Fernon v Lawton [2012] NTSC 7

PARTIES:	JOAN PATRICIA FERNON
	v
	MICHAEL LAWTON
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	43 of 2009 (20908447)
DELIVERED:	9 FEBRUARY 2012
HEARING DATES:	23 JANUARY 2012
JUDGMENT OF:	MASTER LUPPINO

CATCHWORDS:

Practice and Procedure – Privilege attaching to documents prepared and used for settlement negotiations – Statutory privilege attaching thereto.

Costs – Cost orders in applications for a property adjustment order under the De Facto Relationships Act – Costs in the discretion of the Court – Principles applicable to the exercise of the discretion.

Interest – Entitlement to interest on judgment – Date from which interest is to run – Extent of Court's discretion in respect of interest on judgment – Whether an amount payable under an adjusting property order under the De Facto Relationships Act is a judgment debt.

Supreme Court Act ss 9, 84, 85
Supreme Court Rules rr 26.03(3), 26.03(4), 48.12, 48.12(8), 48.12(12), 59.02, 63.03(1).
*De Facto Relationships Act (NT)*s 18
Property (Relationships) Act 1984 (NSW)

Nicol v Allyacht Spars Pty Ltd (No.2) (1988) 165 CLR 306.
Kardos v Sarbutt (No.2) (2006) DFC 95-337.

Baker v Towle [2008] NSWCA 73.
Albany v Albany [2010] NTSC 25.
Re The Minister for Immigration and Ethnic Affairs Ex Parte Lai Qin [1997] 186 CLR 622.
Dunstan v Rickwood (No.2) [2007] NSWCA 266.
Chanter v Catts (No.2) [2006] NSWCA 179.
Rowston v Dunstan [2011] NTSC 30
Hartley Poynton Ltd v Ali (2005) 11 VR 568.

Williams, Civil Procedure Victoria.

REPRESENTATION:

Counsel:

Plaintiff:	Mr Young
Defendant:	Mr Black

Solicitors:

Plaintiff:	De Silva Hebron
Defendant:	Cecil Black Family Lawyer

Judgment category classification:	B
Judgment ID Number:	LUP1202
Number of pages:	22

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Fernon v Lawton [2012] NTSC 7
No. 43 of 2009 (20908447)

BETWEEN:

JOAN PATRICIA FERNON
Plaintiff

AND:

MICHAEL LAWTON
Defendant

CORAM: MASTER LUPPINO

REASONS FOR DECISION

(Delivered 9 February 2012)

[1] On 23 December 2010 I made an adjusting property order pursuant to section 18 of the *De Facto Relationships Act* ("the DR Act") and published reasons. These further reasons deal with costs and interest on judgment.

[2] The adjusting order I made was in favour of the Plaintiff to the extent of 46.25% with the balance of 53.75% to the Defendant. The total property pool that I assessed included the financial resources of the parties, specifically the parties' superannuation. On 24 June 2011 the Court of Appeal determined that the value of the superannuation should not have been included in the pool and readjusted the distribution by reducing the Plaintiff's entitlement to 44%. As the former matrimonial home was in the

process of sale at the time of the trial before me, the adjusting order I made was based on an agreed value of the former matrimonial home at $875,000.00. The sale occurred between the hearing and decision in the Court of Appeal. The sale price achieved was $835,000.00. On that basis the distribution of 44% in favour of the Plaintiff represented approximately $375,800.00 in round figures.

[3] Pending the Court of Appeal decision, the parties agreed to an interim distribution of the proceeds of sale of the former matrimonial home as to $270,000.00 to the Plaintiff and $232,414.00 to the Defendant with the balance to be retained in the trust account of the Plaintiff's solicitors. The balance was invested at prevailing market rates. How that division was arrived at was not explained.

[4] The balance was not distributed to the parties until 16 December 2011. I was told that the reason for the delay was that the Defendant sought interest on judgment from the date of my decision as opposed to the date of the decision of the Court of Appeal. After accepting that the interest should run from the date of the Court of Appeal decision, the Defendant withheld his agreement to payment out and required part of the amount to be retained and earmarked to cover the costs of the appeal. In effect the Defendant sought a de facto order for security for the costs of the appeal. The funds were only paid out when the Defendant abandoned that position.

