not whether the Court possesses power to grant relief but whether the Applicant has

22 See: r 63.36(5) of the Rules.

established the factual circumstances necessary to justify the exercise of that power. That question turns principally upon whether the Applicant was served with, or otherwise received notice of, the taxation proceedings and, if so, whether any other circumstance nevertheless warrants either reopening the taxation determinations made on 15 May 2023 or a relevant exercise of power extending time to seek reconsideration or review. Those matters are considered below.

ii. Taxation process and service requirements

[27] The taxation proceedings were governed by O 63 of the Rules. The Rules require a party seeking taxation to file and serve a summons for taxation and a bill of costs, and to provide the opposing party with an opportunity to object to items claimed. The summons for taxation, unless ordered otherwise, is to be served no later than 21 days before the hearing named on the summons.²³ The bill of costs is to be filed with the summons and is to be served at the time (or before) the summons is served.²⁴

[28] The summons for taxation and bill of costs are not required to be served personally but may be affected by ordinary service.²⁵ Ordinary service may be effected, in accordance with r 6.06, by leaving it at the other party's proper address for service²⁶ or by sending the document to the party's email

23 The Rules, r 63.36.

24 Ibid, rr 63.37-63.38.

25 Ibid, rr 6.01, 6.06.

26 Ibid, r 6.06(1)(a) (or by email if the party has endorsed or stated an email address under r 6.05).

address. Rule 6.05 provides that the address for service for a party, relevantly not appearing by solicitor, is either an address within 30km of the relevant registry or the email of the party stated in the originating process or notice of appearance. Proof of service may be established through affidavit evidence and documentary records demonstrating transmission of the relevant documents. It is trite to state that purpose of service requirements is to ensure that a party is afforded a reasonable opportunity to participate in proceedings affecting that party's interests.

[29] Relevantly, this matter concerns appeal proceedings and the appeal rules, appearing in Chapter 2 of the Rules, which contain no provisions relating to addresses for service, either physical or email. However, I take it that rr 6.06 and 6.05 have similar application to notice of appeals via the application of r 82.03. So too would other rules concerning service, such as confirmation of informal service (r 6.10) and service by agreement (r 6.13). Affidavits of service are provided by r 6.16 which, for ordinary service, require relevant dates and facts constituting service.

[30] Once service of the summons and bill of costs is effected, the party upon whom the summons and bill is served may, by notice, object to items in the bill.²⁷ A failure to object to the bill within a required timeframe (within 14 days of service or such other time as allowed) means the party is taken to have admitted the bill,²⁸ although the Taxing Master may address items in

27 Ibid, r 63.45(1).

28 Ibid, r 63.45(4).

the bill even if no objection is taken. An application for an extension of time to object to the bill, informally, may be made before or after the time expires.²⁹ Turning to the taxation process on summons, the process is set out as per the Rules. However, r 63.45(7) provides that a taxation shall not proceed unless the party to filing the bill proves, by affidavit, service of a copy of the bill on all relevant parties. At the end of the taxation process, the Taxing Master makes the relevant orders.³⁰

[31] What is clear from the above is, firstly, a party at the receiving end of a summons for taxation is given a timeframe in which they are to provide any objections and that timeframe may be extended by further order. Secondly, a taxation is not to proceed unless an affidavit of service for the bill is filed. In accordance with the Rules,³¹ that would require, for ordinary service, an affidavit with relevant dates stating the facts constituting service. For ordinary service, such an affidavit should state the documents were left at the proper address of the person to be served, sent by prepaid post to the person served at his proper address or sent by email (if endorsed on the relevant originating process).

[32] Once a taxation process has been completed the Rules provide for a reconsideration and review process. Rule 63.55 provides that an application for reconsideration can be made to the Taxing Master within 14 days of the

29 Ibid, r 63.45(6).

30 Ibid, rr 63.45(7), 63.54.

31 Ibid, r 6.16.

date of the taxation order. The Taxing Master is to consider the application for reconsideration, including any objections and responses to them, and give written reasons.³² Following that, where a party continues to object to a decision of the Taxing Master on reconsideration, a party may seek a review of the order. The review is made to a Judge.³³ That review needs to take place within 14 days of the reconsideration order. On review, the Judge has all of the powers of the Taxing Master including to set aside or vary the orders, remit or make such order as he or she thinks fit.

- [33] Thus, there is an elaborate process for dealing with taxation for: the filing and service of a summons and bill of costs; the opportunity to file and serve objections, and ability to gain an extension in which to do so; proving that service has been effected; the reconsideration of any decision; and the review of any reconsideration.

iii. Setting aside orders where service did not occur

- [34] A fundamental requirement of procedural fairness is that a person whose interests are liable to be affected by a judicial determination be given notice of the proceeding and an opportunity to be heard. In *Cameron v Cole*, Rich J described it as a fundamental principle of justice that a person against whom a claim is made be given a reasonable opportunity of appearing and

32 Ibid, r 63.55(1), (8).

33 Ibid, r 63.55(11)-(13).

presenting his or her case.³⁴ The principle applies equally where a court is asked to make orders materially affecting a person's rights or liabilities.

