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THE DISTRICT COURT OF
WESTERN AUSTRALIA

BUN1 of 2017

LAUGHTON

and

MARSH & ANOTHER

STEVENSON DCJ

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON WEDNESDAY, 21 NOVEMBER 2018 AT 2.14 PM

Appellant in person

MR I.A. MORISON appeared for the Respondent

THE ASSOCIATE: In the matter of - in the civil matter BUN APP 1 of 2018, Andrew Laughton, appellant plaintiff v Sharyl and James Marsh, respondents.

STEVENSON DCJ: Mr Laughton?

THE APPELLANT: Yeah, it's not 2018, it's 2017.

THE ASSOCIATE: 2017, I beg your pardon.

STEVENSON DCJ: Thank you.

So Mr Laughton, you're self-represented?

THE APPELLANT: Yes.

STEVENSON DCJ: Thank you. You do need to stand when we communicate.

THE APPELLANT: Sorry, yes.

STEVENSON DCJ: It's just the way we do business in this place.

THE APPELLANT: Yeah, I'm sorry.

STEVENSON DCJ: That's all right, no difficulty. You don't need to apologise. This is your appeal and you have carriage of these proceedings?

THE APPELLANT: I'm appealing, yes.

STEVENSON DCJ: Yes, all right. I've read everything on the court's file. I have seen that the respondents have a filed a notice of intention to abide the court's decision in relation to this appeal.

THE APPELLANT: I don't know what that means.

STEVENSON DCJ: As an abundance of caution, I asked the associate to let Mr Morison know, who acts for the respondents, that your appeal was to be heard today. I understand he has indicated that he would like to participate by audio-link which is a process which I think you're familiar with having used it yourself previously from Tasmania.

THE APPELLANT: No, South Australia.

STEVENSON DCJ: And South Australia. So what we'll do is just make that link live and then we'll proceed.

THE APPELLANT: Thank you.

STEVENSON DCJ: Thank you. Would you be more comfortable remaining seated when we're talking? Is that easier for you?

THE APPELLANT: Whatever's convenient. I was just getting - - -

STEVENSON DCJ: Well, I'm talking about your convenience. Is it more convenient for you to remain seated or would you prefer to stand? It's up to you.

THE APPELLANT: It would be nice to remain seated if that's all right but - - -

STEVENSON DCJ: Certainly. All right. Well, no difficulty. You may remain seated when we communicate. Thank you.

THE APPELLANT: It's one less thing to think about.

STEVENSON DCJ: Are we doing an audio-link or a video-link?

THE ASSOCIATE: Audio-link.

STEVENSON DCJ: Thank you.

THE ASSOCIATE: Hello, Mr Morison, are you there?

MORISON, MR: Yes, thank you.

STEVENSON DCJ: Mr Morison, Judge Stevenson sitting in the District Court in Perth.

MORISON, MR: Yes, your Honour.

STEVENSON DCJ: You can obviously hear me. If you have any difficulty hearing me or Mr Laughton, please do your best to indicate.

MORISON, MR: Certainly, I will. Your Honour, perhaps I could just clarify we still rely upon our notice of intention. I'm present, as I understand it, to see if I can provide any assistance to the court.

STEVENSON DCJ: Yes, I understand the position and I have Mr Laughton in the court with me.

MORISON, MR: Mm hmm.

STEVENSON DCJ: All I've done to this point in time is to confirm his appearance with him and that he is still self-represented.

MORISON, MR: Yes, thank you.

STEVENSON DCJ: I'll just explain what you have said, as I understand it, for the benefit of Mr Laughton. So the notice of intention to abide by the decision of the court in this appeal, as opposed to the substantive proceedings themselves, is relied upon by the respondents and your appearance today is just to assist the court if asked to do so.

MORISON, MR: Yes, your Honour.

STEVENSON DCJ: Thank you.

Do you understand that, Mr Laughton?

THE APPELLANT: He's agreeing - sorry, not really, no.

STEVENSON DCJ: All right. Well, the respondents don't wish to formally participate in the hearing of the appeal.

THE APPELLANT: Okay.

STEVENSON DCJ: But as I said to you before the link was made live, as a matter of courtesy I instructed the associate to contact Mr Morison to let him know that the appeal would proceed and be heard today.

THE APPELLANT: Yes.

STEVENSON DCJ: I've also suggested that he may wish to participate by audio-link to assist the court. The reason in part for that is because it would appear things have happened at certain stages in this matter which are not the subject of transcript and Mr Morison was present on occasions and you've been present on other occasions.

So the purpose of his attendance today is to assist the court if anything arises in the course of hearing your appeal and your submissions. All right. So you indicate you've understood that. What I might do then is just begin

by making some preliminary observations and you can indicate to me whether I've misunderstood anything.

As I've indicated to you, I have read the entire content of the court's file which is an eFile and the documents have been printed out in hard copy for me for that purpose. So the proceedings in the District Court were commenced as a result of an appeal notice that you filed on 23 January 2017 from a decision made in the Magistrates Court in Bunbury on 17 August 2016.

In the course of the appeal in this court on 30 October 2017, Principal Registrar Melville made an order that within 28 days you pay \$13,000 into court by way of security for costs and that in the meantime all further proceedings be stayed.

At the time of that decision which was delivered by the Principal Registrar in writing on 30 October 2017, you were present and represented yourself and, I infer, fully appreciated the order that was made and the obligation it imposed on you.

By reason of your non-compliance with that order, the respondents sought by Chamber summons an order for the dismissal of the appeal. That Chamber summons resulted in orders being made by Deputy Registrar Harman on 24 May 2018. The orders the deputy registrar made on that date were that, (1) the appeal be dismissed, (2) the appellant pay the respondents' costs of the appeal to be taxed, and, (3) the appellant pay the respondents' costs of the application.

THE APPELLANT: What date was that?

STEVENSON DCJ: That order was made on 24 May 2018 by Deputy Registrar Harman.

THE APPELLANT: Can you repeat that? I don't think I ever got a copy.

STEVENSON DCJ: All right. I will show you a copy, and Mr Laughton, I'll say this to you. You can profess that you have not seen things and have not been provided with things and I say that in part because you referred to a confidential affidavit filed by Mr Marsh which you say you have not seen. None of that is going to wash with me. Your appeal is to be heard today and you are taken, even though you are self-represented, to be familiar with the court file and the documents on it.

THE APPELLANT: So how did I get access - - -

STEVENSON DCJ: What I will do is I will show you the order which was made by the deputy registrar and it is the order to which I understand you have lodged the appeal notice on 6 July 2018 which is the reason we're here today.

THE APPELLANT: I'm not sure of the dates.

STEVENSON DCJ: All right. Well, look at your own documentation.

THE APPELLANT: Yes, I've got - - -

STEVENSON DCJ: You've lodged by eFiling a document which is headed, "Appeal Notice", on 6 July 2018. It is dated, according to your document, 29 June 2018. So that was the original appeal notice that you have filed as a result of the dismissal of the appeal by Deputy Registrar Harman.

THE APPELLANT: Okay.

STEVENSON DCJ: So what you're seeking to do - and I'll just ask the usher to provide you with a copy of that order and that you provide back to me the one I gave you. What you're seeking to do is to appeal against the dismissal - - -

THE APPELLANT: Yes.

STEVENSON DCJ: - - - of your substantive appeal in this court from the Magistrates Court because that's the effect of what Deputy Registrar Harman has done in the orders he made.

THE APPELLANT: I appealed against the Magistrates decision - - -

STEVENSON DCJ: To this court, yes.

THE APPELLANT: - - - to the Registrar or - - -

STEVENSON DCJ: Well, no, not to the Registrar. To the District Court.

THE APPELLANT: Okay. And then Mr Morison - - -

STEVENSON DCJ: So you lodged that appeal in the District Court of Western Australia on 23 January 2017.

THE APPELLANT: Approximately, yes.

STEVENSON DCJ: And these proceedings in this court stem and arise only from that appeal notice.

THE APPELLANT: Yes.

STEVENSON DCJ: But for that appeal notice you would not be here - - -

THE APPELLANT: Yes.

STEVENSON DCJ: - - - at all.

THE APPELLANT: Yes.

STEVENSON DCJ: That's the originating appeal notice.

THE APPELLANT: Yes.

STEVENSON DCJ: Since then as I've said and you know because you were present for the submissions and the contest, Principal Registrar Melville made an order on 30 October last year that you pay the sum of \$13,000 into court as security for the respondents' costs of this appeal, these proceedings. Yes? You didn't appeal that decision.