[5] The claim by the Defendant to interest on judgment from the date of my decision is untenable. Where a decision is appealed the rule that applies in respect of interest is that if the decision under appeal is upheld then interest runs from the date of the primary decision. On the other hand where the primary decision is reversed on appeal, as in the current case, interest runs from the date of the decision on appeal unless the Court hearing the appeal antedates that order: *Nicol v Allyacht Spars Pty Ltd (No.2).*[1]

[6] A preliminary issue in the course of the argument before me concerned the evidence filed by the Defendant for the purposes of the application. The Defendant sought to rely on the affidavit of Cecil Black affirmed 20 January 2012. The Plaintiff took objection to most of the affidavit based on relevance and there was also an objection based on privilege. I received the affidavit *de bene esse* as I needed an understanding of the issues on the question of costs and interest to be able to determine the relevance. Mr Black for the Defendant argued that the material was relevant for the purposes of putting before the Court all matters relevant to the positions taken by the parties, including offers, for an appropriate consideration of the entitlement to costs in accordance with the principles in *Kardos v Sarbutt (No 2)*[2] ("*Kardos*") and *Baker v Towle*[3] ("*Baker*") which are discussed below. I agree that the documents are relevant for that purpose.

[1] (1988) 165 CLR 306
[2] (2006) DFC 95-337
[3] [2008] NSWCA 73

[7] As to the objection based on privilege, the document in question was a spreadsheet prepared by the Plaintiff for the purposes of a settlement conference held on 18 May 2010 pursuant to Rule 48.12 of *Supreme Court Rules* ("the SC Rules"). The document had a handwritten note on it, namely "*Without Prejudice*" and I was told, without challenge, that the notation was made by the Plaintiff's counsel before or at the time the document was provided. Mr Black again argued that notwithstanding that apparent claim to privilege, the document was admissible for the purposes of costs and specifically so that it can be taken into account in assessing the position adopted by the parties in accordance with the principle in *Kardos* and *Baker*.

[8] Rule 48.12(8) of the SC Rules is the relevant starting point in determination of the admissibility of the document. That rule provides:-

> (1) Except to prove that a settlement was reached between the parties and the terms of the settlement, evidence of things said or admissions made at a settlement conference is not admissible in either the proceeding or a court without the consent of those parties.

[9] No evidence of consent was put before me in any event. It is clear from the objection that the Plaintiff does not consent. It is also clear that the spreadsheet contains admissions. I am of the view that the spreadsheet falls within the meaning of the phrase *"things said"* in Rule 48.12(8) as that must extend to documents produced for discussion at a settlement conference. It would be absurd if the privilege did not attach to something recorded in

document form for the purposes of the settlement conference whereas that same material would be privileged if it was instead stated verbally.

[10] If Mr Black were to be correct and the spreadsheet was admissible for cost purposes, then it is illogical to limit that exception only to that document. On that argument anything relevant to costs that was said at the settlement conference would be admissible for cost purposes. However that appears to run directly counter to the stated prohibition in Rule 48.12(8). The SC Rules specifically provide that where an offer of settlement is made at a settlement conference then the offer may be taken into consideration by the Court for costs purposes.[4] For that purpose the final recorded offers made by the parties at the settlement conference simply restated their positions as set out in the pleadings. Rule 48.12(12)(b) sets the limit for things said or done at a settlement conference which can be taken into consideration for costs purposes. Although offers can be taken into account other discussions are not exempt.

[11] In any event the notation on the document by the Plaintiff's counsel has the effect of claiming privilege at common law. The privilege attaches to all without prejudice negotiations.[5]

[12] Accordingly in my view that document is not admissible for any purpose.

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[4] Order 48.12(12)(b)
[5] *Albany v Albany* [2010] NTSC 25

[13] As the DR Act does not contain any specific costs provisions, costs are therefore regulated by the SC Rules. The starting point is Rule 63.03(1) which provides that costs are in the discretion of the Court. The discretion is a judicial discretion and must be exercised in accordance with generally accepted principles. The general rule is that a successful party is entitled to an order for costs unless sufficient reason is shown which satisfies the Court that costs should not be ordered. Success in the action or, in some cases, on a particular issue, is the factor that usually controls the exercise of the discretion and a successful party is prima facie entitled to costs.[6]

[14] The relevant sections of the DR Act are in *para materia* to the New South Wales *Property (Relationships) Act 1984.* As a result, decisions made under the New South Wales act can have application in proceedings under the DR Act. However, in respect of costs there is an essential difference between the position in New South Wales and in the Territory. In New South Wales, costs orders are subject to a general rule which provides that costs are to follow "*the event*" unless the Court considers that some other order is appropriate.[7] Although a broad discretion is still vested in the Court, the mandated starting point is that costs follow the event, which seems to give statutory force to the general rule referred to in the preceding paragraph.

