



[2021] JMSC Civ 19

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV02657

BETWEEN	JARTENA APARTMENTS LTD	CLAIMANT
AND	JENNIFER MESSADO (t/a JENNIFER MESSADO & CO)	DEFENDANT

IN OPEN COURT

Mr. Neco Pagon instructed by Vacciana and Whittingham for the Claimant

Mr Lemar Neale instructed by Nea Lex for the Defendant

Heard: November 10th, 2020, November 12th, 2020 and February 26th, 2021

Assessment of Damages – Commercial Interest – Assessment of Interest Rate – requirement to particularise fraud – exemplary and punitive damages

Hutchinson, J

INTRODUCTION

[1] On the 13th of July 2018 the Claimant filed a Fixed Date Claim Form supported by an affidavit of Mr. Christopher Jarrett the CEO and Managing Director in which they seek the following;

1. An Order compelling the Defendant to account for the sum of \$8,800,000.00 paid pursuant to Agreement for Sale dated the 2nd day of January 2018, wherein the Defendant had carriage of sale.

2. An Order for repayment of the sum of \$8,800,000.00 by the Defendant as monies paid as a deposit and further payment on account of the Purchase Price further to the Agreement for Sale which has wholly failed.
3. An Order that interest be paid on the sum at a rate of 16% per annum for the period of January 2, 2018 to the date of payment.
4. Damages for fraudulent conversion of the sum of \$8,800,000.00 and/or misrepresentation.
5. Costs.

[2] The Claim found its genesis in the fact that in December 2017, the Parties entered into a contract for the purchase of a property at 2 Altamont Terrace, Kingston 5 by the Claimant. The transaction was initiated by the Defendant who had approached the Claimant on the basis that she was the Attorney with carriage of sale for these premises. On the 2nd of January 2018, the Claimant executed an Agreement of Sale prepared by the Defendant and same was returned to her along with an RTGS confirming that the sum of \$8.8 million had been transferred to her as the deposit in the matter. It was also indicated that the balance of the payment was to be made by way of a mortgage.

[3] Pursuant to the sale, a valuation of the property was conducted on behalf of the Claimant to provide to the mortgage institution at a cost of \$117,432. On the 5th of February 2018, the Defendant provided the Claimant's attorneys with a certificate of payment of taxes to assist with his application for mortgage approval. The instrument of transfer was executed by him on the 23rd of February 2018 and on the 6th of March 2018, a letter of undertaking was provided to the Defendant from the mortgage institution.

[4] The transaction was scheduled for completion within 120 days which expired on the 2nd of May 2018. The date having passed, the Attorneys for the Claimant were sent correspondence by the Defendant which indicated that the delay was as a result of an issue with the Stamp Office. Independent enquiries were then made

on behalf of the Claimant which revealed that the Stamp Commissioner's office had no record of the transaction, neither had they been in receipt of any documentation from the Defendant in respect of same. This information was communicated to the Defendant who advised that she was prepared to proceed with the transaction.

[5] Mr Jarrett was subsequently approached by an individual who indicated to him that he was the lawful owner of the property and the defendant had never been authorised to sell same. On the 13th of June 2018, the Claimant's attorneys sent a letter to the Defendant demanding the return of the funds paid over. In spite of this request no monies were received by the Claimant or their attorney.

[6] On the 28th of May 2019, the Defendant filed an affidavit acknowledging receipt of the payment as well as the transaction in question. She also indicated that she was unable to speak to any damages suffered by him as that was outside the scope of her knowledge. On the 29th of May 2019, judgment by admission was entered before Thompson-James J and the matter was set down for assessment. The Defendant was also permitted to file a defence limited to quantum but never did. She also failed to file a witness statement for the purpose of the Assessment hearing.