THE APPELLANT: No. I paid the money.

STEVENSON DCJ: You what?

THE APPELLANT: I paid the \$13,000.

STEVENSON DCJ: Well, you haven't paid the \$13,000. The court has no record of you having paid the \$13,000. You've been told that before and you haven't produced anything in addition.

THE APPELLANT: The bailiff's office has - - -

STEVENSON DCJ: No, don't. I'll let you articulate this issue later, but I'm not going to be distracted by it at this point in time. All right? So we'll come back to it. I'll hear you on it in a moment. I just want you to follow with me procedurally what had happened and what the appeal today is concerned with.

So you've agreed that the Principal Registrar made an order on 30 October 2017 that you pay the sum of \$13,000 into

court as security for the respondents' costs of this appeal.

THE APPELLANT: To the court, yes.

STEVENSON DCJ: Because you didn't make that payment, the respondents filed a Chamber summons for the dismissal of your appeal because you did not comply with that order made by the Principal Registrar.

In other words, the order was a condition of you being allowed to continue with your appeal. And that's why in the order the Principal Registrar said until you make that payment, all further proceedings are stayed. That is to protect the respondents from having to incur any further costs until you make the payment.

Because you did not make the payment into court as security for costs, Deputy Registrar Harman - after you appeared by audio-link on 26 April 2018, for some reason the matter was adjourned, I don't know why, but we can come to that, but it was adjourned to 22 May.

THE APPELLANT: 24 May.

STEVENSON DCJ: You're right, 24 May and you didn't appear on that occasion by audio-link.

THE APPELLANT: I never received a call.

STEVENSON DCJ: Well, did you make a telephone call?

THE APPELLANT: Well, every other time I - - -

STEVENSON DCJ: No, no. Did you make a telephone call?

THE APPELLANT: No.

STEVENSON DCJ: No, you didn't. So you sat there knowing - - -

THE APPELLANT: Waiting.

STEVENSON DCJ: - - - that on that day and you didn't make a telephone call.

THE APPELLANT: Well, first of all, I didn't know because I received this bit of - I received this bit of paper the day before.

STEVENSON DCJ: What bit of paper are you referring to? Just provide it to the usher, so I can see it.

THE APPELLANT: Secondly, every other time - - -

STEVENSON DCJ: All right. Well, just let me just read this. So the bit of paper you have handed up, Mr Laughton, is a letter from the court - - -

THE APPELLANT: I never received it from the court, but yes.

STEVENSON DCJ: Well, I thought that was the reason why you say you didn't bother to make a telephone call.

THE APPELLANT: No. The reason I didn't make a phone call is cos I didn't know what number to ring. The arrangement was they were going to ring me.

STEVENSON DCJ: And you just sat by and didn't do anything when the phone didn't ring?

THE APPELLANT: I was stressing out a lot, but - - -

STEVENSON DCJ: Well, why didn't you pick up the telephone and ring the District Court and say, "I have a matter which is to be heard by the Registrar?" You made no contact. You did nothing.

THE APPELLANT: I - I didn't - - -

STEVENSON DCJ: You made yourself effectively unavailable for the hearing.

THE APPELLANT: I was available. I just didn't know to ring.

STEVENSON DCJ: What were you thinking?

THE APPELLANT: I was stressing out that it had been settled as per that bit of paper.

STEVENSON DCJ: Well, this bit of paper is a letter dated 23 May 2018 to the respondents' solicitors. It doesn't say anything about anything being settled.

THE APPELLANT: Maybe I've given you the wrong one, but - - -

STEVENSON DCJ: No, no. The first sentence is:

The order before Registrar in Chambers in for settling filed on 22 May 2018 have been settled.

That's the order made by the Registrar and filed on 22 May 2018. So what did you think was settled?

THE APPELLANT: Well, I thought that the original hearing that got postponed, I was - - -

STEVENSON DCJ: How could the issue have been settled? You hadn't paid the \$13,000, so how could anything be settled without you being a party to the terms of settlement?

THE APPELLANT: Well, I had paid the 13,000 and I thought it had been settled against me without me being there.

STEVENSON DCJ: But it couldn't be settled without you being a party to the settlement.

THE APPELLANT: That's what I thought had happened. You wouldn't think I'd be hung up on in the middle of the hearing either, but that's what happened.

STEVENSON DCJ: Well, you weren't present for the hearing.

THE APPELLANT: The one on - the one about a month earlier, they rung me and then sort of waffled on for a little bit and then hung up. And then rang me back a little bit later and said it's been postponed till the 24th. On the 23rd I received that email.

STEVENSON DCJ: You received this email?

THE APPELLANT: That in an email, yes.

STEVENSON DCJ: But it's not addressed to you.

THE APPELLANT: I received it from the Marshes, from Mr Ian Morison.

STEVENSON DCJ: Sorry, who did you receive it from?

THE APPELLANT: Ian Morison.

STEVENSON DCJ: So he sent it to you?

THE APPELLANT: Yes.

STEVENSON DCJ: All right. Well, that's talking about an order made by the Registrar in Chambers.

THE APPELLANT: It was saying it had been settled.

STEVENSON DCJ: And you've only produced the letter. You haven't actually produced the attached copy of the order.

THE APPELLANT: I didn't have the attached copy of the order, that's why I'm saying.

STEVENSON DCJ: Well, how did you know - - -

THE APPELLANT: This is the first - - -

STEVENSON DCJ: Well, how did you know what it was talking about if you didn't have the attached copy of the order? How did you know which order it was referring to?

THE APPELLANT: Well, I didn't. There's only one thing that it could have referred to and that was what the hearing was about.

STEVENSON DCJ: Well, I have difficulty accepting that, Mr Laughton, because on 26 April 2018 you were told that the Chamber summons, the hearing was going to be adjourned until 24 May.

THE APPELLANT: Yes.

STEVENSON DCJ: And you knew from what was said on that occasion that you had to either make the payment or discontinue the appeal.

THE APPELLANT: I - I - at that point I believed I already made the payment.

STEVENSON DCJ: Well, we'll come to that. Where were you on 24 May? You haven't actually said anything in an affidavit as to what you were doing or where you were or why you didn't make a phone call to the court to say, "Nobody's called me. What's happening to my matter?"

THE APPELLANT: Well, I was absolutely freaking out. I was in South Australia in Port Lincoln. Yeah, I - I was extremely stressed out. I don't know - - -

STEVENSON DCJ: Were you so stressed out that you decided you wouldn't make yourself available?

THE APPELLANT: No. I was available. I was sweating on receiving a phone call.

STEVENSON DCJ: But you didn't do anything and the phone call didn't come.

THE APPELLANT: Well, no because I - I felt that letter was saying it had been settled and - - -

STEVENSON DCJ: On what basis?

THE APPELLANT: Well, the way I read it it was the matter had been settled without - - -

STEVENSON DCJ: Well, this is talking about an order.

THE APPELLANT: Yes.

STEVENSON DCJ: So it's not talking about settling. How could it be settled? It - the purpose of the application was to get rid of your appeal because you had not complied with the previous order to make the payment.

THE APPELLANT: Sorry, say that again?

STEVENSON DCJ: With respect, I don't understand how you could be thinking that the issue has been settled without you being a party to the settlement because you have not made the payment.

THE APPELLANT: Well, for starters, I thought I had made a payment.

STEVENSON DCJ: All right. Where do I find that in your affidavits? Where is proof that you've paid anybody the sum of \$13,000?

THE APPELLANT: I've - - -

STEVENSON DCJ: And let's find out who you've paid.

THE APPELLANT: I've paid the - the - - -

STEVENSON DCJ: No, don't - you can't sit there and tell me these things because you're not on oath.

THE APPELLANT: Okay.

STEVENSON DCJ: Where in your affidavit is there proof that you've paid anybody \$13,000? You would have a bank receipt, wouldn't you?

THE APPELLANT: I've got it in the affidavit, it's point 2.

STEVENSON DCJ: All right. Well, what affidavit are you referring to? I'm - - -

THE APPELLANT: The affidavit dated - - -

STEVENSON DCJ: Tell me what day it was filed because they're not always filed on the same day they're dated.

THE APPELLANT: It's - it's - - -

STEVENSON DCJ: So on your affidavit - - -

THE APPELLANT: Yeah.

STEVENSON DCJ: - - - on the front page there will be a court stamp saying the date it was filed.