[35] Consistently with that principle, courts have long recognised a power to set aside orders where, through no fault of the affected party, a reasonable opportunity to be heard has been denied.³⁵ The critical question is whether notice sufficient to permit meaningful participation in the proceeding was given in accordance with the Rules or otherwise brought to the attention of the affected party. This aspect is reflected in r 46.08(b).

iv. Setting aside orders where a party had notice but could not participate

[36] The position is materially different where service is established. Relief from orders made in a party's absence is discretionary. The central question is whether, having regard to all of the circumstances, the interests of justice require the order to be disturbed. Relevant considerations include the reason for the party's non-participation, the promptness with which relief was sought, the existence of any arguable basis for reopening the proceeding and the prejudice that would result to the opposing party if the order were set aside. The discretion must be exercised bearing in mind the strong public interest in the finality of litigation. Powers to re-open concluded

³⁴ (1944) 68 CLR 571 at 589 per Rich J.

³⁵ *Taylor v Taylor* (1979) 143 CLR 1 at 4-5 per Gibbs J, 22 per Aickin J.

determinations are exercised with considerable caution.³⁶ This aspect is reflected in r 46.08(a).

Consideration

i. *Was the Applicant served?*

- [37] The first issue is whether the Applicant has established that she was not served with the taxation documents. The Applicant's evidence is that she did not receive the summonses, bills of costs or subsequent enforcement material. The Respondent relies on email service said to have occurred on 23 December 2022 and upon contemporaneous records said to document that service.
- [38] The Applicant's denial of receipt must be assessed against the documentary evidence of transmission relied upon by the Respondent. It is necessary to distinguish between proof of sending and proof of receipt. The fact that an email was sent may not necessarily establish that it came to the attention of the recipient. Equally, a mere denial of receipt will not necessarily displace objective evidence demonstrating effective service.
- [39] The factual dispute concerning service is relatively straightforward. The Applicant's position is that she never received the summonses for taxation or the bills of costs, nor was she aware of the taxation until about June 2023.

³⁶ *Autodesk Inc v Dyason (No 2)* (1993) 176 CLR 300 at 302.

She says that she was therefore deprived of any opportunity to participate in the taxation process.

[40] The Respondent relies upon contemporaneous documentary evidence showing service by email on 23 December 2022 of both the summonses for taxation and the associated bills of costs. The Respondent also relies upon subsequent communications said to have been sent to the Applicant concerning the taxation process and the taxation outcomes.

[41] I accept that a distinction must be maintained between proof that a document was sent and proof that it was actually read by the recipient. A party may genuinely fail to see or appreciate a document notwithstanding that it was validly transmitted. However, the issue before the Court is not whether the Applicant recalls reading the taxation documents; rather, whether the Court should accept her contention that she had no notice of the taxation proceedings and no reasonable opportunity to participate in them.

[42] In resolving that issue, I place significant weight upon the objective contemporaneous records. The Respondent's evidence is not merely that the documents were prepared. It is that they were transmitted to an email address which had previously been used in communications with the Applicant and through which she had conducted substantial aspects of the litigation. The Respondent's evidence also demonstrates a continuing course of communications concerning costs and taxation matters.

[43] The Applicant's evidence is essentially a denial of receipt. No evidence was adduced demonstrating any malfunction of the relevant email account, any failure of transmission, or any circumstance likely to have prevented the documents from reaching the email address used by the parties. More significantly, the Applicant's present contention that she remained unaware of the taxation proceedings until June 2023 is inconsistent with the contemporaneous documentary record.

[44] Whatever dispute may exist about whether the December 2022 emails actually came to the Applicant's attention when transmitted, the evidence establishes beyond doubt that the Applicant had actual knowledge of the taxation proceedings by March 2023. On 14 March 2023, she emailed the Court seeking an adjournment on medical grounds and requesting additional time because she said her medical conditions affected her ability to prepare and present her case. On 15 March 2023, the Court informed her that the matter remained listed for hearing on 16 March 2023.

[45] The matter was mentioned before Luppino AsJ on 16 March 2023. Orders were made, in court, giving the Applicant additional time in which to specifically file objections to the bills of costs. Later that same day, Court staff corresponded with the parties concerning alternate dates for the taxation hearing. The Applicant responded personally and advised that she would be available on 15 and 23 May 2023. That correspondence demonstrates not merely awareness of the taxation proceedings but active

engagement in the fixing of the taxation date. The Applicant nevertheless failed to file any objections within the time afforded by the Court.