[7] On the 13th of September 2019, a witness statement of Christopher Jarrett, CEO and Managing Director of the Claimant was filed which gave additional details of the transaction entered into by the Parties. It also contained a breakdown of all the expenses which had been incurred by the Claimant in respect of this transaction and documentary proof of same was provided in a notice of intention to tender hearsay documents which was filed on the 27th of May 2020. No objection was filed to this notice. These expenses were as follows;

- a. Valuation report – receipt dated 17th of January 2018 in the amount of \$117, 432.

b. Insurance Premium on property pursuant to the Mortgage application in the sum of \$206, 366.19.

c. Attorney's fees were broken down as follows;

1. Retainer - \$150,000 – receipt dated 9th July 2018.
2. Additional Fees - \$624,620 – receipt dated 11th of September 2018.
3. Cost for Caveat placed on title - \$44,000 – receipt dated 24th of May 2018

[8] On the 6th day of November 2020, an additional affidavit of Christopher Jarrett was filed with a document attached which had been downloaded from the Bank of Jamaica website.

[9] After a number of adjournments, which the record reflects were occasioned by efforts to serve the Defendant with the documents filed, the matter commenced on the 10th of November 2020 with preliminary submissions and Mr. Christopher Jarrett gave evidence on the 12th of November 2020. The documents referred to at paragraph 7 above were all admitted as exhibits.

[10] Mr Jarrett gave evidence of his efforts to obtain relevant information which could be considered by the Court in respect of his request for interest at the commercial rate. He stated that as part of his preparation he went on the Bank of Jamaica website to check the interest rate for loans and his search led him to June 2020. He said that he then used the rate displayed to determine a reasonable rate which could be applied to monies owed to him by Mrs Messado. He also stated that based on the information obtained he believed that 18 % interest was an appropriate rate of interest to be applied.

[11] He was cross examined by Mr Neale and conceded that he did not work with the BOJ and his indication of the rate the Court should apply was based on what he saw on the site and not his personal knowledge. He also conceded that the

document downloaded was not his creation. The parties were permitted to make submission on how the Court should treat with this evidence and this will be addressed later in the course of this judgment.

- [12] He was asked about the payment of the insurance premium in light of the clause in the agreement that the building remained at the risk of the owner and he indicated to the Court that he effected his own insurance on the property as he assumed there was no insurance and as there was a building on the property which could be destroyed in the event of fire, he wanted to ensure the company was covered.

ISSUE

- [13] Judgment having already been entered by admission, the issue which fell to be determined to be determined by me is the quantum of damages to be awarded to the Claimant.

CLAIMANT'S SUBMISSIONS

- [14] In written submissions filed on the 17th of June 2020, it was submitted by Counsel on behalf of the Claimant that where a person has been induced to enter into a contract as a result of a Fraudulent Misrepresentation by the contracting party, he may claim damages and in support of this proposition they relied on ***Chitty on Contracts, 27th edition, 6-026***. They argued that the Defendant, on receipt of the funds was acting as a stakeholder/agent of the vendor and was responsible for the funds placed in her possession and given her admission to 'the claim and the particulars pleaded', the case of fraudulent misrepresentation, deceit and conversion had been proven.
- [15] They submitted that in determining the true loss of the Claimant, the Court is conducting an exercise akin to assessing the loss of a Plaintiff being kept out of money and should adopt the approach of compensating this loss by an award of interest. In this regard, Counsel recommended the approach outlined in the dicta

of Forbes J. in **Tate & Lyle Food Distribution Limited v. Greater London Council & Anon. [1981] 3 All ER 716,722** where he stated: -

"Despite the way in which Lord Herschell LC in London, Chatham and Dover Railway Co. v. South Eastern Railway Co. [1893] AC 429 at 437 stated the principle governing the award of interest on damages, I do not think the modern law is that interest is awarded against the Defendant as a punitive measure for having kept the Plaintiff out of his money. I think the principle now recognised that it is all part of the attempt to achieve restitution in integrum. One looks, therefore, not at profit which the Defendant wrongfully made out of the money he withheld (this would indeed involve a scrutiny of the Defendant's financial position) but at the cost to the Plaintiff of being deprived of the money which he should have had. I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the Plaintiff would have had to borrow money to supply the place of that which was withheld. I am also satisfied that one should not look at any special position in which the Plaintiff, may have been, one should disregard, for instance, the fact that a particular Plaintiff, because of his personal situation, could only borrow money at a very high rate or, on the other hand, was able to borrow at specifically favourable rates, the correct thing to do is to take the rate at which Plaintiffs in general could borrow money. "