[15] The most recent New South Wales decision on point is *Baker*. Preceding that case, *Kardos* held that a starting position in applications for adjustment of

[6] *Re The Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin* (1997) 186 CLR 622
[7] *Uniform Civil Procedure Rules 2005 (NSW) r* 42.1

property interests in de facto relationships matters should be that each party should bear their own costs. Later cases such as *Dunstan v Rickwood (No 2)*[8] and *Baker* have rejected that as a general principle. In *Baker* however the Court agreed that the starting position set out in *Kardos* could still apply to cases *"..where it could not be said that either party had been "wholly or substantially successful" or had bettered his or her offer of compromise*".[9] This was said to be justified on the basis that in de facto property settlement matters, determination of "*the event*" for the purposes of the general costs rule might involve consideration of factors which do not apply to other forms of civil litigation.

[16] The factors referred to appear to be the four considerations referred to by Brereton J in *Kardos*. Only two of those factors have relevance in the current case.

[17] The first of those two is that typical property adjustment orders differ greatly to judgments in routine civil litigation. His Honour said:-

> "However, the costs of adjusting property interests consequent upon the failure of a domestic relationship are an instant of the failure of the joint relationship, usually without attributable fault.....In this type of litigation, it is artificial to resolve liability for costs according to the accident of who is plaintiff and who is defendant, so as to leave a plaintiff free to litigate confident that he will receive costs however unreasonable his claim, unless the defendant betters her offer. There is no reason why the defendant should bear the risks

[8] [2007] NSWCA 266
[9] [2008] NSWCA 73 at para 82

> of costs to the exclusion of the plaintiff when neither makes a realistic offer."[10]

[18] The other relevant consideration is the extent to which any party has been wholly or substantially successful or has bettered an offer of compromise. His Honour approved of *Chanter v Catts (No.2)*[11] to the effect that there may be a costs entitlement on the basis of "*substantial success*" notwithstanding that less than the initial amount claimed was achieved. In this context Brereton J elaborated and said:-

> "For this purpose, "substantial success" is not to be judged merely by the circumstance that a plaintiff obtains an adjustment order in his or her favour. It involves an evaluation of the outcome, in light of the forensic and negotiating positions of the parties, such that it can be said that one party has been clearly more successful than the other, to the extent that the costs of the proceeding can be seen to be attributable to the unsuccessful party's opposition, rather than to matters referred to by Hisolp J in *Vollmer* – including, in particular, the necessity for both parties that their property interests be separated, and the failure of both parties to adopt a realistic position."[12]

[19] As I said in *Rowston v Dunstan*,[13] irrespective of the extent to which the authorities on costs under New South Wales law apply in the Northern Territory, the considerations identified by Brereton J in *Kardos* are appropriate matters to take into account in the exercise of this Court's discretion as to the costs of these proceedings under the regime applying in the Northern Territory.

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[10] (2006) DFC 95-337 at paras 28-29
[11] [2006] NSWCA 179
[12] (2006) DFC 95-337 at para 31
[13] [2011] NTSC 30

[20] Turning now to consider the forensic and negotiating positions adopted by the parties, the first offer was made personally by the Plaintiff to the Defendant by email dated 10 December 2008. It is clear from that email that the Plaintiff had the benefit of legal advice. Mr Young for the Plaintiff argued that the email did not contain an offer as such but I agree with Mr Black that an offer was made and that it was made specifically for costs purposes. The email refers to Calderbank letters and to the Offers of Compromise procedure.

[21] That offer was for an equal division of the property pool, including the parties' respective superannuation entitlements. The Plaintiff calculated the quantum of that offer at approximately $550,000.00 in round figures. That offer, at least as to the percentage proposed although not as to the specific dollar amount, was then repeated by an open letter from the Plaintiff's solicitor dated 19 March 2009. The offer was based on a value for the former matrimonial home of $850,000.00 which was $15,000.00 greater than the actual sale price achieved some three years later.