THE APPELLANT: I don't know that.

STEVENSON DCJ: All right. Well, what's the date the affidavit was sworn?

THE APPELLANT: I've got a copy of the original file I printed out, I didn't print the PDF. It would have been 1 November or possibly 2 November.

STEVENSON DCJ: Well, there is an affidavit which bears the date 9 November 2017 filed on the same date.

THE APPELLANT: I just have problems getting - - -

STEVENSON DCJ: Four pages long.

THE APPELLANT: Sorry. I just had problems getting to a JP, but - - -

STEVENSON DCJ: Is it four pages, the one you're referring to?

THE APPELLANT: No, it's a total of five pages but that includes all the template.

STEVENSON DCJ: All right. So which paragraph are you referring to?

THE APPELLANT: Paragraph 2, grounds of appeal.

STEVENSON DCJ: All right. Well, paragraph 2 of the affidavit I have referred to is headed, "Regarding paragraph 44."

THE APPELLANT: We must have different ones.

STEVENSON DCJ: All right. Show me the document you're looking at. Mr Laughton, this is an appeal notice not an affidavit.

THE APPELLANT: Sorry. Yeah, okay. Sorry, I've taken the wrong one. There are four pages.

STEVENSON DCJ: All right. So what you've referred to is the appeal notice which you have filed on 2 November 2018.

THE APPELLANT: I'm a bit confused but, yes, hang on. I - I have got multiple affidavits. Yeah, the affidavit dated - 8 - 13 September '18. Now, at point 22 it says I was unable to pay it.

STEVENSON DCJ: All right. Well, let's find the affidavit. What date was the affidavit filed?

THE APPELLANT: The date it was made was 13 September.

STEVENSON DCJ: Two thousand and - - -

THE APPELLANT: Eighteen.

STEVENSON DCJ: - - - eighteen. Can you show me that document, please, so I can see if I can identify what you're referring to? The document you've handed to me consists of four pages and 35 paragraphs. It is not sworn and bears the date 13 September 2018. That document has not been filed.

THE APPELLANT: I sent it to the court.

STEVENSON DCJ: All right. What date did you send it on?

THE APPELLANT: I'll say I sent it by a tracking thing to the defence - - -

STEVENSON DCJ: Well, you wouldn't have - - -

THE APPELLANT: - - - but - - -

STEVENSON DCJ: - - - sent an unsworn copy, would you?
You would have sent - - -

THE APPELLANT: No. No, no, no.

STEVENSON DCJ: - - - a sworn copy.

THE APPELLANT: I had sworn and signed and sent it to the court.

STEVENSON DCJ: Well, you would keep a copy, wouldn't you?

THE APPELLANT: I only made the two copies. I've got it on paper on soft copy and I've scanned it. I've got a - I can get a soft copy but I didn't have a paper copy and I didn't - I haven't got a paper copy with me. I didn't know I needed it.

STEVENSON DCJ: All right. And you've got a soft copy there, have you?

THE APPELLANT: I can get one.

STEVENSON DCJ: Sworn?

THE APPELLANT: Yes.

STEVENSON DCJ: So what do you want me to do?

THE APPELLANT: Well, this one that I never received is a - a major plus.

STEVENSON DCJ: All right. Well, what are you - you're holding up a piece of paper. What are you referring to?

THE APPELLANT: The one you gave me before that you told me is not - - -

STEVENSON DCJ: That's just the order that - - -

THE APPELLANT: Yeah. I - I didn't know it existed.

STEVENSON DCJ: All right. Well, I think you did know that it existed because you've referred to it in your appeal notice. That's the purpose of the appeal.

THE APPELLANT: Yeah, I was guessing.

STEVENSON DCJ: And I should just say for the record that the appeal notice that you just handed up to me that you were referring to is not the original appeal notice that you filed on 6 July 2018. That appeal notice was a purported amended appeal notice which you filed on 2 November 2018. So let's just deal with that. You've got two appeal notices.

THE APPELLANT: Probably, yes, or possibly more.

STEVENSON DCJ: At least. At least.

THE APPELLANT: Yes.

STEVENSON DCJ: I think the last one you filed is filed on 2 November 2018, is that right?

THE APPELLANT: I think it's 21 November of 2018.

STEVENSON DCJ: All right. Well, I'm a - - -

THE APPELLANT: That can't be right that's today.

STEVENSON DCJ: Yes. So I think it's 2 November 2018.

THE APPELLANT: Yeah. Well, I must have - - -

STEVENSON DCJ: At least on the court file that's the last version.

THE APPELLANT: Yeah, it could be. There's a - there's the - - -

STEVENSON DCJ: But you can't, Mr Laughton, just simply keep filing documents particularly when you don't mark them up. So do you know how much time I have spent trying to compare your original appeal notice that you filed on 6 July with the one you filed on 2 November 2018?

What you need to do if you file an amended document is to, (a) call it an amended document so we know so there's no confusion.

THE APPELLANT: Okay. I didn't know that.

STEVENSON DCJ: Well, think about it. It makes sense, doesn't it?

THE APPELLANT: It does make sense.

STEVENSON DCJ: And also to assist everybody, you cross out what you no longer seek to rely upon and underline what you seek to insert so that we can see what the difference is.

THE APPELLANT: Okay.

STEVENSON DCJ: Make sense?

THE APPELLANT: Yeah.

STEVENSON DCJ: Yes.

THE APPELLANT: Yeah.

STEVENSON DCJ: Saves a bit of time, doesn't it? Your document - - -

THE APPELLANT: Yes.

STEVENSON DCJ: Anyway, so what I'll do is I will put to one side the original appeal notice filed 6 July 2018.

THE APPELLANT: Yeah.

STEVENSON DCJ: That's the first one you filed when you became aware that you had to do something because your appeal had been struck out.

THE APPELLANT: Yes, I think. I'm not sure about it.

STEVENSON DCJ: And - - -

THE APPELLANT: I'm - yeah, okay.

STEVENSON DCJ: And we'll proceed with the one you filed on 2 November and that's the one that you referred to a moment ago.

THE APPELLANT: Yes.

STEVENSON DCJ: All right. So we'll - are you content to proceed on that basis?

THE APPELLANT: Yes.

STEVENSON DCJ: So that's the appeal notice. It - it says a number of things which we can discuss.

THE APPELLANT: Yes.

STEVENSON DCJ: The document that you say you have a soft copy after it was sworn and is another affidavit is not on the court file so it doesn't appear that you have filed it.

THE APPELLANT: I did, that's true.

STEVENSON DCJ: But there is an affidavit on the court file which was sworn by you on 9 November 2017 which is last year. Another affidavit made on 8 June 2017 which is folio 25 and the first one was folio 40 on the court file.

THE APPELLANT: I made a affidavit shortly after the original registrar's court order to pay the 13,000 security.

STEVENSON DCJ: I think that would be the affidavit of 9 November 2017.

THE APPELLANT: It could be.

STEVENSON DCJ: Now, you have deposed in that affidavit that you paid the bailiff's officer over \$10,000.

THE APPELLANT: By that date and I've - I've paid the \$13,000.

STEVENSON DCJ: No, you said:

I will endeavour to pay the \$13,000 - - -

THE APPELLANT: Yeah, that - - -

STEVENSON DCJ:

- - - by the 28-day deadline.

THE APPELLANT: Yes.

STEVENSON DCJ: So the court's got no record of you having made that payment.

THE APPELLANT: I assumed - - -

STEVENSON DCJ: Can you - you - you'd have a bank record? You - you're aware of the issue. It - - -

THE APPELLANT: I - I - - -

STEVENSON DCJ: Don't assume anything, Mr Laughton, you know the issue. The issue is you have not paid the money into court. You've known that since the respondents' Chamber summons was filed. You know that's the issue. All of the material that you filed talks about delay, delay, delay for legal advice, for time to pay money. And you've filed settlement offers which appear to be on a walk away basis. So you're all about delay.

THE APPELLANT: No.

STEVENSON DCJ: Well show me where you have paid the \$13,000 in accordance with the order. The court has not received it.

THE APPELLANT: Okay. I made the mistake of assuming that the bailiff - - -

STEVENSON DCJ: Don't - no, I - I'm not going to wear that, Mr Laughton. You've known since the respondents' Chamber summons that this is the issue. You know that.

THE APPELLANT: Yeah, and I thought I had paid it.

STEVENSON DCJ: Well, you haven't proved it. You haven't produced one skerrick of evidence that you've paid anybody the sum of \$13,000. You'd have a - you'd have an entry in your bank account, wouldn't you?