- [16] Counsel also submitted that the Claimant has proved the special damages being claimed, which were the expenses and losses incurred as a result of entering into the failed contract with the Defendant and would be entitled to an order for the payment of same. In respect of Eight Million Eight Hundred Thousand Dollars (\$8,800,000.00) which was paid over to the Defendant as the deposit, Counsel submitted that this sum should be refunded to the Claimant in full as it was unlawfully obtained by the Defendant and commercial interest at a rate of 16% should be applied.
- [17] Counsel also argued that an award should be made for punitive or exemplary damages given the 'outrageous, illegal and abusive behaviour' of the Defendant and the duty of the court to deter and punish Defendants who hold a position or profession based in trust and confidence and used same to deceive and defraud others.
- [18] In support of this position they relied on the UK Court of Appeal decision of **AXA Insurance UK PLC v Financial Claims Solution Ltd & Ors. [2018] EWCA Civ 1330**, where a 'fake law firm' was created to carry out 'serious fraud' and the claimant insurer sought exemplary damages, on top of compensatory damages,

under the torts of deceit and unlawful means and conspiracy. The Court of Appeal was of the view that this was in fact a paradigm case for the award of exemplary damages and each respondent was accordingly ordered to pay AXA a further £20,000.00

- [19] Counsel commended the approach of Lord Devlin in **Rookes v Barnard 119641 AC 1129** where he stated that the Courts are required to carry out the categories test before awarding exemplary damages and submitted that this position which was also approved by Lord Justice Flaux at the Court of Appeal in **AXA Insurance** in which the Court stated;

"the second category only encompasses cases where the defendant's conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the claimant. If that criterion is satisfied, exemplary damages may be awarded to deter and punish such cynical and outrageous conduct"

"... the present case....is a paradigm case for the award of exemplary damages. This was a sophisticated and sustained fraud involving deceit and fraudulent misrepresentation from the outset. The accidents were faked. False documentation, such as the hire agreements and medical reports, was created.... its conduct of those proceedings was cynical and abusive and through its dishonest manipulation and misuse of the court process, falsely representing that court documents had been served when they had not, the fraud very nearly succeeded. There is little doubt that if the respondents had managed to enforce the judgments they obtained against AXA, AXA would never have seen its money again.'

- [20] Counsel asserted that in this case, the Defendant used her position as Counsel and her knowledge of the Claimant's interest in the property to deceive them and to fraudulently misrepresent herself as having the authority to sell the property in order to obtain the Claimant's funds. They argued that the Defendant engaged in and instigated a seriously fraudulent scheme to take advantage of the Claimant's interest in the property and in her deceit and fraud presented the Claimant's Attorneys with an executed Agreement for Sale which purported to show the duly witnessed signature of the registered proprietor and also copied them in on letters purportedly sent to the Stamp Commissioner's office.

[21] The Court was asked to note that even after the Stamp Office disclosed it had no record of such a transaction, the Defendant continued to convey that she had the authority to sell the property and for these reasons an award for exemplary or punitive damages should be made against her.

DEFENDANT'S SUBMISSIONS

[22] In respect of the claim for damages for fraudulent conversion or misrepresentation Mr Neale submitted that the Claimant used an incorrect procedure to commence the claim as a claim involving fraud ought to have been begun by Claim Form. He argued that the Claimant having failed to do so the claim for fraudulent conversion and misrepresentation cannot succeed.

[23] In respect of the special damages sought, he argued that like fraud, the law requires the Claimant to specifically plead and prove special damages and the Claimant has failed to do so. He asserted that the Claimant only gave evidence of the expenses incurred none of which are grounded in the claim. Counsel submitted that the Claimant's pleading is inadequate and suffers from malady and argued that they did not seek permission to amend the claim to plead special damages. He asserted that whereas the Court can relax the strict proof requirement for special damages, it cannot waive the requirement to plead same and as such it has no basis on which to award these sums.

[24] In examining the request for Interest at 16% per annum, Mr Neale submitted that the Court's power to award interest is found in the Law Reform (Miscellaneous Provisions) Act and interest on judgment debt is 3% per annum. Counsel argued that while the pleading claimed interest at 16 % per annum, it never stated 'at the commercial rate' but the Claimant later sought to tender evidence in an affidavit in relation to same. He submitted that the Court should not be placed in a position to speculate what the Claimant is seeking.