[22] The first offer from the Defendant came in a detailed letter from his solicitors dated 6 May 2009. The Defendant's offer represented a distribution in proportion 58.75% / 41.25% in the Defendant's favour. This was based on the value of the former matrimonial home being $785,000.00 and the adjustment in dollar terms was calculated at $357,487.00 to the Plaintiff.

[23] Relevantly the position that the Defendant adopted in that offer and the position which the Defendant has always maintained since then is that superannuation should be excluded from the property pool. That position was validated on appeal.

[24] The foregoing positions were not reflected in the orders sought in the pleadings. In her Statement of Claim filed 15 December 2009 the Plaintiff sought orders which, had they been granted, would have resulted in an award in her favour in dollar terms of the order or $616,000.00 based on the values which I subsequently found. In his Defence filed 20 January 2010 the Defendant sought orders that he retain the former matrimonial home and pay the Plaintiff an amount of approximately $121,000.00. Some other incidental orders were also sought which basically would see the status quo maintained in respect of all remaining assets. As noted above those positions were maintained by both parties at the settlement conference held 18 May 2010.

[25] A change in the parties' position occurred by the time of trial which commenced on 4 October 2010. At the time of the opening of the Plaintiff's case, Mr Young proceeded on the basis of a distribution in of 49% of the pool, which included superannuation, to the Plaintiff. The Defendant's position at the trial was for a distribution of 45% of the pool to the Plaintiff, but excluding superannuation.

[26] The final division after the decision of the Court of Appeal was for a distribution to the Plaintiff of 44% of the property pool excluding superannuation.

[27] In summary the end result was a distribution of the proceeds of sale of the former matrimonial home as to the sum of $375,800.00 to the Plaintiff and $426,000.00 to the Defendant in approximate round figures. That distribution is closer by far to the Defendant's initial offer than to that of the Plaintiff. Nevertheless, the Plaintiff bettered the Defendant's offer by approximately $17,000.00 which I consider to be a significant amount. It also substantially betters the position of the Defendant in his Defence and as restated at the settlement conference. On the other hand, that amount falls well short of the Plaintiff's initial offer and her final offer at the settlement conference.

[28] Although I accept that the parties' positions as set out in their respective pleadings or at trial is something which can be taken into consideration for the purposes of determining the forensic or the negotiating position of the parties, in the normal case I consider an offer, whether by way of Calderbank letter or by the Offer of Compromise procedure in the SC Rules, is more relevant for cost purposes. Claims in pleadings are often subsequently developed once the evidentiary position is clearer as the case develops. The claims in pleadings more set the limits in the nature of an ambit claim rather than necessarily being representative of a party's final position. Having said that, in this particular case the position taken in the

pleadings is more relevant and has greater significance given that the final offers of both parties at settlement conference was to restate their position as set out in their pleadings.

[29] The position adopted at the commencement of the trial is not strictly an offer. In any case it occurs at an obviously late stage and that impacts on its relevance in my view. By that time the parties have prepared their case for trial, often in reliance of previous offers and having had an opportunity to review offers after considering all the evidence. Moreover, by that time there is no realistic opportunity for the other party to consider it if it is to be treated as an "offer". A reasonable time is usually allowed for that purpose. The Offer of Compromise procedure in the SC Rules allows at least 14 days.[14] For these reasons, in general terms the positions in the pleadings and as argued at trial are not as important as offers specifically put.

[30] In summary, the positions of the parties at the various times are that the Plaintiff's initial offer was 50/50 or $550,000.00, her offer in the pleadings and at the settlement conference was $616,000.00 and at trial she sought 49% of the property pool. By comparison, at corresponding times, the Defendant's position was 41.25/58.75 or $357,500.00, then $121,000.00 and lastly 45% of the pool.

[14] See rules 26.03(3) and (4).

[31] With that background the Defendant seeks costs on an indemnity basis against the Plaintiff and the Plaintiff argues that there should be no order for costs.