THE APPELLANT: Yeah, I have several.

STEVENSON DCJ: No, no, you only need one for \$13,000.

THE APPELLANT: No, I paid the initial 10,000 plus I made regular payments and then before the deadline I made sure it was 13,000. So there's - there's multiple payments. If I knew I needed those I would have brought them.

STEVENSON DCJ: So when did that dawn upon you that you needed to prove that you had complied with the order made by Principal Registrar Melville over a year ago? When did that dawn upon you?

THE APPELLANT: When I needed to prove?

STEVENSON DCJ: Yes.

THE APPELLANT: When you just told me just today.

STEVENSON DCJ: So where have you been for the last six months or so since the respondents filed their Chamber summons for dismissal of your appeal because you had not made the payment.

THE APPELLANT: Yeah, and I tried to make the blimming payment.

STEVENSON DCJ: No, no, that's - that's a different proposition. You just told me that you just realised today for the first time you had to prove that you'd made the payment.

THE APPELLANT: To the bailiff's court - to the bailiff's office. I didn't know that. I tried to pay it the second time to the District Court instead of the bailiff's office and I couldn't.

STEVENSON DCJ: What the \$13,000?

THE APPELLANT: Yes.

STEVENSON DCJ: And when was that?

THE APPELLANT: That's - I put it on the affidavit. I'll go through the affidavit. Just - I - - -

STEVENSON DCJ: Well, it's not in the affidavit of 9 November 2017 because at that stage you are saying that you are endeavouring to make the payment.

THE APPELLANT: Yeah. And that was the one - - -

STEVENSON DCJ: And you've - - -

THE APPELLANT: - - - immediately after - - -

STEVENSON DCJ: And I have indicated a willingness at paragraph 7.1:

For the appeal to be delayed on the assumption that if I do not agree the appeal will not be able to take place.

THE APPELLANT: Say - say that again?

STEVENSON DCJ: It doesn't make sense but it's paragraph 7.1 of your affidavit of 9 November 2017.

THE APPELLANT: No, I - you'd have to repeat it. I can't visualise it.

STEVENSON DCJ: Well, you wrote it and you deposed it.

THE APPELLANT: Yes.

STEVENSON DCJ:

I have indicated a willingness for the appeal to be delayed on the assumption that if I do not agree the appeal will not be able to take place.

THE APPELLANT: Yes, well, I didn't - I'm, trying. This has been dragging out for - the original damage was done in 2012. This has been dragging on. It's stuffed up my life. It's caused me medical problems, it's caused me depression and it's caused me high blood pressure. It's caused all sorts of problems. I don't want it to drag out anymore. But the only reason I said that is that if that's my only choice. If the choice is between delaying it or missing out on - yeah, costing me \$100,000.

STEVENSON DCJ: Mr Laughton, the difficulty is the order was made by Principal Registrar Melville - - -

THE APPELLANT: Mm.

STEVENSON DCJ: - - - over a year ago.

THE APPELLANT: Mm.

STEVENSON DCJ: You still have not complied with that order.

THE APPELLANT: I was unable to do so, I tried but I just couldn't.

STEVENSON DCJ: Well, what's stopping you paying it tomorrow?

THE APPELLANT: I've tried. I've gone to the - - -

STEVENSON DCJ: No, no, what's stopping you paying it tomorrow?

THE APPELLANT: Well, I could pay it tomorrow if I had that chance.

STEVENSON DCJ: You've got the money?

THE APPELLANT: I can get it.

STEVENSON DCJ: Tomorrow?

THE APPELLANT: Yes.

STEVENSON DCJ: You'll make the payment tomorrow?

THE APPELLANT: Yes.

STEVENSON DCJ: Thirteen thousand?

THE APPELLANT: Possibly the next day but in the - in - within the week. What's - what's - today is Wednesday. In a very short time frame - time frame, yes.

STEVENSON DCJ: But why hadn't you paid it before?

THE APPELLANT: Because when I - well, first of all, I did pay it but I paid it to the wrong court and, second of all, when I did try and pay it the second time, the court told me, no, it was too late.

STEVENSON DCJ: Mr Laughton, the difficulty is that none of these things you are saying from the Bar table are on oath.

THE APPELLANT: Well, how do I put it on oath?

STEVENSON DCJ: You swear an affidavit - - -

THE APPELLANT: I did do - - -

STEVENSON DCJ: - - - and then if you are caught misleading the court or caught telling untruths, you can be dealt with.

THE APPELLANT: Okay. I did - - -

STEVENSON DCJ: You don't seem to be able to put it in an affidavit that you've paid the money.

THE APPELLANT: I did put in an affidavit. I don't know why you didn't receive it.

STEVENSON DCJ: There's always something.

THE APPELLANT: It's not only you I sent it to. I sent one - like, I made two copies, printed and signed it and - - -

STEVENSON DCJ: Did you serve it?

THE APPELLANT: Yes.

STEVENSON DCJ: You've served it?

THE APPELLANT: By registered mail to Ian Morison.

STEVENSON DCJ: Mr Morison, are you still on line?
Mr Morison, are you still on line?

MORISON, MR: Yes, your Honour. Is your Honour there?

STEVENSON DCJ: Yes, I am.

MORISON, MR: I'm sorry.

STEVENSON DCJ: That's all right. Have you been following the discussion?

MORISON, MR: I have, yes, thank you, your Honour.

STEVENSON DCJ: Mr Laughton is saying that he's filed an affidavit in recent time deposing that he has paid the \$13,000 into court.

MORISON, MR: I've seen no such affidavit, your Honour. I have received a copy of a document that's been referred to in the exchange of 2 November. That's entitled an, "Appeal Notice", but it's not a sealed copy and it hasn't been - I'm sorry, that was 1 November 2018 so that's what I've received in recent times.

STEVENSON DCJ: All right. That appears to be what I've referred to as the amended appeal notice consisting of five pages - - -

MORISON, MR: Yes, your Honour.

STEVENSON DCJ: - - and this simply highlights the difficulty when parties file documents without doing so in the proper way, but I think we are referring to the same document.

MORISON, MR: Yes.

STEVENSON DCJ: So you haven't been served with, as Mr Laughton said, a sworn affidavit in November this year deposing to payment having been made.

MORISON, MR: No, your Honour, I don't recall any such affidavit. I've been through my file this morning and I see no such affidavit.

STEVENSON DCJ: Thank you.

Mr Morison, was there any reason why Deputy Registrar Harman didn't make a springing order?

MORISON, MR: On 24 May?

STEVENSON DCJ: Yes.

MORISON, MR: Yes.

STEVENSON DCJ: Especially in the absence of Mr Laughton on that occasion.

MORISON, MR: It began, your Honour, with Deputy Registrar Harman asking why we were not content with a stay and the stay continuing. My response was that continuing the stay places the respondents in limbo indefinitely. The issue of a springing order was not raised by myself or by the deputy registrar.

STEVENSON DCJ: It seems to me that there are two possible outcomes today - and I'll hear further from Mr Laughton - based on the information that's before the court and that is to dismiss his appeal against the order dismissing the proceedings themselves.

Alternatively, in view of his absence on the day the order was made, the court might entertain the possibility of making a springing order that unless the sum of \$13,000 - and it might need to be increased by reason of the fact that the respondents have now filed a bill of costs and incurred further cost, but whatever the sum is, it would be \$13,000 or slightly more, but unless that sum is paid into court by close of business on Friday this week - that would allow two clear days for Mr Laughton to make the payment - then the appeal is dismissed.

Do you wish to be heard in relation to the second alternative?

MORISON, MR: No, your Honour, it's a matter for the court.

STEVENSON DCJ: All right, thank you.

Mr Laughton, your appeal - you have carriage of it. It's been on foot now for nearly two years. It is no closer to being determined on its merits. You have not demonstrated any interest in progressing the matter.

THE APPELLANT: I have.

STEVENSON DCJ: You have? You haven't paid the security into court.

THE APPELLANT: I thought I had.

STEVENSON DCJ: You haven't asked the court to list the appeal for hearing.

THE APPELLANT: Well, I did actually and they said this thing needed to be settled first, yes.

STEVENSON DCJ: You haven't filed any submissions, as you were required to do so at least two clear days before today. You had a letter from the court telling of the relevant rule.

THE APPELLANT: In the submissions they're not - - -

STEVENSON DCJ: The court wrote to you on 18 October 2018 reminding you of the need to comply with the District Court Rules, rule 61, in relation to filing written submissions.