[25] In respect of the interest he contended that the Claimant had adopted an erroneous approach as they filed and short-served an affidavit containing hearsay

evidence from the Bank of Jamaica website which should be rejected by the Court. Mr. Neale argued that the Claimant never sought permission to amend its pleading to plead interest at the commercial rate and that the Court cannot, on its own volition, award same and in those circumstances interest should be awarded at 3% per annum.

- [26] Mr Neale argued that while costs usually follow the claim if the Court agrees with his submissions on these issues, it would mean that the Claimant would not have succeeded in all areas raised in the Fixed Date Claim Form. He submitted that if this is the case, the Court should adopt the approach of the Court of Appeal where a party is not 100% successful on all grounds and award a fraction of its costs to the Claimant which should be no more than 60%.

ANALYSIS AND DISCUSSION

- [27] As stated earlier, this claim was brought on a Fixed Date Claim supported by an affidavit. The matter progressed in this form until the 29th of May 2019, where upon reviewing the documents which included an affidavit filed by the Defendant and hearing from Counsel for the Parties, the Court entered judgment by admission for the Claimant. The matter was then scheduled for assessment of damages and the Defendant was granted permission to file a Defence limited to quantum. This option was never exercised by her. Implicit in these orders of the Learned Judge, was the indication that although the matter was commenced in one form it was the intention of the Court to have it continue in another, specifically to have it proceed as though brought by Claim Form and to treat with all the documents filed up to this point as pleadings in the matter.

- [28] It was in light of this observation that I indicated that, for the purpose of the record, I was prepared to have it officially noted that the matter was proceeding by way of Claim Form in exercise of my case management powers. Mr Neale raised an objection to this course which I found was without merit as it disclosed no prejudice to his client who had admitted liability, raised no objections to the orders made and

had failed to file a defence or witness statement in respect of the manner in which the Claim should proceed or any other issue.

[29] In respect of the issue to be determined, it was evident that among the orders being sought by the Claimant was an order for the Defendant to repay the monies paid over to her as well as the monies expended by the Claimant in pursuit of the failed transaction. In addition to this claim, there was also a request for exemplary or punitive damages as a result of fraudulent conversion/misrepresentation.

[30] In respect of the first order, the Defendant accepted in her affidavit that these sums were paid and/or expended by the Claimant pursuant to this transaction. I have seen the receipts and all other documentary proof presented and there being no evidence from the Defendant taking issue with these sums being awarded, I am satisfied that this money was expended for this purpose and should be repaid. As such, I order that the deposit of \$8.8 million dollars as well as the sum of \$1,142,418.92, expended pursuant to this sale, be paid to the Claimant by the Defendant.

Fraudulent Conversion

[31] In relation to the request for exemplary and punitive damages on the basis of fraudulent conversion/misrepresentation, the tort of conversion was examined at paragraph 64 of Halsbury's Laws of England/Tort (Volume 97 (2015))/6 where it was outlined as follows;

The tort of conversion is broadly concerned with cases where one person has misappropriated goods belonging to another. Conversion of goods can occur in so many different circumstances that framing a precise definition of universal application is virtually impossible. However, its basic features are as follows:

(1) the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession);

(2) the conduct was deliberate, not accidental; and

(3) the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods.

Another notable feature of conversion is that liability in the tort is strict. Although the defendant's interference with the claimant's chattel, in the sense of his dealing and physical contact with it, must be deliberate, his infringement of the claimant's right need not be. Indeed, there is no need to prove that the defendant was at fault at all, so complete ignorance of the existence of the claimant's right affords no general defence

[32] The Claimant's contention is that the Defendant engaged in a deliberate act of deceit as she was never authorised to sell the property and as such the basic features of this fraud have been made out. In response to this submission, Mr Neale submitted that in spite of this contention fraud was not pleaded and no award should be made under this head of damages. My examination of the Fixed Date Claim Form reveals that an order was sought for damages for fraudulent conversion/misrepresentation. The Claimant's affidavit in support makes reference to the payment of JMD \$8.8 million to the Defendant for a sale that was not completed and the Defendant's failure to repay the sum was also outlined.