[46] The Applicant's awareness of the taxation proceedings is further demonstrated by the events immediately preceding the taxation hearing. On 12 May 2023, the Registry emailed the Applicant seeking confirmation of attendance at the taxation hearing listed before Blanch R on 15 May 2023. The Applicant responded the same day seeking an adjournment on medical grounds. She, or someone on her behalf, subsequently sent further emails on the morning of 15 May 2023 advising that she had been sent to hospital and would not be attending the hearing. Those communications are irreconcilable with the proposition that she was unaware of the taxation hearing.

[47] Following the taxation, the Applicant exercised her entitlement to seek reconsideration pursuant to r 63.55 of the Rules. The Registrar considered and dismissed those applications on 10 July 2023. The Applicant did not seek review of the Registrar's decision. The reconsideration process itself demonstrates that by June 2023, the Applicant was aware not only that taxation proceedings had occurred but also of its outcome.

[48] In those circumstances, I am satisfied that the Applicant had actual notice of the taxation proceedings and repeated opportunities to participate in them. I am satisfied that she was aware of the proceedings no later than March 2023 and certainly by May 2023. To the extent that the Applicant now contends

that she remained unaware of the taxation proceedings until June 2023, that contention cannot be accepted.

ii. The Applicant's later evidence

[49] I wish to address what can be described as the shifting sands in this application. The Applicant's original evidence was that she knew nothing of the taxation process until the warrants of seizure and sale were brought to her attention in June 2026. However, after the close of the Respondent's evidence, the Applicant filed a further affidavit on 4 September 2026. In that affidavit, she accepted that by June 2023 she was aware that taxation had occurred, that she communicated with the Court objecting to the taxation and that she sought reconsideration of the taxation determination. She nevertheless maintained that she was never served with the summonses for taxation or the bills of costs, and that she was therefore denied a meaningful opportunity to participate in the taxation process, including any reconsideration. She also gave evidence as to being overseas when the summons for taxation and bill of costs were said to have been served by email.

[50] I accept the Applicant's evidence that she was outside Australia between approximately 20 December 2022 and 8 February 2023. I also accept that there is no evidence of personal service of the taxation documents upon her during that period. However, as discussed above, personal service was not required by the Rules. More importantly, whatever dispute may exist

concerning receipt of the December 2022 emails, the contemporaneous record demonstrates that by March 2023 the Applicant was aware that taxation proceedings were on foot. She appeared before Luppino AsJ on 16 March 2023, the requirements of her were explained by the Court, and she obtained an extension of time within which to file objections and thereafter participated in correspondence concerning the taxation hearing date.

[51] The Applicant's later affidavit also asserts that she had no knowledge of the taxation hearing on 15 May 2023. I do not accept that evidence. It is inconsistent with the contemporaneous documentary record. In particular, the Applicant identified dates upon which she was available for the taxation hearing, sought an adjournment on 12 May 2023 and on 15 May 2023, she (or someone on her behalf) communicated to the Court and the Respondent that she would not be attending because she had been sent to hospital. Those communications are inconsistent with a lack of knowledge of the hearing itself.

[52] I accept that the Applicant has longstanding medical conditions and that those conditions may affect her recollection of events. I do not infer from the inconsistencies in her evidence that she has deliberately attempted to mislead the Court. However, where her present recollection differs from contemporaneous documents, I prefer the contemporaneous record. In particular, I find that by June 2023 the Applicant knew that taxation had occurred, knew the outcome of the taxation, sought reconsideration of the

determination and knew by July 2023 that the reconsideration application had been dismissed.

iii. *Non-compliance with r 63.45(7)*

[53] I also wish to address an issue which is raised by the Applicant in respect to compliance with r 63.45(7) of the Rules. That rule provides that a taxation shall not proceed unless the party filing the bill proves by affidavit service of a copy of the bill on all relevant parties.

[54] The Applicant submits that no affidavit of service was filed and points to the absence of any such affidavit on file. The Respondent has not identified any affidavit of service complying with r 63.45(7), either in the material filed in response to the present application or otherwise. On the material presently before the Court, I am prepared to proceed on the basis that the taxation may have occurred without strict compliance with r 63.45(7).

[55] However, the consequence of non-compliance does not automatically follow. Rules 2.01 and 2.03 make clear that non-compliance with the Rules ordinarily constitutes an irregularity and does not, without more, render a proceeding, step, judgment or order a nullity. Rather, the Court is required to determine whether the irregularity should lead to the setting aside of the relevant step or order in the circumstances of the particular case.

