

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2019-092-004319
[2022] NZDC 8820**

BETWEEN	JAMES STEWART KIRKPATRICK AND WAREHOUSE WORLD LIMITED Plaintiffs
AND	KIRAN GOBIND First Defendant
AND	PRINAL GOBIND Second Defendant
AND	PACIFIC HVAC SUPPLIES LIMITED Third Defendant

Hearing: 17 February 2022

Appearances: P Murray for the Plaintiff
N Tabb for the Second Defendant

Judgment: 18 May 2022

JUDGMENT OF JUDGE J BERGSENG

Introduction

[1] This case involves a claim by the plaintiffs for the recovery of unpaid rent, outgoings, interest and the subsequent legal costs of these proceedings against the second defendant, Pranal Gobind (Ms Gobind), as a guarantor under an Assignment of Lease.

[2] Ms Gobind defends the claim on the basis that she did not agree to be a guarantor under the Assignment of Lease. If she is found to be liable as a guarantor, she disputes the amount claimed as owing.

[3] By way of counterclaim set off and/or affirmative defence, Ms Gobind claims that the lease was unlawfully terminated which has resulted in her suffering a loss.

[4] Further, she claims that two of her vehicles were unlawfully uplifted by the plaintiff from other premises it owned. One of the vehicles was subsequently recovered by her, while the other is still retained by the plaintiff. She claims damages for the unlawful taking and retention of these vehicles.

Background

The lease

[5] Warehouse World Limited is part of a group of companies associated with James Kirkpatrick Group Limited. The plaintiffs, James Kirkpatrick and Warehouse World Limited are trustees of the James Trust. The trust is the owner of a number of commercial properties, including 906-930 Great South Road, Penrose, Auckland (the premises).

[6] On 2 June 2017 the plaintiffs and KPG Electrical Ltd (KPG) entered into a deed of lease (the lease) of Unit 5 at the premises.

[7] The first defendant, Kiran Gobind, was the sole director and shareholder of KPG.

[8] On 19 February 2018 a Deed of Assignment of Lease (the Assignment) of the premises was entered into whereby KPG assigned its interest under the lease to the third defendant, Pacific HVAC Supplies Limited (Pacific HVAC).

[9] Ms Gobind is the sole director and shareholder of Pacific HVAC.

[10] Both Mr and Mrs Gobind executed the assignment as guarantors.

Termination of the lease

[11] Pacific HVAC breached its lease covenants by failing to pay the monthly rental and outgoings as they fell due. Between March and August 2019 there were various attempts made by the plaintiff to have Pacific HVAC pay the arrears. Ultimately this was unsuccessful.

[12] On 2 September 2019 Mr Kirkpatrick met Mr Gobind at the premises and served on him a notice pursuant to the Property Law Act 1952. The notice advised that the plaintiffs were re-entering and taking possession of the premises and terminating Pacific HVAC's tenancy on the grounds that Pacific HVAC had failed to pay rent due under the lease for a period in excess of 14 days which was a breach of the lease.

[13] Within hours of Mr Kirkpatrick serving that notice a locksmith attended at the premises and the locks changed. From that point Pacific HVAC and Mr and Ms Gobind were locked out and denied access to the premises. They were able to remove some of their belongings before being locked out. The plaintiff says it arranged for the balance of their property to be delivered to their home address later that day.¹

The lease

[14] The relevant provisions of the lease provided that:

- (a) An annual rental of \$80,000 (plus GST) together with any outgoings to be paid by equal monthly payments, in advance, on the rent payment dates, being the first day of each month commencing on 1 July 2017.²
- (b) Payments not paid within 10 working days of their due date were liable to penalty interest at the default interest rate of 18% per annum.

¹ Ms Gobind's evidence was their property was delivered to their home and left outside and was only some of their property.

² Where any such outgoings not separately assessed then the proportion to be paid by KPG was 6.4% of the total amount.