[32] The Defendant's claim to costs is based firstly on the exclusion of the superannuation from the pool. The Defendant claims that as a successful outcome in terms of *Kardos* and *Chanter v Catts (No 2).*[15] Although that is a relevant factor to be taken into account, it is not the paramount consideration. It is clear from the cited extract from that case that it is a factor which is to be considered as part of the forensic and negotiating positions overall and to the extent that *"…the costs of the proceeding can be seen to be attributable to the unsuccessful party's opposition…and the failure of both parties to adopt a realistic position"*. Noting that the last true offers were made at the settlement conference and that both parties' offers can be said to be unrealistic measured against the final result, the current case seems to fall outside the position envisaged by those authorities. Having regard to that the significance of the Defendant's success on the superannuation issue is reduced.

[33] Secondly the Defendant submits that he bettered the Plaintiff's position as at the commencement of trial by a factor of 4% and that he bettered his own position at the commencement of trial by 1%. I think that overly emphasises the position taken by the parties as at the time of trial which, in any case, I consider to be less relevant for costs purposes for the reasons set out above.

[15] [2006] NSWCA 179

The Defendant also submitted that the distribution to the Plaintiff fell far short of both her initial offer ($550,000.00) and the value of the orders she sought in the Statement of Claim (approximately $616,000.00). However in that respect costs orders are based on betterment of an offer not the failure by a party to achieve or better their own offer. The failure to achieve the claimed amount is not determinative: *Chanter v Catts (No 2)*[16] and *Dunstan v Rickwood (No 2).*[17] That submission also overlooks that the final distribution to the Plaintiff exceeded the amount put by the Defendant in his Defence and at the settlement conference by some $250,000.00. It was bettered by a factor of three and that clearly renders the Defendant's offer unrealistic.

[34] In the end result the Plaintiff's initial offer was excessive. The Defendant's initial offer was closer to the ultimate result but the Defendant subsequently reduced that at the settlement conference. In any event it was bettered by the Plaintiff and by more than a minimal or trivial amount. Leaving aside betterment by a minimal or trivial amount, it is the betterment of the offer that is relevant more so than the amount by which the offer is bettered.

[35] Having said that, consideration of the success of the Defendant on the superannuation issue, to the extent that looking at that almost in isolation is not inappropriate, turns on whether the Plaintiff's position in respect of the superannuation was unreasonable. Although the Court of Appeal accepted

[16] [2006] NSWCA 179
[17] [2007] NSWCA 266

the position adopted by the Defendant it was by a majority decision. A consideration of the majority decision identifies and recognises that the Plaintiff's position was arguable.

[36] In my view the net result then is that neither party was wholly or substantially successful in their case. Neither made a realistic offer and neither bettered their offers. Cases involving an adjusting property order pursuant to the DR Act are in a different category to the usual civil litigation conducted in this Court. Cases such as the current proceedings highlight that difference. The case ultimately turned on how the proceeds of sale of the former matrimonial home of the order of $770,000 were to be distributed. It is different to a routine case in this Court where the decision may be a total success or a total failure in a claim for a monetary award. The effect of the adjusting property order is that an amount is awarded in favour of each party. There is technically no victor and no loser in the proceedings. For all of the foregoing reasons in my view the most appropriate basis for determining whether a costs order should be made in favour of one party is whether offers have been bettered and that did not occur here.

[37] In my view therefore there should be no order for costs.

[38] The question as to whether indemnity costs should be ordered does not need to be considered but I will briefly do so. The claim for indemnity costs is made firstly on the basis that the Plaintiff only bettered the Defendant's offer by a comparatively small amount. I was not persuaded that this should

be the basis for an order for costs at all and for similar reasons I do not consider that it should be the basis of indemnity costs.

[39] Secondly Mr Black submitted that the Defendant had always maintained that superannuation should not have been included in the property pool and that the Plaintiff's position on that issue was plainly unreasonable. I have already dealt with this and I remain of the view that the Plaintiff's position was at least arguable.

[40] In my view the cases where indemnity costs are awarded are fairly clear. They are usually confined to cases where offers are bettered or where a position taken by a party totally lacks merit: *Dunstan v Rickwood (No 2).*[18] That cannot be said to be the case in the current proceedings.

[41] Accordingly had I been persuaded that a costs order in favour of the Defendant was appropriate, such an order would have been made on the standard basis.

[42] I now turn to the question of interest on the judgment debt.