THE APPELLANT: Yes.

STEVENSON DCJ: You didn't do so.

THE APPELLANT: I haven't submitted anything after that deadline.

STEVENSON DCJ: No, you haven't complied with the rule.

THE APPELLANT: The appeal notice was well and truly before that.

STEVENSON DCJ: The appeal notice is not an outline of submissions. That's the document which gives origin to the matters you wish to agitate. The outline of submissions is

the reasons why you say whatever you said in the appeal notice should happen.

THE APPELLANT: Well, the appeal notice and the reasons is all one notice.

STEVENSON DCJ: All right. Let's look at that appeal notice filed 2 November 2018. You say were excluded from the majority of the hearing on 26 April.

THE APPELLANT: Yes.

STEVENSON DCJ: How did that come about?

THE APPELLANT: The court paperwork hadn't been sealed or something from the original one where they asked for - - -

STEVENSON DCJ: So there was a small adjournment, was there, while something was done?

THE APPELLANT: Yes, for roughly a month.

STEVENSON DCJ: You understood the reason you were there on that occasion. You were there in relation to the respondents' Chamber summons to strike out your appeal.

THE APPELLANT: Yes.

STEVENSON DCJ: And you knew that the basis upon which that application was made that you had not complied with the payment into court.

THE APPELLANT: I'm not sure about that.

STEVENSON DCJ: Registrar Harman told you that.

THE APPELLANT: Yes, I'm not sure. It's possible.

STEVENSON DCJ: All right. You're unsure.

THE APPELLANT: I'm getting a bit - - -

STEVENSON DCJ: It's plain from the documentation filed, including the affidavits in support of the Chamber summons, that that is why that application was made so you must have appreciated it at the time.

THE APPELLANT: I could have. I'm not sure.

STEVENSON DCJ: Not could have, you must have.

THE APPELLANT: I must have.

STEVENSON DCJ: You must have. You had affidavits. You had a Chamber summons. You knew what the respondents were seeking from the court. You knew the reason one. All have been served on you so you understood. In any event, the matter is adjourned - you're aware of that - to 24 May.

THE APPELLANT: Yes. And on 23 May I received that letter from - well, via the District Court. I never received anything from the District Court directly saying the matter had been settled.

STEVENSON DCJ: Mr Morison, that letter which has been spoken of was addressed to you. Do you have - - -

MORISON, MR: Yes, your Honour.

STEVENSON DCJ: - - - a record of having sent it to Mr Laughton?

MORISON, MR: Yes, your Honour. I do.

STEVENSON DCJ: All right. Was the order sealed or unsealed at that point?

MORISON, MR: The order was sealed. Your Honour, my email was sent to Mr Laughton with a copy to his lawyer or sometime lawyer, Mr Owens. And it simply attached and I quote:

I attach the sealed orders of 30 October 2017. The Marsh's application was adjourned on the last occasion because the orders had not been sealed.
Regards, Ian Morison.

STEVENSON DCJ: All right. Thank you. So I understand now what's happening.

So with respect, Mr Laughton, you couldn't have been misled by that letter. You've only produced the letter, you haven't produced the order which was also sent to you and that's the purpose of the letter.

THE APPELLANT: Yeah, the order was - that came with it was dated six months or more before - - -

STEVENSON DCJ: Yes, 30 October 2017. So it's the order sealed that was made by Principal Registrar Melville when he handed down his reasons for decision and made the order that you make the payment into court. That's the order that's been referred to.

THE APPELLANT: Yes.

STEVENSON DCJ: All right. Well, you couldn't have been misled or misunderstood, so far as the hearing on 24 May was concerned by reason of the provision of that order because it was being given to you because the previous hearing had been adjourned because it hadn't been sealed by the court. So you knew the reason.

THE APPELLANT: It didn't say, "sealed". It says, "settled".

STEVENSON DCJ: What was settled? What was settled? What does the letter say was settled?

THE APPELLANT: I assume it had been settled.

STEVENSON DCJ: No, no, no. You can't assume. Just tell me what the letter says was settled?

THE APPELLANT: The order before a Registrar in Chambers.

STEVENSON DCJ: Exactly. So it's talking about an order having been settled, not the Chamber summons. It's the order and you had the order with you and you could see the order was the sealed order made 30 October 2017 and you knew the purpose of its provision because on 26 April 2018, the matter had been adjourned because it hadn't been sealed. So you knew the reason.

THE APPELLANT: Yes, your Honour. And I tried to pay it, I wasn't allowed.

STEVENSON DCJ: No, no, no. That's another point, we'll get there. So with respect, I can't accept your alleged confusion by reason of that letter. It doesn't make any sense at all. In any event, you say from the Bar table that you were stressed out waiting for the phone call on 24 May. It never came, you didn't do anything. You didn't contact the court, didn't - - -

THE APPELLANT: No, sir.

STEVENSON DCJ: Just did nothing. What was the next thing you did do?

THE APPELLANT: I tried to pay - I tried to contact the - I did contract the District Court and tried to pay 13,000 which they wouldn't accept. I tried to pay cos I discovered that on my form - cos originally they asked for a form 9 as well and I didn't realise at the time that needed a filing fee. I tried to pay that filing fee and that was rejected and - - -

STEVENSON DCJ: So now you're talking about the correspondence from the Principal Registrar dated 30 May 2018 when he wrote to you care of Max Owens.

THE APPELLANT: Sorry?

STEVENSON DCJ: Remember the Principal Registrar's letter saying to you that you're barking up the wrong tree? That he wasn't confused, the position was clear? You were talking about Civil Judgments Enforcement Act section 9 application? Do you remember that letter?

THE APPELLANT: Civil Actions Enforcement Act, sorry?

STEVENSON DCJ: All right.

Well, let's move on, Mr Laughton. So let's go to your grounds of appeal. Ground 2, the order to pay \$13,000 to the court did not specify which court. Well, you didn't have any doubt about that. You knew you had to pay it into the District Court because it's your appeal in the District Court.

THE APPELLANT: Yes. And I was also told by the Bailiff's Office that if I didn't pay the money to them I'd lose the house.

STEVENSON DCJ: Right. I don't know what that's about. I'm talking about the payment the subject of the order which is the reason we're here today.

THE APPELLANT: Yes. I paid money to - - -

STEVENSON DCJ: The bailiff's not there enforcing the security for costs order. The bailiff's there because you have some other matters.

THE APPELLANT: That's the same matter.

STEVENSON DCJ: Well, it may be the same parties, but it's a different issue. Then you go on and say in ground 2:

I did in fact pay \$13,000 to a court as per the court order.

So what court did you pay \$13,000 to?

THE APPELLANT: To the Bailiff's Office.

STEVENSON DCJ: Well, the Bailiff's Office is not a court.

THE APPELLANT: They represent the court. I thought it was the court.

STEVENSON DCJ: All right. Okay:

Before the original deadline of 27 November 2017.

THE APPELLANT: Yes.

STEVENSON DCJ: So you paid the Bailiff's Office \$13,000 - - -

THE APPELLANT: Yes.

STEVENSON DCJ: - - - before 27 November 2017?

THE APPELLANT: Yes.

STEVENSON DCJ: All right. Well, you'd have a receipt from them for the money.

THE APPELLANT: Not with me.

STEVENSON DCJ: Well, you haven't filed it, have you, anywhere?

THE APPELLANT: I thought the - - -

STEVENSON DCJ: Well, I mean, you thought what?

THE APPELLANT: Well, the court paperwork - the court would have its own paperwork.

STEVENSON DCJ: But you haven't paid it in respect of this order, you've paid it in respect of something else. That was explained to you by the Principal Registrar in his letter.

THE APPELLANT: Yeah. And after he explained it I tried to pay it again and I was unable to.

STEVENSON DCJ: In ground 3 you refer to the affidavit of 9 November 2017 - - -

THE APPELLANT: Yes.

STEVENSON DCJ: - - - and state:

I intended to pay the full \$13,000 to the Bailiff's Office.

THE APPELLANT: Yes.

STEVENSON DCJ: So you say you've paid them \$10,000, that's the Bailiff's Office - - -

THE APPELLANT: Yes.

STEVENSON DCJ: - - - and you intend to pay the full \$13,000.

THE APPELLANT: At that point in time which was before the deadline and I paid the full \$13,000 before the deadline.