- (c) Regarding legal costs the tenant shall pay the landlord's legal costs (as between solicitor and client) of an incidental to the enforcement or attempted enforcement of the landlord's rights, remedies and powers under this lease.³

The Assignment

[15] Pursuant to the Assignment, from the date of assignment the guarantor:

- (a) Guarantees to the assignor and the landlord the performance by the assignee of all the tenant's obligations under the lease.
- (b) Indemnifies the assignor, any guarantor of the assignor and the landlord against any liability or losses suffered by the landlord as a result of the lease being lawfully disclaimed by any liquidator or receiver or arising through any default by the assignee in the performance of the provisions in the lease.
- (c) The guarantor agrees that neither an assignment of the lease nor any rent review in accordance with the lease nor any indulgence granting of time waiver or forbearance to sue or any other thing whereby the guarantor would be released as a surety in any way releases the guarantor from liability under the lease.

[16] I turn now to deal with Ms Gobind's defences to the plaintiff's claim.

Was Ms Gobind a guarantor of Pacific HVAC?

[17] The plaintiffs' claim against Ms Gobind is that as guarantor she is liable to the plaintiffs for its losses due to Pacific HVAC's failure to pay the rent and outgoings, its legal costs and interest on those amounts at the default interest rate.

[18] By her statement of defence Ms Gobind says that she did not agree to guarantee Pacific HVAC's performance of its obligations under the Assignment.

[19] At the hearing Ms Gobind abandoned this defence.

³ Clause 6.1 of the Lease.

[20] The evidence clearly establishes that the Assignment was properly executed by Ms Gobind as a guarantor. Her signature was witnessed. The terms of the guarantee are clearly set out in the Third Schedule of the Assignment as noted above at [15].

[21] Abandoning this defence was an appropriate concession for Ms Gobind to make. It was not a viable defence based on the evidence. The evidence clearly establishes Ms Gobind's liability as a guarantor of Pacific HVAC's liability.

Has the plaintiff proven the amounts claimed as owing?

Rent and outgoings

[22] At the time of the plaintiff's re-entry Pacific HVAC was in arrears with its rent and outgoings.

[23] The arrears were reduced when on 20 September 2019 the plaintiff received a payment of \$7666.67 on behalf of Pacific HVAC. While Ms Gobind initially sought the return of this payment, claiming it was by way of an unauthorised deduction, it seems the payment was made in error. The plaintiff refused to return the payment and it has been applied to offset Pacific HVAC's arrears, which at the date of hearing were \$24,414.55.

[24] While Ms Gobind disputes the amount which the plaintiff claims is owing under the lease no details of the amounts disputed, or the grounds of dispute have been addressed by her, other than a charge for signage, which the plaintiff has already deducted from its claim.⁴ Essentially Ms Gobind puts the plaintiff to the proof regarding the amount it claims is outstanding.

[25] The plaintiff's claim is that the amounts owing are due pursuant to the terms of the lease. There is no dispute that the payment of rent and outgoings are a term of the lease. All the underlying invoices in respect of rent, rates and insurance premiums form part of the evidence and are clearly identified in the plaintiff's pleadings.

⁴ The amount deducted from the plaintiff's claim for signage was \$1242.00

[26] Having reviewed these invoices it is clear they relate directly to amounts that are due pursuant to the terms of the lease. Given the plaintiff's unchallenged evidence I find the plaintiff has proven that as at the date of the hearing, the amount owed by Pacific HVAC pursuant to the lease was \$24,414.55.

Default interest

[27] No challenge is made in respect of the plaintiff's calculation of default interest. Accordingly, it is proven that \$11,512.93 is due and owing by Pacific HVAC to the plaintiff.

Legal costs

[28] In respect of the plaintiff's claim of legal costs these are claimed on the basis of solicitor-client costs and are calculated at \$42,763.40, to the date of hearing. While significantly more than the amount owing under the lease it cannot be said that the costs are unreasonable. The underlying invoices supporting the plaintiff's costs claim have been presented in evidence. No challenge has been made by Ms Gobind in terms of the amount being claimed.

[29] The costs involve the initial attempts at recovery prior to proceedings being issued and the obtaining of judgment by default against Mr Gobind and Pacific HVAC.

[30] Originally judgment had been obtained against Ms Gobind. However, that was set aside, and costs were awarded in her favour. This was on the basis that there had been a failure to properly serve the proceedings on Ms Gobind. The plaintiff's costs in respect of obtaining judgment and the subsequent setting aside do not form part of its claim for costs.

[31] The uncontested evidence proves the plaintiff's costs of and incidental to enforcing its rights and remedies under the lease amount to, as at the date of hearing, \$42,763.40.