[33] In ***Harley Corporation Guarantee Investment Co Ltd v Estate Rudolph Daley et al [2010] JMCA CIV 46*** while examining the issue of fraud in a matter concerning the Registration of Titles Act, it was noted by Harris JA that in ***Davy v Garrett [1878] 7 Ch D 473***, Thesiger L.J had acknowledged that fraud must be distinctly alleged and distinctly proved and that it was not allowable to leave fraud to be inferred from the facts. Having outlined this statement of law Harris JA continued;

[57] The Civil Procedure Rules however do not expressly provide that fraud must be expressly pleaded. However, rule 8.9 (1) prescribes that the facts upon which a claimant relies must be particularized. It follows that to raise fraud, the pleading must disclose averments of fraud or the facts or conduct alleged must be consistent with fraud. Not only should the requisite allegations be made but there ought to be adequate evidentiary material to establish that the interest of a defendant which a claimant seeks to defeat was created by actual fraud.

[34] This reasoning was also followed in the decision of ***Bent v Evans*** where McDonald-Bishop at paragraph 88 of her judgment observed as follows;

'It is clear to me that an allegation of fraud ought not to be taken lightly and the evidence to prove it must be as weighty as the allegation of it. I will venture to say therefore that fraud must not only be strictly pleaded but must be strictly proved by

those who assert its existence, on the clearest, most cogent and indisputable evidence on a balance of probabilities.'

[35] Applying these principles outlined in the foregoing cases, it is evident that once fraud has been alleged, the party raising this as an issue bears the responsibility of providing specific evidence of the fraudulent conduct or actions alleged and cannot merely invite a Court to infer this from the evidence presented. The material presented cannot be spurious or capable of another interpretation as the cases call for cogent and indisputable evidence.

[36] In light of the foregoing principles, the importance of pleadings specific to fraudulent conduct on the part of the Defendant take on even greater significance. The Claimant would also have to show damage suffered by him as a result of this fraud in order to justify an award being made on this basis. I note that fraud was never pleaded neither was there an application to amend the pleadings to address same. The end result of this is that the Court is being invited to infer fraud from the facts/circumstances outlined which is speculative at best and certainly prohibited.

[37] In respect of the request for aggravated/exemplary damages, it is well established that this category of damages must be specifically pleaded and this is outlined in clear terms at Rule 8.7 (2) of the CPR which provides;

A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.

[38] A review of the Fixed Date Claim Form reveals that this type of damages was never pleaded but made its appearance in the submissions filed on behalf of the Claimant herein. At the commencement of the hearing in November an attempt was made to amend the pleadings to add this head of damages but this was not pursued. While there is no question that the conduct of the Defendant was egregious, the Court is not in a position to make an award for the foregoing reasons.

Interest at a commercial rate

[39] It has been argued on behalf of the Defendant that the Claimant has no entitlement to commercial interest as this was never specifically requested in the pleadings. While it is correct that the words 'commercial rate of interest' were never used in the pleadings, the request for interest at the rate of 16% on what was clearly a commercial transaction would tend to suggest that this is what the Claimant was seeking.

[40] In respect of this application for commercial interest, the Claimant has sought to rely on a document downloaded from the BOJ website on the 5th of November 2020 which disclosed the commercial rate of interest for the period January 1996 to July 2020. This document was exhibited to an affidavit which was filed on the 6th of November 2020 and in this affidavit he indicated his position that on a review of the rates published he was of the view that the applicable commercial rate for January 2018 would be 23.72%. This affidavit as well as the document produced from the BOJ website were objected to by Mr Neale who apart from complaining that the documents were short served asked that they be rejected on the basis that it was hearsay evidence as it contained information which was not within the personal knowledge of the Claimant.

[41] In examining this request as well as the objection raised, useful guidance was provided by the decision of Laing J in ***Traille Caribbean Limited v Cable and Wireless Jamaica Ltd (trading as LIME) 2017 JMCC COMM 14*** where an application for commercial interest was also being pursued. In that situation, the Claimant had sought to present the Court with a spreadsheet which contained information from the BOJ website. In ruling on this matter, the Learned Judge stated;

*[30] In my view, in circumstances such as those under consideration, the Court in assessing the true loss of the Defendant is conducting an exercise similar to that of a Court assessing the loss of a Plaintiff being kept out of money. In this exercise, the Court ought to adopt a similar approach as would a Court compensating a plaintiff's loss by an award of interest. Forbes J in ***Tate & Lyle Food Distribution****