- [56] In determining whether to exercise that power, the Court must have regard to the nature of the irregularity, the extent of any resulting prejudice, the conduct of the parties and the overall interests of justice.
- [57] Even assuming non-compliance with r 63.45(7), I am not satisfied that the Applicant suffered any practical injustice as a consequence. By March 2023, and certainly by May 2023, the Applicant had actual notice of the taxation proceedings. She was aware of the existence of the bills of costs. She sought accommodation on medical grounds. She participated in correspondence concerning the hearing date. She was granted additional time to file objections. She sought an adjournment of the taxation hearing. She (or someone on her behalf) sent communications on the day of the taxation advising that she would not attend. Following the taxation, she exercised her entitlement to seek reconsideration under r 63.55 of the Rules. In those circumstances, the fundamental purpose served by proof of service, namely ensuring notice and an opportunity to participate, was achieved notwithstanding the procedural irregularity.
- [58] I am therefore not persuaded that the interests of justice require the taxation determinations to be set aside solely because of the apparent absence of an affidavit of service. If there was non-compliance with r 63.45(7), it constituted an irregularity within the meaning of r 2.01. Having regard to the Applicant's actual knowledge of the proceedings, the opportunities afforded to her to object and participate, the reconsideration process subsequently invoked by her, and her failure to seek review thereafter, I

decline to exercise the discretion under rr 2.01 and 2.03 to set aside the taxation determinations on that basis.

iv. *The amended bill of costs*

[59] A separate issue arises in relation to the amended bill of costs filed by the Respondent at the taxation hearing on 15 May 2023 in the Court of Appeal proceeding. The amended bill increased the amount claimed by approximately \$4,700³⁷ and reflected additional costs incurred after the original bill had been filed in December 2022. There is no evidence before me that the amended bill was served on the Applicant before the taxation hearing, nor is there evidence that the Applicant was afforded a separate opportunity to object to those additional items (approximately 20) before they were taxed. To that extent, I accept that the Applicant did not have an opportunity to respond specifically to the amendments. I wish to make it clear that the amended bill issue is confined to the taxation conducted in the Court of Appeal proceeding. There is no evidence that the bill taxed in the Supreme Court proceeding was amended. To the extent the reconsideration reasons suggest otherwise, I regard that as a drafting error.³⁸ Any procedural fairness issue arising from the amended bill therefore relates only to the Court of Appeal proceeding.

37 Of a bill which originally claimed costs in the amount of \$177, 487.56.

38 *Reynolds v Darwin City Council* [2023] NTSC 60 at [1].

[60] I accept that the failure to serve the amended bill on the Applicant involved an element of procedural unfairness in relation to the amended items. Ordinarily, a party against whom costs are sought should be given an opportunity to review and, if thought appropriate, object to the bill which is ultimately taxed. The Applicant was denied that opportunity in respect of the additional items introduced by amendment. The unfairness identified was confined to those additional items. It did not affect the Respondent's underlying entitlement to costs, the Applicant's awareness of the taxation proceeding itself, the opportunity previously afforded to her to object to the original bills, nor the Taxing Master's jurisdiction to conduct the taxation. By March 2023, the Applicant had actual notice that taxation proceedings were on foot. She appeared before Luppino AsJ, obtained an extension of time within which to file objections, was aware of the hearing date ultimately fixed for taxation, sought an adjournment shortly before that hearing and communicated with the Court on the day the taxation proceeded. The Respondent's entitlement to costs was not dependent upon the amendments, and the amendments did not introduce a new basis of liability or materially alter the nature of the taxation exercise.

[61] In those circumstances, I do not accept that the absence of service of the amended bill rendered the taxation proceeding itself invalid or deprived the Taxing Master of jurisdiction to proceed. At its highest, the irregularity affected a discrete and identifiable component of the bill.

[62] Further, any assessment of the consequences of that irregularity must take into account the procedures provided by the Rules after taxation. By June 2023, the Applicant knew that taxation had occurred. She exercised her right to seek reconsideration under r 63.55 and received written reasons on 10 July 2023. Those reasons referred to an amended bill of costs filed on 15 May 2023 in AP 13 of 2020.³⁹ Accordingly, by July 2023 the Applicant was aware, or at least ought reasonably to have been aware, of the very matter now relied upon as giving rise to procedural unfairness. If she wished to contend that the amended bill had not been served, that she had been denied an opportunity to object to it, or that the wrong bill had been taxed, the review procedure under r 63.55 was available. No challenge to the amended bill, whether by review or otherwise, was brought at that time. Instead, the issue was first pursued almost three years later. That circumstance weighs strongly against disturbing the taxation now.

[63] I do not suggest that the availability of reconsideration or review necessarily cures every instance of procedural unfairness occurring at an earlier stage of a proceeding. However, where a party becomes aware of the determination, invokes the reconsideration process, receives written reasons and thereafter elects not to pursue the review mechanism specifically provided by the Rules, or otherwise, those matters are plainly relevant to the relief that should subsequently be granted.

³⁹ *Reynolds v Darwin City Council* [2023] NTCA 9 at [1], [19].