STEVENSON DCJ:

3.1 I did not receive any feedback from the District Court at all with no indication I was paying to the wrong court.

Well, that's because you weren't paying to this court. This court can't know what you're doing with your money, Mr Laughton, in respect to other places and other courts and other matters. So we'll just strike that one out.

THE APPELLANT: I - I didn't know that.

STEVENSON DCJ: What, you think the District Court can somehow be out there looking for payments made by you in respect of your personal affairs - - -

THE APPELLANT: I think - - -

STEVENSON DCJ: - - - concerning other courts and other people and other matters?

THE APPELLANT: I thought the court system would communicate within itself.

STEVENSON DCJ: Why would this court have any interest whether you'd paid \$10,000 to satisfy the bailiff for some other liability? Why would this court care about that?

THE APPELLANT: I thought there was communication between the courts.

STEVENSON DCJ: But why? Why would this court need to know? What's the relevance of it to this court?

THE APPELLANT: To comply with the court order.

STEVENSON DCJ: But the payment wasn't made with respect to the court order.

THE APPELLANT: The payment was made to the Bailiff's Office - - -

STEVENSON DCJ: As a result of a liability which arose elsewhere.

THE APPELLANT: In the same matter.

STEVENSON DCJ: Another court.

THE APPELLANT: Yeah, okay.

STEVENSON DCJ: The Magistrates Court, yes?

THE APPELLANT: Yes.

STEVENSON DCJ: Yes. All right. We've agreed that then. What evidence have you got that you attempted to pay this court the \$13,000 and this court rejected the payment? Do you have a letter or do you have - - -

THE APPELLANT: No, I - I rang up, I've quite - probably got a - - -

STEVENSON DCJ: Well, how can you pay money by ringing up?

THE APPELLANT: Well, by credit card. I - I rang up to find out, you know, how - how to deal with it.

STEVENSON DCJ: and you were told you could pay by credit card?

THE APPELLANT: No I was told it was too late. It has all been settled and it's too late to pay it.

STEVENSON DCJ: Who told you that?

THE APPELLANT: The person on the end of this phone when I rang the District Court.

STEVENSON DCJ: You'd have a file note with the name of that person.

THE APPELLANT: I - not with me, no, but I can possibly chase something up, I don't know. I couldn't pay the filing fee either.

STEVENSON DCJ: The money hasn't been paid to this court at this point in time. The appeal - substantive appeal has been dismissed. This is a new hearing in respect of the issue involving the dismissal of the substantive appeal, that is, the order made by Deputy Registrar Harman on 24 May 2018.

The only issue is subject to any further submissions from you, is whether this appeal should be dismissed or you should be given 48 hours to make the payment. Can you make the payment within 48 hours?

THE APPELLANT: Of 13,000?

STEVENSON DCJ: Sorry?

THE APPELLANT: I'll - I'll just try and check my bank account; of 13,000 or - - -

STEVENSON DCJ: No. It would need to be 14,500. And the increased amount is to take account of the further steps taken by the respondents in filing a bill of costs which I think is listed to be heard on 13 December 2018.

THE APPELLANT: No, I'd need to borrow some money, I don't know how quickly I can get it.

STEVENSON DCJ: All right.

Well, Mr Laughton, there's no point in making a springing order which means unless you pay the money within the 48 hours the appeal is dismissed. There's no point giving you any further time. You've had over a year to make the payment.

It may with hindsight, in due course you might realise that it's in your best interests because these proceedings will come to an end and as soon as you've dealt with the bill of costs, the matter is resolved and you can move on with your

life, particularly if as you say, it's been dragging on since 2012.

THE APPELLANT: Yes. Yes, it's destroyed my life.

STEVENSON DCJ: All right. Well, it needs to be finalised so that you can get back on track. This of course is only the tip of the iceberg because you also seek to appeal against the decision made by Principal Registrar Melville, so you've got the appeal itself from the Magistrates Court decision.

You've got to somehow overturn the appeal of Principal Registrar Melville made on 30 October 2017, and then you've got the appeal which I'm dealing with today which is to somehow overturn the dismissal order made by Deputy Registrar Harman on 24 May 2018.

So you can see how it's a never-ending cascade in respect of all of the three appeals. You need leave because you're not in time, and there's been substantial non-compliance with you by every - at every step of the process so far as time is concerned and critically, with respect to payment of the \$13,000.

And I say all of that taking into account that you are self-represented, but I am not satisfied that there's any injustice or any prejudice that you can point to when you say you can't make the payment within 48 hours.

THE APPELLANT: Well, I - I might be able to make it in a short notice but I'd need to - - -

STEVENSON DCJ: No. You've had over a year. I'm not going to be talked into extending time.

THE APPELLANT: I haven't had over - - -

STEVENSON DCJ: I'm giving you 48 hours, this week.

THE APPELLANT: I tried to pay it - - -

STEVENSON DCJ: You've known - you have known since 30 October last year you have to make the payment.

THE APPELLANT: I'm not sure what the dates are but I did make - - -

STEVENSON DCJ: Well, that's the date that Principal Registrar Melville told you when he handed down his judgment that you have to make the payment.

THE APPELLANT: And I did make a payment.

STEVENSON DCJ: No, you've made no payment.

THE APPELLANT: I've made a - I might have paid it to the wrong court but I did make payment.

STEVENSON DCJ: You've made no payment with respect to that order. You may have made another payment which you accepted earlier was as a result of a Magistrates Court order - - -

THE APPELLANT: Yes.

STEVENSON DCJ: - - - or proceeding but that's not the reason we're here today.

THE APPELLANT: Yeah. But I wasn't aware of that. It just says, "A court", or to, "The court", and I paid it to the court. I didn't realise there was so much division between them.

STEVENSON DCJ: I hear what you say.

Do you want to make any further submissions as to why the appeal should not be dismissed? I'll give reasons for decision and you will be provided with the transcript but is there anything else you want to say or take me to as to why the appeal should not be dismissed today?

THE APPELLANT: Apart from what I've written, no.

STEVENSON DCJ: And when you say what you've written, you're referring to what's in the - - -

THE APPELLANT: Appeal notice.

STEVENSON DCJ: Amended appeal notice.

THE APPELLANT: Yeah.

STEVENSON DCJ: The final one filed on 2 November 2018.

THE APPELLANT: That's held in Perth.

STEVENSON DCJ: Yes, that's the five page version.

THE APPELLANT: Yes. Yes, you're right.

STEVENSON DCJ: Anything else in addition?

THE APPELLANT: No. Just - just the grounds of appeal that are on there.

STEVENSON DCJ: All right. Well, I will deal with the grounds of appeal in the appeal notice in the course of my reasons for decision so if there's nothing else you want to take me to. All right. Thank you.

Mr Morison, I'm now going to deliver reasons for decision. A transcript will obviously be made available to you. I've foreshadowed what the result will be, it's entirely a matter for you whether you wish to stay online or to await the transcript.

MORISON, MR: Your Honour, I wonder if I might be excused and await the transcript.

STEVENSON DCJ: All right. Certainly, and I'm not sure what the time frame for the provision for the transcript is, but it will be a few days.

MORISON, MR: Certainly.

STEVENSON DCJ: And as soon as it's available, it will be made available to yourself and to Mr Laughton.

MORISON, MR: I'm obliged.

STEVENSON DCJ: Thank you for your appearance this afternoon on the basis that you indicated.

MORISON, MR: You're welcome, your Honour. Thank you.

STEVENSON DCJ: Thank you. So we'll now terminate the link to Mr Morison.

As I indicated at the beginning of the hearing, I have had the opportunity to consider in full every document that has been filed in this court since the inception of the substantive appeal by the appellant, Mr Laughton by his appeal notice filed on 23 January 2017.

That appeal notice seeks to appeal from a decision made in the Magistrates Court at Bunbury on 17 August 2016. That appeal like almost every other step in these proceedings is out of time and the appellant requires leave to extend time.

The respondents are represented by Mr Morison. They filed a notice of intention to appear to the substantive appeal.

Before I deal with the extended interlocutory history of the matter, I will go straight to the purpose of the hearing today which is concerned with an appeal notice originally filed by Mr Laughton on 6 July 2018 and subsequently purported to be amended by a further appeal notice filed on 2 November 2018. The first appeal notice I will refer to as the original appeal notice. The second appeal notice I will refer to as the amended appeal notice.