[32] In summary, the plaintiff has been successful in proving its claims pursuant to the lease in respect of outstanding rent and outgoings of \$24,414.55, default interest of \$11,512.93 and costs of \$42,763.40.

Ms Gobind's counterclaim, set off and/or affirmative defence

[33] I will now address the matters Ms Gobind raises as either a counterclaim, set-off or as an affirmative defence being the unlawful termination of the lease by the plaintiff and its unlawful retaining of two vehicles owned by Ms Gobind.

Unlawful termination of the lease

[34] Subpart 6 of the Property Law 2007 (PLA) provides a code for the cancellation of leases. Section 243(1) provides that a lease may be cancelled only in accordance with ss 244 - 252.

[35] Section 245 provides that a lessor may cancel a lease due to a breach of a covenant to pay rent, only if the rent has been in arrears for less than 10 working days, and the lessor has served on the lessee a notice of intention to cancel the lease and at the expiry of the period specified in the notice the breach has not been remedied. There are additional information requirements in set out in s 245. Section 246 sets out the requirements for cancellation of a lease for breach of other covenants.

[36] The plaintiff does not challenge that it failed to comply with the notice provisions of s 245. Mr Kirkpatrick's evidence was that when he served the notice of re-entry on Mr Gobind on 2 September 2019, he did so believing that a s 245 notice had already been served on Pacific HVAC and remained unremedied.

[37] The plaintiff's unlawful re-entry and exclusion of Pacific HVAC from the premises constituted an unretracted repudiatory breach of the lease.⁵ There had been a repudiation of the lease by the plaintiffs and by the time of the hearing, at the latest it had been accepted. The eviction had been unlawful and Pacific HVAC were entitled

⁵ *Ingram v Patcroft Properties Ltd* [2011] 3 NZLR 433, [2011] NZSC 49 at [41] – [43].

to damages for it. This is consistent with the earlier Court of Appeal decision of *Hirst v Vousden*.⁶

[38] The issue is whether Ms Gobind herself has standing to bring a claim for damages for the unlawful re-entry, either in her capacity as a director or shareholder of Pacific HVAC or as guarantor.

[39] Ms Gobind argues that the plaintiff's wrongful re-entry, amounting to repudiation, means that she has lost the ability to operate her business, Pacific HVAC, and accordingly has lost her initial capital injection into the business, her future ability to draw a wage from the business for working in and for the business and her expected lost profits from the ongoing operation of the business. She says she would have continued to operate the business of Pacific HVAC, but for the plaintiff's actions.

[40] Ms Gobind relies on the cases of *Ingram v Patcroft Properties Ltd*,⁷ *Prestige Motors Ltd v My Trustee Co. Ltd*,⁸ and the recent decision of Walker J in *Parkhurst Corporation Ltd v Bisht*.⁹

[41] These are a series of cases that dealt with the wrongful termination of a lease. Accordingly, based on these authorities she seeks damages for the losses she has suffered.

[42] The plaintiff's submission is that any claim regarding the unlawful termination of a lease can only be brought by the tenant under the lease, which would be Pacific HVAC.

Does Ms Gobind have standing to claim damages in these circumstances?

[43] The plaintiff argues the High Court decision in *Link Technology 2000 Ltd (In Liq) v Peterland Ltd*¹⁰ applies.

⁶ *Hirst v Vousden* CA25/02, 20 June 2002.

⁷ *Ingram v Patcroft Properties Ltd* [2011] 3 NZLR 433, [2011] NZSC 49.

⁸ *Prestige Motors Ltd v My Trustee Co Ltd* (2021) 22 NZCPR 45, [2021] NZHC 237.

⁹ *Parkhurst Corporation Ltd v Bisht* [2021] NZHC 2888.

¹⁰ *Link Technology 2000 Ltd (In Liq) v Peterland Ltd* [2021] NZHC 428.

[44] *Link* involves an application by Mr Memelink, as second plaintiff, for an order that the proceedings vest in him. Link had leased premises from GPI who later on-sold to Peterland. The plaintiff's claim was for damages when Peterland removed various items of stock, components, dyes, tools and other items belonging to Link from the premises. This prevented Link and Mr Memelink from being able to operate the business. Grice J noted:

[25] The first three causes of action (repudiation of lease, conversion and damages for loss of business) are claims that can only be made by [Link]. Only the lessee is able to bring those claims. Mr Memelink although a shareholder of Link has no direct interest in the claims. Therefore he does not suffer loss or damage as a result of the disclaimer.