Ltd. v Greater London Council & Anor [1981] 3 All ER 716 as to the basis for awarding interest at page 722 as follows:

Despite the way in which Lord Herschell LC in London, Chatham and Dover Railway Co v. South Eastern Railway Co. [1893] AC 429 at 437 stated the principle governing the award of interest on damages, I do not think the modern law is that interest is awarded against the defendant as a punitive measure for having kept the plaintiff out of his money. I think the principle now recognised is that it is all part of the attempt to achieve restitution in integrum. One looks, therefore, not at the profit which the defendant wrongfully made out of the money he withheld (this would indeed involve a scrutiny of the defendant's financial position) but at the cost to the plaintiff of being deprived of the money which he should have had. I feel satisfied that in commercial cases the interest is intended to reflect the rate at which the plaintiff would have had to borrow money to supply the place of that which was withheld. I am also satisfied that one should not look at any special position in which the plaintiff may have been; one should disregard, for instance, the fact that a particular plaintiff, because of his personal situation, could only borrow money at a very high rate or, on the other hand, was able to borrow at specially favourable rates, the correct thing to do is to take the rate at which plaintiffs in general could borrow money.

Notably, the Court also sanctioned the use of Bank of Jamaica Statistics as to the appropriate commercial rate. (emphasis supplied)

[42] Having stated thus, his Lordship continued;

In light of that finding the Revised Spreadsheet of Damages Claimed in the form as originally filed and the per diem amount contained therein was not of any assistance to the Court in its assessment. I therefore invited Counsel to make additional submissions on this point. Mr Hemmings submitted that it was impermissible for the Defendant to provide the Court with any further information as to the commercial interest rate since this was not pleaded and that if this were allowed the Defendant would be getting a third bite at the cherry. I do not agree with these submissions of Counsel. The Court is carrying out a mathematical exercise and there is no prejudice to the Claimant by the Defendant reformulating its spreadsheet using the Bank of Jamaica weighted average lending or commercial rate which is publicly available at its websites www.boj.org.jm and providing same by way of a filed affidavit as it has done. I accept the evidence provided by the Defendant as to the calculation of the interest on the amounts paid in accordance with the Revised Spreadsheet of Damages Claimed

[43] It is settled law that the purpose behind an award of interest on a judgment sum is to put him in the position in which he would have been had he not suffered this loss/deprivation as occasioned by the Defendant. It is clear from the reasoning in **Tate and Food Corporation v Greater London Council** which was adopted in **Traille Caribbean Ltd** that the use of the statistics from the BOJ website has long been accepted by the Court in its approach to this exercise. Additionally, it was recognised by Laing J, that it is perfectly permissible for a Party to present

evidence to the Court of the interest rate which it believes should be applied even where this was not specifically pleaded. The Learned Judge also made it clear that the information from the website could be exhibited to an affidavit for the Court's consideration.

[44] In light of the foregoing principles it is evident that the submission by Mr Neale that this information should be rejected as hearsay is not on sound footing and the material could be considered by the Court in the circumstances. While it is true that the affidavit was short served, the Defendant was afforded the opportunity to make submissions on whether the Court should award this type of interest. Having considered the submissions as well as the authorities on the point, I adopt the view of the Court in *Traille Caribbean Ltd* that in a situation such as this the Court is embarking on a mathematical calculation and can only be assisted by the statistics available to the public on the BOJ website.

[45] The challenge in the instant case however is that the Claimant specifically pleaded interest at the rate of 16% and there was no application to amend the pleadings to allow for a higher rate to be considered or awarded. This situation is different from that which existed in *Traille Caribbean Ltd* as a specific rate was never pleaded. In the circumstances, I am persuaded that the Claimant is bound by his pleadings and while I am prepared to award commercial interest it is at the rate of 16% on the sums awarded above.

CONCLUSION

[46] Having arrived at these conclusions, I am prepared to make the following orders;

1. Special Damages awarded to the Claimant in the sum of \$9, 942,418.19
2. Interests awarded at the rate of 16% from the 2nd of January 2018 to today's date.
3. Costs to the Claimant to be taxed if not agreed.