The reason for this appeal is because on 30 October 2017, Principal Registrar Melville made an order that Mr Laughton within 28 days pay \$13,000 into court by way of security for costs, and that in the meantime all further proceedings be stayed. That order was pronounced when Principal Registrar Melville delivered his reasons for decision in writing on 30 October 2017. At that time both Mr Morison and Mr Laughton were present.

It follows that Mr Laughton was informed and fully cognisant of the requirement of the order that he pay into this court the sum of \$13,000 as security for the respondents' costs as a condition precedent to the continuation of these proceedings. To date that order has not been complied with by Mr Laughton. No appeal was lodged against Principal Registrar Melville's decision at the time.

On 24 May 2018, Deputy Registrar Harman made an order dismissing the appellant's appeal in this court on the application of the respondents by reason of Mr Laughton's non-compliance with the order made by Principal Registrar Melville on 30 October 2017.

This is an appeal from that decision, that is, the order made by Deputy Registrar Harman on 24 May 2018 whereby he made orders as follows. (1) The appeal be dismissed, (2) the appellant pay the respondents' costs of the appeal to be taxed, (3) the appellant pay the respondents' costs of the application.

In effect, this appeal is the third appeal in the history of the matter since the decision of the Magistrates Court on 17 August 2016. In each case, the appellant requires leave to extend time by reason of his delay in the proceedings at the relevant step. It is now almost exactly one year since the payment of the \$13,000 was due and it has still not been paid into court.

The principles which govern this appeal are found in rule 15 of the District Court Rules which provides that if a party is dissatisfied with a decision of a registrar, the party may appeal to a judge. The appeal must be commenced within 10 days after the date of the decision or such longer period as the judge may allow and the appeal does not operate as a stay of proceedings unless a judge orders otherwise.

The position here, of course, is that the proceedings were effectively stayed in any event by the order made by Principal Registrar Melville on 30 October 2017. That was the object and purpose of requiring the appellant to pay the \$13,000 into court by way of security for the respondents' costs and plainly the respondents' ought not to be put to further cost until that condition had been complied with for the continuation of the appeal.

In addition, for the purpose of this appeal, Mr Laughton was informed by letter from this court dated 18 October 2018, folio 66, of the need to comply with rule 61 in relation to the filing of written submissions. Mr Laughton has not complied with that rule which requires written submissions in support of the appeal to be filed at least two clear working days before the hearing.

The rule also requires the parties to file notice of any other documents or material that they seek to rely upon at least seven clear days before the hearing. In any event, it is sufficient to say that the rule was not complied with by Mr Laughton.

I do, of course, accept that he is self-represented and I'll say something about his position in that regard towards the end of these reasons for decision. I would, however, interpose that I do fully appreciate the position that he is in in those circumstances, particularly with respect to rules and the procedural rules which govern proceedings in this court.

On the basis that this is a new hearing with respect to the application by the respondents by Chamber summons filed on 1 March 2018 that the appeal be dismissed by reason of the appellant's non-compliance with the orders made by the Principal Registrar on 30 October 2017 the following observations can be made. I also make findings consistent with these observations.

The matter came on for hearing initially before Deputy Registrar Hewitt in Chambers on 26 April 2018. Mr Laughton appeared on that occasion by audio-link. Mr Morison

appeared on behalf of the respondents noting, of course, that subsequently the respondents filed a notice of intention to abide by the court's decision in relation to this appeal.

I infer that the Chamber summons was not resolved on that occasion because the order made by Principal Registrar Melville on 30 October 2017 had not been sealed or extracted by the court. On that basis, Deputy Registrar Hewitt adjourned the hearing of the respondents' Chamber summons to 24 May 2018 and gave Mr Laughton leave to again attend by audio-link. The purpose of the adjournment was fulfilled and the orders of Principal Registrar Melville made 30 October 2017 were sealed by the court and provided by Mr Morison to Mr Laughton.

At the same time, the court's letter providing the sealed copy of the orders was provided to Mr Laughton which appears to be the document referred to in the second bullet under the heading, "Decision Details", on the first page of the amended appeal notice.

I reject with respect Mr Laughton's purported explanation for his non-attendance on 24 May 2018 on the basis that he in some way interpreted that letter to be an indication or confirmation from the court that in some way which is unspecified the matter had been, "settled". And that he therefore inferred when he was not telephoned by the court on 24 May 2018 that there was no need to be concerned.

I accept his statement from the Bar table that he was stressed at the time and expecting the court to contact him on 24 May 2018. I accept his evidence that he did not make any attempt to contact the court when he was not contacted and that he did not take any steps immediately thereafter to ascertain the reason for not being audio-linked to the hearing.

In due course, having become aware that the original initiating appeal proceeding in the District Court had been dismissed by orders made by Deputy Registrar Harman on 24 May 2018, the appellant filed the original appeal notice on 6 July 2018. It is difficult to discern the difference between the original appeal notice and the amended appeal notice because Mr Laughton has not marked up the second document in the way explained to him in the course of submissions.

It is agreed that the appeal should proceed to be heard and determined on the amended appeal notice which represents the final and best position of Mr Laughton for the purpose

of the hearing. I also note that as Mr Morison indicated today as an officer of the court that there was no reference to the possibility of a springing order being made by Deputy Registrar Harman on 24 May 2018.

That was not a defect or necessary in the circumstances by reason of the long non-payment of the money by the appellant and the very plain and underlying position set out in various affidavits and other communications from the appellant that he was unable to make the payment and effectively welcomed any delay in the proceedings. I have raised with Mr Laughton the possibility of a springing order being made on the basis that payment be made within 48 hours.

That was met by further obfuscation and a plea for further time which, of course, would just create further delay in these proceedings. Ironically, it may be in the best interest of all parties including the appellant that the proceedings are brought to an end as they must inevitably at some point in time before I'm satisfied that there would be no proper purpose of utility and that it would not be in the interest of justice that any further delay be afforded for the payment by way of a springing order.

There is nothing in the material before the court including the statements of Mr Laughton that gives the court any confidence that there is any prospect that the payment would be made in the near future or that there is any genuine or bona fide desire to progress the resolution of the appeal in this court. Reference to documents including the affidavit filed by Mr Laughton on 9 November 2017 only admit to a hope that he would be in a position at some future point in time given delay to make a payment.

All of that is explained in relation to his personal circumstances, work circumstances and other matters personal to him. He has not produced any evidence in this court that he has made any payment or indeed attempted to make any payment which has been refused. I do accept that there is some material on the court file which indicates that an inquiry was made as to whether money could be paid by credit card and as I understand it, approval was granted in that regard.

In any event, that does not matter because the position today almost exactly 12 months after the order was made is that it has not been complied with.

So far as my finding that there is no real purpose in allowing the proceedings to possibly be continued by reason of the lack of interest that is demonstrated by the extensive non-compliance and inaction by Mr Laughton to bring the appeal to a finality, even accepting of course that the matter is stayed pending the payment into court of the amount in issue.

Evidence of non-compliance is found in the failure to comply with Rule 61 which I've already mentioned notwithstanding a letter from the court to Mr Laughton with respect to the requirements in that regard.

The fact that 12 months has now elapsed effectively with ongoing non-compliance throughout the course of that period, the fact that need is required for leave to be granted for the substantive appeal to be brought in any event by reason of delay from the decision in the Magistrates Court to when this appeal was commenced, that period being between 17 August 2016, the date of the Magistrates Court decision and 23 January 2017, the date that this appeal was initiated in this court.

There is also a need as mentioned in the course of submissions for leave to bring this appeal and also for leave to extend the time to pay in any event again and for leave to appeal out of time from the original order made by Registrar Melville 13 months ago.

The position is also compounded by reason of the fact that the respondents have now filed a bill of costs which is listed for hearing in this court on 13 December 2018. I note that the sum sought is about \$16,000 and of course leave was required or would have been required to amend the original appeal notice in any event.

So hearing the matter again, and reconsidering the order which was originally sought by Chamber summons by the respondents on 1 March 2018, for those reasons including in particular the still ongoing non-compliance with the order in question made on 30 October 2017 for the payment into court, in my view, the appeal to this court should be dismissed.

For those reasons this appeal that is heard today in relation to the orders made by Deputy Registrar Harman on 24 May 2018 is dismissed.

I will hear from Mr Laughton, but there should be an order that he pay the respondents' costs of this appeal that was dismissed today but those costs will be minimal because the

respondents have filed a notice of intention to abide thereby seeking that they did not intend to participate in this appeal and therefore their costs would be, as I've said, minimal.

There will be leave in the circumstances, notwithstanding that notice for any costs order which might be sought to be enforced as a result of the orders today. that it include the audio appearance of Mr Morison today.