[26] Mr Livingstone says it may be possible to provide Mr Memelink, personally, with causes of action by amending the statement of claim. These would be based on, first, the fact that he was a guarantor of the lease. The second basis would be that, as a shareholder of Link whose property was damaged through the actions of the defendants, Mr Memelink has suffered loss.

...

[28] The suggested basis for the amended claims to enable Mr Memelink to bring the claims personally, in any event, do not appear to be sustainable. First, Mr Memelink has no direct right as guarantor to bring actions based on the breach of the lease. It is not suggested that Mr Memelink as guarantor has obtained a right of subrogation or an assignment under the guarantee so cannot be said to be at jeopardy of suffering loss or damage as a result of the disclaimer.

[29] In addition, a director or shareholder of a company is not entitled to take a claim in his name when it is properly brought by the company. The option suggested by Mr Livingstone is by way of a derivative action. However no application for leave for Mr Memelink to pursue a derivative action has been made.

[45] For the same reason as noted by Grice J in *Link* I agree that Ms Gobind, either in her capacity as a director or shareholder of Pacific HVAC or as a guarantor, hasn't suffered any loss as a result of the plaintiff's actions.

[46] The proper plaintiff in these circumstances can only be Pacific HVAC given it is the entity that has potentially suffered a loss and not Ms Gobind as a shareholder or

guarantor. The rule in *Foss v Harbottle*¹¹ precludes Ms Gobind from claiming damages because any losses were suffered by Pacific HVAC.

[47] Pacific HVAC was removed from the Companies Register on 27 April 2021 by a special resolution of the company shareholders. Ms Gobind was the sole shareholder and director of that company. Given the removal of the company Ms Gobind in effect seeks to stand in the company's shoes to sue the plaintiff for damages arising out of the unlawful termination of the lease.

[48] Ms Gobind submitted that the Court should allow her to stand in the shoes of Pacific HVAC and claim any losses on the basis of the principles that arise from the decision of the English Court of Appeal in *Esso Petroleum Co Ltd v Mardon*, that to avoid an injustice the Court, in appropriate cases, disregards the separate legal personalities of the company and its shareholders.¹²

[49] *Esso Petroleum* was concerned with a representation as to the likely throughput of a service station. Mr Mardon successfully contended that he should be awarded damages for breach of warranty. *Esso* argued that Mr Mardon could not recover his lost capital because it had been contributed by his private company. The Court held:¹³

It remains to consider counsel for Esso's final submission that in fact no capital loss fell on Mr Mardon personally because the £6270 came from a private company in which he and his wife held all the shares. The Judge, who examined with meticulous care the trading arrangements which Mr Mardon had adopted in his business, came to the conclusion that his and the company's finances were so inextricably intermingled that it was impossible to differentiate between them. I agree with this conclusion. This is one of those cases of a business run partly on one man company's account and partly on a personal account by the only person who was active in the company. Mr Mardon simply regarded the capital of the company as, to all intents and purposes, his own.

...

It would be extremely unrealistic and a denial of justice in a case like this to allow Esso, who were quite unaffected by the existence of this company, to take advantage of a piece of legalistic purism.

¹¹ *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189.

¹² *Esso Petroleum Co Ltd v Mardon* [1976] QB 801 (CA).

¹³ At pages 23 – 24.

[50] In *Parkhurst* Mr Bisht had leased premises from Parkhurst. His company Imaax Café & Bistro Ltd then operated a restaurant from the premises. Parkhurst was found to have unlawfully re-entered the premises. Imaax was not a party to the proceedings. Mr Bisht was allowed by the court to apply to recover any losses suffered by Imaax by way of application of the principles from *Esso*.¹⁴

[51] To allow Ms Gobind to claim alleged losses, arising through the plaintiff's actions when they unlawfully re-entered the premises, would not be a just outcome. Here there is no evidence of how Ms Gobind operated Pacific HVAC as there was for Mr Mardon in the *Esso* case where the company's finances were inextricably intermingled with Mr Maldon's.¹⁵ Further, it was Ms Gobind, as shareholder, who passed the resolution removing the company from the Register after the plaintiff obtained judgement against it. The effect on the plaintiff being, without application being made to restore the company to the register, it is unable to enforce its judgment.