[64] Even assuming that the failure to provide the amended bill before taxation constituted procedural unfairness, I would not be persuaded that the taxation determination should now be set aside. The additional items were identifiable, limited in scope, related to post-December 2022 work of a kind certainly capable of recovery under the relevant cost orders, and represented a comparatively small component of the overall taxed amount. The Applicant became aware of the taxation outcome in 2023, sought reconsideration, did not seek review and allowed almost three years to elapse before raising the present application.

[65] In those circumstances and having regard to the discretionary nature of the relief sought, the availability and non-use of the review procedures provided by the Rules, the delay involved and the strong public interest in finality, I am not persuaded that the interests of justice require the taxation determination to be set aside, either wholly or in part, by reason of the amended bill.

Whether there is sufficient reason to set aside the decisions

[66] Although the above is sufficient to dispose of the Applicant's primary argument, it is appropriate to consider the alternative basis upon which relief is sought. The Applicant relies upon extensive medical evidence documenting longstanding and serious health difficulties. The material discloses a history of migraines, hypertension, neurological symptoms,

PTSD and anxiety-related conditions, and repeated presentations to hospital.

I accept that those conditions were genuine and, at times, debilitating.

[67] The question before the Court, however, is not whether the Applicant suffered significant health problems, nor is it whether those conditions created hardship in her daily life. The question is whether the evidence demonstrates that the Applicant was unable to participate meaningfully in the taxation proceedings during the relevant period.

[68] Particular emphasis was placed upon medical material concerning 15 May 2023, being the date upon which the taxation hearing proceeded before Blanch R. The evidence demonstrates that on 12 May 2023, the Applicant sought an adjournment on medical grounds and that on the morning of 15 May 2023 she (or someone on her behalf) communicated with both the Court and the Respondent advising that she had been sent to hospital because of uncontrolled hypertension. The Applicant's third affidavit refers to a chronology and underlying records, and there appears to be some material relating to 15 May 2023 in the chronology. However, from that material, I am unable to identify a contemporaneous medical certificate or treating doctor opinion dealing with inability to attend court. However, a medical certificate issued by Royal Darwin Hospital on 15 May 2023, covering the period 13-15 May 2023, noting that the Applicant has a medical

illness, with no further description as to capacity, was located on the Court file.⁴⁰ I accept that the Applicant was unwell at or about that time.

[69] I wish to emphasise that I do not take lightly the Applicant's assertion that she required hospital treatment on 15 May 2023. A genuine medical emergency may justify an adjournment or subsequent relief from a decision made in a party's absence. However, no medical evidence has been provided either before the hearing, after the hearing, or in these proceedings, which identifies the precise condition(s) affecting the Applicant on that date and, to the standard required, explaining why it prevented her from attending or otherwise participating in the taxation hearing. Whilst I accept that the Applicant may have been unwell, the evidence is insufficient to establish that her condition prevented participation in the taxation process.

[70] The contemporaneous material establishes that the issue of the Applicant's medical condition was specifically considered by the Taxing Master before the taxation proceeded. The Registrar recorded that the Applicant had provided medical reports, medical notes and a medical certificate in support of her request that the matter not proceed. The Registrar considered those materials and expressly noted that they did not state that the Applicant was medically unfit to attend Court on 15 May 2023. The medical certificate relied upon by the Applicant covered a period ending on 4 April 2023 and did not address her capacity to attend the taxation hearing on 15 May 2023.

⁴⁰ The notation on the court file states: '[t]he attached has not been provided to the Court until today 12/6/23'.

- [71] The Registrar further recorded that, on the morning of the hearing, the Applicant had spoken with Registry staff and had been advised to forward any medical certificate upon which she wished to rely. The material subsequently provided included a referral dated 15 May 2023. However, as the Registrar noted, that document did not state that the Applicant was medically unfit to attend Court on that day.
- [72] Having considered the material then before her, Blanch R determined that there was insufficient evidence to justify an adjournment and was satisfied that the Applicant was aware of the hearing. The Registrar therefore declined to adjourn the taxation and permitted it to proceed. Those contemporaneous observations were made at the time of the events and after consideration of the very matters upon which the Applicant now relies.
- [73] The distinction between the existence of a medical condition and an inability to participate in legal proceedings is well recognised. Courts have repeatedly emphasised that medical evidence relied upon to explain non-attendance or justify an adjournment must demonstrate not merely the existence of an illness but the reason why the illness prevented effective participation in the proceeding. In *Novikov & Novikov*⁴¹ and *Sabet & Abdo* (*No 2*)⁴², recent appellate and trial courts have emphasised that medical evidence relied upon to explain non-attendance or justify an adjournment must address the critical question of why and not merely whether the

41 [2024] FedCFamC1A 56.

42 [2025] FedCFamC2F 379.

condition prevented participation in the hearing. Generic assertions of illness, unfitness for work or inability to attend to usual activities are insufficient unless the material demonstrates a clear nexus between the condition relied upon and the asserted inability to participate effectively in the proceeding.