[43] Relevant to this issue is section 85 of the *Supreme Court Act* and Rule 59.02 of the SC Rules both of which are set out hereunder:

> **85 Interest on judgments**
>
> Except as provided by any law in force in the Territory, a judgment debt carries interest, from the date of the judgment:

[18] [2007] NSWCA 266

(a) at such rate as is fixed by the Rules;[19] and

(b) until a rate is so fixed, at 8% per annum.

59.02 Judgments and orders

(1) A judgment given or order made by the Court shall bear the date of and take effect on and from the day it is given or made, unless the Court otherwise orders.

(2) Any other judgment shall bear the date of and shall take effect on and from the day it is authenticated in accordance with Order 60.

(3)-(5) *Omitted*

[44] Unlike section 84 of the *Supreme Court Act* which deals with interest up to judgment and which is the discretion of the Court, interest on a judgment debt pursuant to section 85 of the *Supreme Court Act* is as of right and the Court can neither vary the rate specified nor decline to award it: *Hartley Poynton Ltd v Ali*. [20]

[45] One of the objects of an award of interest on judgment, I consider it to be the major object, is to deter a judgment debtor from the delaying the ultimate payment of the judgment amount while profiting from the use of the withheld funds.[21]

[19] Rule 59.02(3) of the SC Rules fixes the rate of interest by reference to the Federal Court Rules and that rate is 10.75%.
[20] (2005) 11 VR 568.
[21] *Williams, Civil Procedure Victoria*, Vol 2 at para 690.17

[46] Rule 59.02(1) stipulates that a "*judgment*" takes effect from the day it is given or made unless the Court otherwise orders. There has been no other order from the Court.

[47] Section 85 of the *Supreme Court Act* contains the term "*judgment*". That term is given a specific meaning in section 9 of the *Supreme Court Act* namely:-

> "***judgment*** includes a decree, order, declaration, determination, finding (including a finding of guilt), conviction or sentence, and a refusal to make a decree, order, declaration, determination or finding, whether final or otherwise."

[48] Clearly an adjusting property order made under section 18 of the DR Act falls within that definition. However, interest pursuant to section 85 of the *Supreme Court Act* is payable in respect of the "*judgment debt*". That term is not defined.

[49] Having regard to the nature of the judgment and the circumstances of this case and the major object of an award of interest on judgment, I have come to the conclusion that although an order adjusting property interests under the DR Act is a "*judgment*" as defined in section 9 of the *Supreme Court Act*, the actual determination of the quantum of the adjustment is not a "*judgment debt*". Hence section 85 of the *Supreme Court Act* has no application in the current case.

[50] An order under the DR Act is, as that Act stipulates, an adjusting order. It effectively makes an award in favour of both parties such that if section 85

of the *Supreme Court Act* applied, then both parties have an entitlement to interest. I do not think that such a position is contemplated by the section. That does not sit well with the major object of an award of interest on judgment. Indeed in the current case, if I was to have regard to that object, it is anomalous that the party who withheld consent to the distribution of the funds can now claim interest. Looked at that way, if there were to be any entitlement to interest on judgment at all, it should be in favour of the Plaintiff.

[51] Again, having regard to the major object of interest on judgment, the section contemplates an award in favour of one party against the other where the payer pays the award from their own funds. Contra the case of an adjusting property order which comprises a division of an existing pool of funds. It also contemplates that the payer alone determines when to pay the award and that otherwise all the payee can do is to take enforcement proceedings. Again, that is not the case here.

[52] Moreover, as funds were invested pending distribution at market rates, which are significantly lower than the rate which applies to interest under section 85, the delay serves to enhance the amount of interest payable to the party who has held up the distribution of the funds. Were it not for the actions of the Defendant in firstly improperly seeking payment from the date of the primary decision as opposed to the date of the Court of Appeal decision and thereafter seeking to withhold some funds as a form of security of the costs of the appeal without a court order to that effect, the funds

could have been distributed soon after the decision of the Court of Appeal. Had that occurred there would be no issue of interest on judgment. That situation also does not sit well with the major object of interest on judgment.

[53] Accordingly I conclude that the quantum determined by the calculation in accordance with the orders in these proceedings is not a "*judgment debt*" and therefore neither party has an entitlement to interest pursuant to section 85 of the *Supreme Court Act*.