[52] Therefore, I find Ms Gobind does not have standing to bring a claim for damages against the plaintiff for losses arising to Pacific HVAC as a result of the plaintiff's unlawful re-entry, and nor would it be just to allow her to stand in the place of Pacific HVAC, by application of the principles from *Esso*.

[53] This is not a case where the company's losses could be treated as being those of Ms Gobind.

Ms Gobind's claim the plaintiff unlawfully took her vehicles

[54] Ms Gobind is the registered owner of two motor vehicles, a VW Golf and a 2006 Nissan Nivara. Ms Gobind's evidence is that she had parked these cars in

¹⁴ This was the finding at first instance. In the High Court the argument was focussed on whether the damages were properly characterised as loss of chance damages.

¹⁵ At the commencement of the hearing I declined Ms Gobind's application to have an accountant give evidence regarding what profit, if any, Pacific HVAC was making or might have made in the future. The proposed evidence was well outside the time for filing and no compelling explanation was given for its lateness. Further, I held the evidence proposed was not substantially helpful in accordance with s 25 of the Evidence Act 2006. The proposed expert had not sighted any independent verification of the company's finances, such as bank its statements. Rather, the proposed evidence was based solely on what Ms Gobind had told the witness.

carparks leased by “Phil at Print and Copy at 9 – 11 Sylvia Park Road, Auckland, and had his permission to do so. These premises are also owned by the plaintiffs.

[55] On 7 November 2019 both vehicles were removed by Auckland Towing Limited. On 8 November 2019 Ms Gobind learnt the vehicles had been towed by Auckland Towing. That day she and an associate, Mr Bloomfield, went to their premises and requested their return, offering to pay any towing fees. Ms Gobind says she was told that she could not get her vehicles until “she paid money to James Kirkpatrick”.

[56] Ms Gobind argues Auckland Towing were the plaintiff’s agent as they were acting on Mr Kirkpatrick’s instructions first, when they were towed from Sylvia Park Road and second, when they were not released to her.

[57] On 5 December 2019 Ms Gobind was able to recover the VW Golf.¹⁶ When she uplifted her vehicle, she noted that it had been damaged. The second vehicle has never been recovered by Ms Gobind. She assumes it remains at Auckland Towing.

[58] Ms Gobind argues that the plaintiff had no lawful right to take possession of the vehicles or to instruct Auckland Towing to uplift them and nor did it have a lawful right to instruct Auckland Towing to refuse to return the vehicles to her.

[59] Ms Gobind submits that the towing of the vehicle constitutes the tort of trespass to goods and that it was a wrongful interference with her possession of them. She seeks damages for trespass. Further, she submits that the tort of conversion has been committed by the plaintiff in arranging for the vehicles to be removed and then not being released to her until she paid money to the plaintiff. This is said to be evidence of an intention to assert dominion over the vehicles in an attempt to force Ms Gobind to pay money to the plaintiff.

[60] Mr Kirkpatrick acknowledged that both vehicles had been removed from premises owned by the James Kirkpatrick Group Limited. The company, as a

¹⁶ The VW Golf was subject to a security interest and Ms Gobind was able to recover it from Turners Auctions premises.

commercial landlord, regularly checks what vehicles are parked at its various premises. On this occasion it had noted that there were two vehicles parked in carparks at the Sylvia Road premises that had not been leased. Mr Kirkpatrick denies the carparks were those leased to Print and Copy. At the time the vehicles were towed he had no knowledge of whose vehicles they were. They were towed because they had no legal right to be there. Mr Kirkpatrick notes that there are signs at the Sylvia Road parking area advising that illegally parked vehicles will be towed.

[61] Mr Kirkpatrick acknowledged that some time after the vehicles were towed, he had received a call about Ms Gobind's vehicles. When asked if Ms Gobind owed money to the plaintiff, he confirmed that she did. However, he denies that he told Auckland Towing the vehicles were not to be released until Ms Gobind paid money to the plaintiff. He denies that Auckland Towing were the plaintiff's agent as alleged by Ms Gobind. He says Auckland Towing are engaged to enforce parking restrictions at the various carparks owned by the plaintiff. That is the extent of the relationship.