[74] The medical material relied upon by the Applicant suffers from the same difficulty. Whilst it demonstrates that the Applicant experienced genuine health issues, it does not satisfactorily explain why those conditions prevented her from filing objections within the extended period allowed by the Court, seeking further procedural relief, identifying the items to which she objected in the bills of costs, pursuing review of the reconsideration decision or otherwise taking steps to protect her interests.

[75] The relevant question is not whether the Applicant suffered from genuine health conditions. I accept that she did. The question is whether the evidence demonstrates that those conditions rendered her incapable of meaningful participation in the taxation process. The contemporaneous record does not support that conclusion. To the contrary, it demonstrates that the Court accommodated the Applicant's concerns by extending time for objections, considered her requests for adjournment, reviewed the medical material she supplied and concluded that there was insufficient evidence that she was medically unable to participate. The Taxing Master expressly considered and rejected her adjournment request.

[76] Taking the evidence as a whole, I accept that the Applicant suffered genuine and significant health issues. I am not satisfied, however, that those conditions prevented her from understanding the taxation proceedings, communicating with the Court, seeking procedural relief, filing objections, seeking review of the reconsideration decision, or otherwise taking steps to protect her interests. I am equally not satisfied that they provide a proper basis for setting aside the taxation determinations made on 15 May 2023.

[77] The Court must also have regard to the findings previously made by Blanch R. In dismissing the application for reconsideration, the Registrar observed that the medical certificates relied upon by the Applicant did not cover the relevant periods and did not explain her failure to comply with the requirements of r 63.55. Those findings are not determinative, but they are consistent with my own assessment of the material.

[78] The Applicant's contentions regarding medical incapacity and her inability to participate in the taxation process must also be considered in their broader procedural context. Prior to the taxation before Blanch R, similar issues had been raised and considered at several stages of the underlying litigation. In September 2021, the Court of Appeal refused a further adjournment sought on medical grounds, noting that the application was supported only by a general certificate of medical unfitness and that there was no real prospect that further delay would resolve the matters identified by the Applicant. In November 2022, Gordon JR considered similar assertions in the course of taxing the Respondent's Local Court costs and

expressly directed the Applicant as to the need for proper itemised objections and medical material capable of demonstrating an inability to participate in the taxation process. Those decisions are not binding or determinative of the present application.⁴³ They do, however, demonstrate that by May 2023, the Applicant was well aware of the requirements of a taxation proceeding, the need for itemised objections and the need to provide cogent medical evidence establishing why participation in the process was not reasonably possible.

[79] Accordingly, by the time the taxations were heard by Blanch R, the Applicant was already aware of the nature of taxation proceedings, the requirement for itemised objections, and the need to provide medical material capable of demonstrating why compliance with procedural obligations was not reasonably possible. Against that background, the Applicant's failure to file objections, and later her failure to provide a statement of objections complying with r 63.55, cannot readily be attributed to a lack of understanding of the process.

Delay

[80] A further and substantial difficulty confronting the Applicant is the delay with which the present application was brought.

⁴³ *Reynolds v City of Darwin* [2021] NTCA 3 at [2]-[4]; *City of Darwin v Carolyn Reynolds* [2022] NTLC 26 at [13]-[17], [43]-[57]; *Reynolds v Darwin City Council* [2023] NTSC 60 at [8]-[18].

- [81] The taxation determinations were made on 15 May 2023. The present application was not commenced until 10 June 2026, more than three years later. Delay is not necessarily fatal where an order has genuinely been obtained without notice. However, once the Applicant's primary contention concerning lack of notice is rejected, the significance of the delay increases considerably.
- [82] The Rules provided a series of opportunities through which the Applicant could challenge the taxation process or outcome. Before taxation, she was entitled to file objections to the bills and was afforded additional time by the Court in which to do so. Following taxation, she exercised her right to seek reconsideration under r 63.55. After the reconsideration application was dismissed, she retained a right to seek review before a Judge of the Court. Absent those processes, further processes were available to the Applicant.
- [83] By July 2023, the Applicant was unquestionably aware of the taxation proceeding, its outcome and the dismissal of her reconsideration application. Despite that knowledge, no review was sought and no further challenge to the process was brought until the commencement of the present application following enforcement activity in June 2026. In my opinion, no satisfactory explanation has been provided for that inactivity. In particular, the material before the Court does not explain why no review was sought, why no earlier application was made to set aside the taxation determinations or why no challenge of any kind was pursued during the almost three years which followed. As time passes, memories fade and records become more difficult

to locate. Parties organise their affairs on the basis that litigation has concluded and the public interest in finality becomes increasingly weighty. The significance of the delay in the present case extends beyond forensic inconvenience. In *Autodesk Inc v Dyason (No 2)*, the High Court emphasised the public interest in finality and the consequent need for caution before concluded proceedings are reopened.⁴⁴ That consideration carries substantial weight where, as here, the impugned determinations were made more than three years before the present application was commenced.