[62] The issues to be first addressed are whether Ms Gobind's evidence satisfies me, on the balance of probabilities, that her two vehicles were lawfully parked and therefore not liable to be towed and having been towed, did Mr Kirkpatrick instruct Auckland Towing not to release her vehicles until she had paid the plaintiff?

[63] Ms Gobind's evidence in respect of these aspects of her claim are sparse. While it is necessary to focus on the evidence that has been called and not on what evidence could be called it is unusual and unexplained why Ms Gobind does not seek to rely on the independent evidence she refers to in support of her claim. She hasn't called evidence from Phil of Print and Copy regarding her claim her vehicles were lawfully parked in his carparks when they were towed, nor Mr Bloomfield, who she says was with her when she visited Auckland Towing's offices on 5 November 2019, or anyone from Auckland Towing about the discussion regarding the alleged instruction from Mr Kirkpatrick that her vehicles were not to be released until payment had been made to the plaintiff. No photographs or any other detail has been presented as to where she says the vehicles were parked, other than in Phil's carparks at Sylvia Park Road.

[64] Mr Kirkpatrick's evidence was that the plaintiff undertakes regular checks of vehicles parked at its premises to ensure parking time limits are observed and vehicles are parked only where they are authorised to be. Based on information that was received, and not knowing whose vehicles they were, a request was made to have two vehicles towed which later turned out to be Ms Gobind's vehicles.

[65] Mr Kirkpatrick noted there is a sign in the proximity of the carparks that warns of these consequences and the vehicles towed were not parked in "Phil's carparks".

[66] Given the paucity of evidence from Ms Gobind I cannot conclude, on the balance of probabilities, that her vehicles were lawfully parked at the time of the towing. I find Mr Kirkpatrick's evidence in this regard compelling. The plaintiffs, as commercial landlords, had in place a process to ensure vehicles parked at their premises were authorised to be there. If they were not, then they were towed. Being a landlord does not give them access to information to establish who the owner of the vehicle was.

[67] Regarding the call from Auckland Towing, Mr Kirkpatrick's evidence was he did not instruct Auckland Towing to retain Ms Gobind's vehicles pending payment to the plaintiff. Mr Kirkpatrick accepted there would simply be no basis for such a request to be made.

[68] As Ms Gobind alleges the relationship between the plaintiff and Auckland Towing was one of agency she has the onus of proving such a relationship existed.¹⁷ Given the lack of direct evidence on the issue of whether Auckland Towing was the plaintiffs agent, Ms Gobind appears to rely on the drawing of inferences to establish the agency relationship.

[69] The facts from which inferences could be drawn include that the plaintiff engaged Auckland Towing in the removal of unauthorised parked cars from its premises, Mr Kirkpatrick received a call from Auckland Towing during which he advised the caller that Ms Gobind owed money to the plaintiff.

¹⁷ *Ansin v R & D Evans Ltd* [1982] 1 NZLR 184 at 187.

[70] The evidence relied on by Ms Gobind does not allow me to infer that Auckland Towing was more likely than not the plaintiff's agent.

[71] If I am wrong on this issue, I would not have upheld Ms Gobind's claim as again there is insufficient evidence before me to find that it is more likely than not that Mr Kirkpatrick instructed Auckland Towing not to release Ms Gobind's vehicles. I note Mr Kirkpatrick's evidence that there was no way he would ever have known whose vehicles had been towed given they have no way of establishing ownership of vehicles towed by Auckland Towing.

[72] Therefore, I find Ms Gobind has failed in her claim for damages against the plaintiff in relation to her vehicles.

Summary of findings

[73] The plaintiff has proven its claim for unpaid rent and outgoings of \$24,414.55, interest at the default rate, to the date of hearing, of \$11,512.93 and costs on a solicitor-client basis, to the date of hearing, of \$42,763.40 and entitled to judgement in those amounts.

[74] Ms Gobind has failed in her claims against the plaintiff, both on the damages issue arising from the plaintiff's unlawful re-entry of the premises and for any damages in trespass and conversion.

Costs

[75] The plaintiff being successful is entitled to costs, on a solicitor-client basis. A memorandum regarding the plaintiff's costs and ongoing interest is to be filed and served within 10 working days and any response from Ms Gobind withing a further 5 working days.