[84] The delay in the present case therefore weighs heavily against the grant of discretionary relief.

Prejudice and Finality

[85] The Court must also consider the broader interests of justice.

[86] The underlying dispute commenced in 2019. It proceeded through the Local Court, this Court and the Court of Appeal. Cost orders were ultimately made by the Court of Appeal in June 2022, and the taxation process was completed in 2023. The litigation has therefore occupied the attention of the parties and the Court for many years.

[87] It is also relevant that the Applicant was not entirely an involuntary participant in the litigation from which the present taxation determinations arise. Whilst she was the Respondent to the original Local Court

⁴⁴ (1993) 176 CLR 300 at 302.

proceeding, she subsequently elected to appeal to this Court and thereafter to the Court of Appeal. The costs orders ultimately taxed in 2023 arose following the dismissal of those appeals. That circumstance does not disentitle the Applicant from seeking relief. It does, however, reinforce the importance of finality once the appellate process has concluded.

[88] Finality is an important objective of the Rules governing taxation. Parties who obtain costs orders are entitled to have those costs assessed and recovered without the prospect of indefinite re-litigation. The Rules therefore provide structured opportunities for objection, reconsideration and review. Those opportunities were available to the Applicant.

[89] The Respondent has been entitled since 2023 to proceed on the basis that the taxation process had concluded. It obtained taxation certificates, successfully resisted the reconsideration application and was entitled to assume that the litigation had reached its conclusion when no review was sought, and no further challenge was brought.

[90] I accept that the Respondent did not immediately take steps to enforce the taxation certificates and that a considerable period elapsed between the dismissal of the reconsideration application and the commencement of actual enforcement activity. However, the Respondent was already in possession of final taxation determinations. The more significant consideration is that the Applicant, notwithstanding her knowledge of those determinations and

the dismissal of her reconsideration application, took no step to challenge them during that same period.

[91] I do not overlook the fact that the Applicant relies upon longstanding medical conditions in explanation of her conduct. However, by the time the taxation occurred in May 2023, issues of medical incapacity, adjournment, self-representation and the adequacy of medical evidence had already been considered at multiple stages of the litigation. The Applicant was therefore not confronting an unfamiliar process.

[92] The importance of finality is underscored by the history of the litigation itself. Concerns about repeated delay, medical incapacity and adjournment requests were raised long before the taxation proceedings. Barr J observed that the matter ultimately had to be determined and that the Respondent was entitled to have it heard.⁴⁵ Similar concerns were later expressed by the plurality of the Court of Appeal and Gordon JR in the Local Court.⁴⁶ Whilst those observations do not determine the present application, they demonstrate that the tension between accommodation of the Applicant's circumstances and the Respondent's entitlement to a final determination has been a recurring feature of this litigation.

[93] In circumstances where I am satisfied that the Applicant had actual notice of the taxation process, was afforded a reasonable opportunity to participate,

⁴⁵ *Reynolds v City of Darwin* [2020] NTSC 69 at [71]-[72].

⁴⁶ *Reynolds v City of Darwin* [2021] NTCA 3 at [2]-[4]; *City of Darwin v Carolyn Reynolds* [2022] NTLC 26 at [43]-[57].

has not demonstrated an incapacity preventing participation, and thereafter allowed the matter to remain undisturbed for almost three years, the interests of justice strongly favour finality.

[94] Those considerations substantially outweigh any basis for reopening the taxation determinations made on 15 May 2023.

Extensions of time

[95] In the alternative, the Applicant seeks an extension of time to pursue reconsideration or review under r 63.55. To the extent that reconsideration is sought, that process has already occurred. Blanch R considered and dismissed the Applicant's application for reconsideration on 10 July 2023. There is therefore no utility in extending time to permit a reconsideration application that has already been made and determined. To the extent that the Applicant seeks an extension of time to seek review of the reconsideration decision, I decline to grant such relief. The same considerations which lead me to refuse the application to re-open the taxation determinations, including the Applicant's actual knowledge of the taxation process, her failure to pursue review in 2023 and the substantial unexplained delay of almost three years, lead me to conclude that no extension of time should now be granted.

Whether an oral hearing is required

- [96] Notwithstanding that consent orders were made that this application be determined on the papers, the Applicant has recently submitted that the matter should be listed for a full oral hearing on the basis that a number of factual matters are disputed, including service of the taxation documents, service of the warrants, the amended bills of costs and the disposition of various business assets.⁴⁷ I have considered that submission.
- [97] The Applicant seeks leave to rely upon additional evidence by way of the affidavits of Gemma Baxter made 3 September 2026 and Michael Anthony made 2 September 2026. I have considered that material. The affidavits are directed principally to the existence, value and disposition of business assets formerly located at the Rock Centre premises, alleged restrictions upon access to those premises, and the possibility that assets may have been sold, disposed of or otherwise dealt with following the Respondent obtaining possession. Whatever significance those matters may have in another context, they do not materially bear upon the issues presently before the Court concerning service of the taxation documents, notice of the taxation process, the taxation determinations, the reconsideration process, delay or finality.
- [98] More importantly, receipt of that evidence would tend to transform what is presently a confined challenge to completed taxation proceedings into a

⁴⁷ Submissions in Reply of Applicant filed 4 September 2026.

much broader factual inquiry concerning business assets, access to premises, valuation issues, alleged loss of property and whether any part of the judgment debt may have been satisfied by means unrelated to the taxation process itself. Those matters are not the subject of the present summons and would substantially expand the scope of the application. In circumstances where the taxation determinations were made more than three years ago, reconsideration occurred in 2023, no review was sought, and the Court is required to have regard to the importance of finality, I am not persuaded that the interests of justice favour permitting the present application to evolve into a broader inquiry of that kind. To the extent leave is required to rely upon the affidavits of Gemma Baxter and Michael Anthony, leave is refused. The proposed expansion of the issues for determination reinforces my conclusion that the interests of justice now favour finality.

[99] Turning back to the specific issue, I do not consider that an oral hearing is necessary in the interests of justice. The issues raised by the present application are sufficiently disclosed by the affidavit material, the Court file, the taxation records and the contemporaneous documentary evidence. The determinative questions concern the effect of those documents and the procedural history of the taxation process.

[100] To the extent factual disputes exist, they are either capable of resolution by reference to the contemporaneous documentary record or are not material to the disposition of the application. In particular, I have proceeded upon assumptions most favourable to the Applicant in relation to several matters,

including the possibility of non-compliance with r 63.45(7) and the absence of service of the amended bill of costs. Even upon those assumptions, for the reasons already given, I am not persuaded that the taxation determinations should now be set aside.

[101] Having regard to the overarching purpose reflected in O 1A of the Rules, the requirement that proceedings be resolved justly, quickly and inexpensively, the age of the litigation, the substantial documentary record already before the Court and the importance of finality, I am satisfied that the present application can be fairly and adequately determined on the papers. To the extent that the Applicant seeks a full oral hearing, that request is refused.

Disposition

[102] The critical fact is that, whatever dispute may exist concerning service in December 2022, by July 2023 the Applicant knew that taxation had occurred, knew the outcome of the taxations and knew that her reconsideration applications had failed. If she wished to challenge the taxation process on the basis of non-service, procedural unfairness, the amended bill of costs or any other irregularity, opportunities existed to bring those matters before the Court. No such challenge was pursued. Instead, the taxation determinations were left undisturbed for almost three years. That circumstance bears heavily upon the relief now sought.

[103] For the reasons given above, I am satisfied that the Applicant had actual notice of the taxation proceedings and ample opportunity to participate in

them. Whether viewed through the lens of service in December 2022 or actual knowledge demonstrated by her conduct in March, May and June 2023, the Applicant has failed to establish that the taxation proceedings were conducted without notice to her.

[104] I am further not satisfied that the medical evidence establishes any incapacity which prevented the Applicant from participating in the taxation proceedings or pursuing the procedures for reconsideration or review available under the Rules.

[105] I do not consider that the Applicant has demonstrated any other basis upon which the taxation determinations made on 15 May 2023 should now be reopened. That conclusion includes the irregularities identified in relation to the absence of an affidavit of service under r 63.45(7) and the failure to provide the amended bill of costs in the Court of Appeal proceeding prior to taxation. Particular weight must be given to the substantial delay between those determinations and the commencement of the present application, the absence of any satisfactory explanation for that delay and the public interest in the finality of litigation.

[106] It follows that the Applicant's application must be dismissed.

Costs

[107] The Respondent seeks its costs of the application. The ordinary rule is that costs follow the event. The Respondent has successfully opposed the application and there is no sufficient reason to depart from that principle.

[108] I accept that the Applicant genuinely believes that she did not receive the taxation documents and that the application was brought in circumstances where enforcement action had commenced against significant property interests. However, those matters do not alter the fact that the Respondent has been successful and has incurred costs in resisting the application.

[109] In all the circumstances, the Applicant should pay the Respondent's costs of and incidental to the application, to be taxed if not agreed.

[110] Notwithstanding the dismissal of the application, I consider it appropriate to continue the existing stay for a short period to enable the Applicant to consider her position and, if so advised, take any further steps available to her.

Orders

[111] I therefore make the following orders:

1. The application filed 10 June 2026 is dismissed.
2. The interim stay of execution of the two warrants of execution, granted by order on 18 June 2026, pending determination of the application

shall continue for 28 days from the date of these orders and shall lapse thereafter, unless otherwise ordered.

3. The Applicant shall pay the Respondent's costs of and incidental to the application, to be taxed if not agreed.