In my view, that was appropriate and necessary, notwithstanding the notice by reason of the fact that the evidence which the appellant should have put on to inform the court of the background and circumstances of the making of the order to which he has appealed was not done so and Mr Morison was present on the occasion.

I do in that regard take into account, having had the opportunity to read it, the transcript of 11 October 2018 at which time both the appellant and Mr Morison appeared before Deputy Registrar Harman, and Deputy Registrar Harman made it clear that even though there were no written reasons for decision, that in effect the reason for the orders he made dismissing the substantive appeal was because of the ongoing non-compliance which was of course sought by the respondents from 1 March 2018 by their Chamber summons.

I indicated at the outset that I am cognisant and very mindful of the fact that Mr Laughton is self-represented. I have refreshed myself by reference to the reasons for decision of Principal Registrar Melville delivered 30 October 2017 in relation to the relevant principles as they have been expressed by courts, and in particular, that a court should always be careful to see that the rights of an unrepresented litigant have not been obfuscated by their own advocacy as was noted by the Court of Appeal in *Glew v Frank Jasper Pty Ltd* [2010] WASCA 87 referred to in paragraph 11 of the principal registrar's judgment.

I have taken one last look at the matter. I have considered everything afresh. In my view, for those reasons and in the interests of justice, bearing in mind of course that the respondents are entitled at some point in time to have legal proceedings against them concluded, for all of those reasons, in my view, it is appropriate for this appeal to be dismissed with the costs order that I have made.

Mr Laughton, is there anything that you want to say at this point or you want me to re-explain or clarify for you that you might not have understood what I've said?

THE APPELLANT: Sorry, I tuned out for a minute.

STEVENSON DCJ: No difficulty, just take a moment to reflect.

THE APPELLANT: As - as well as posting a letter to the District Court, I believe I also emailed it, I was just trying to check it then. How long would I have to appeal this?

STEVENSON DCJ: I can't give you legal advice and I'm not being difficult. I don't know the answer as I sit here, I would have to make some inquiries, but I can't give you legal advice, that's not - - -

THE APPELLANT: Yeah.

STEVENSON DCJ: - - - appropriate.

THE APPELLANT: I thought - - -

STEVENSON DCJ: If I knew the answer I would tell you - - -

THE APPELLANT: I thought it - - -

STEVENSON DCJ: - - - but I don't know the answer.

THE APPELLANT: I thought it would have been procedural advice rather than legal advice.

STEVENSON DCJ: Well, I'm not under a duty to give you legal advice, and as I say, I don't know the answer.

THE APPELLANT: Yeah.

STEVENSON DCJ: Sometimes it's 21 days but obviously the longer you leave it, if you're outside the time frame then you'll need leave again and it's entirely a matter for you as to whether you wish to appeal this decision but if you do so then you run the risk of continuing to incur an adverse costs order.

And at some point in time, you need, Mr Laughton, to take a helicopter look at everything and hopefully get into that helicopter and leave it behind you, particularly if this is all now history. And I don't know whether it is or it isn't. But if there is no good reason for you to continue legal relations with these respondents, then put it down to a life lesson and move forward, for your own sake.

But I'm not saying you should not appeal. If you wish to appeal, that's your legal right. Feel free.

THE APPELLANT: Sorry. I'm wondering a little bit. How long - - -

STEVENSON DCJ: Sorry. I'm having trouble hearing you. You - - -

THE APPELLANT: You're saying I'd need to pay 14,000 something before, in - in 48 hours.

STEVENSON DCJ: No. I've said there's no - I'm not persuaded that there is any purpose or point in making such an order because you've demonstrated to this point that you can't. I asked you about it and you started talking about more time. Time's run out. It's over.

And I'm quite satisfied that you have appreciated at all times since the respondent filed their Chamber summons, that you had to make the payment into court, and if you did not do so, you were at risk of having your appeal proceedings struck out, particularly since the decision was made by the Deputy Registrar in May this year. So - - -

THE APPELLANT: But you - - -

STEVENSON DCJ: - - - you've known, at least since then, what the result would be and you haven't made the payment yet.

THE APPELLANT: I did try.

STEVENSON DCJ: You haven't proved that. And even if you have, you haven't complied with the order. It's as simple as that.

THE APPELLANT: I thought I had complied with the order at the time.

STEVENSON DCJ: Trying is not sufficient. You have not, out of your bank account, put up the money. It's still sitting in your funds. It's not where it should be.

THE APPELLANT: Yeah. Well, the upshot is I paid it to the wrong court. I didn't know that.

STEVENSON DCJ: Well, you - no. Well, you've had since May to sort it out - - -

THE APPELLANT: Yes. And I tried to - - -

STEVENSON DCJ: - - - and get the money back, if you paid it to the wrong court. But you haven't even proved that you paid the money to the wrong court.

THE APPELLANT: Yeah. I - I thought the court would have communicated to itself, to the point that it was automatic.

STEVENSON DCJ: Courts don't communicate between each other unless there is a need. When you filed this appeal notice, yes, the Magistrates Court file was sent to this court. But if you pay money to another court by reason of another obligation, this court has got no way of knowing what that other matter's about.

THE APPELLANT: I didn't know that.

STEVENSON DCJ: And sensibly, has no interest, with all due respect.

THE APPELLANT: And I - I - I've put that affidavit out, trying to explain this is the false assumptions that were made and this is what I've done. And I never received anything back saying - - -

STEVENSON DCJ: Well, you haven't filed the affidavit that you proffered this afternoon that's not even sworn. That's not filed. But the answer is not there anyway because the appeal today is concerned with the failure by you to pay the money. Even if you pay the money, you then have to run another hearing as to why you shouldn't have been ordered to pay that money. And that's what I said earlier when I said there's effectively an appeal on an appeal on an appeal.

THE APPELLANT: Yes. Well, yeah.

STEVENSON DCJ: That's what you - that's - - -

THE APPELLANT: That's a stress on me. I - - -

STEVENSON DCJ: And while this is all happening, the issue that you want to agitate is, because of your conduct, being simply pushed further and further away. And the parties

are not getting on with having finality, which is an important principle for you, as you seem to in part accept. But also it's a very important principle to other parties involved in litigation, especially when they are responding and not responsible for the carriage of it.

They are entitled to have finality and to get on with their life as well. And if you don't want to run your appeal, then it will be - - -

THE APPELLANT: I do want to run the appeal.

STEVENSON DCJ: - - - struck out, for want of prosecution.

THE APPELLANT: I did want to run the appeal.

STEVENSON DCJ: Well, you did at some point in time.

THE APPELLANT: And I still do.

STEVENSON DCJ: And the motivation would appear, on the material before the court, to just buy delay.

THE APPELLANT: I was forced into delay by the blimbling paying the extra dollars. And I stated that at the hearing.

STEVENSON DCJ: Is there anything else that you want to say or anything you want me to clarify? Do you understand what I've said?

THE APPELLANT: Yes. Because I didn't come up with the paperwork, it's been dismissed.

STEVENSON DCJ: No. That's not quite right. Because you have not made a payment into court.

THE APPELLANT: I was prevented from doing so. And I can prove it.

STEVENSON DCJ: Well, you say you can prove it. You haven't proved it. You haven't - - -

THE APPELLANT: I - - -

STEVENSON DCJ: And even if you were prevented, you should have made the payment.

THE APPELLANT: The - - -

STEVENSON DCJ: You should overcome the reason why you say you were prevented - or at least put some cogent evidence before the court to say that this court refused to accept your payment. You haven't done that.

THE APPELLANT: Well, I did it in that affidavit you didn't receive.

STEVENSON DCJ: It's not even signed.

THE APPELLANT: No.

STEVENSON DCJ: The one you showed - - -

THE APPELLANT: The - the one - - -

STEVENSON DCJ: - - - is not even signed.

THE APPELLANT: - - - I printed off isn't signed. But I - I have got - I have got one that's signed and JP signatures and all that sort of stuff. I sent one as - I can give you the tracking number. I - I've - I - I've probably sent one by email to the District Court as well, at the time.

STEVENSON DCJ: Well, it's not on the file that I have.

THE APPELLANT: I can't argue with that. I haven't got access to it.

STEVENSON DCJ: So to summarise, this appeal is dismissed.

So the effect is the proceedings in this court are dismissed. And there is an order that you pay the respondents' costs of this appeal today, but to be taxed unless otherwise agreed. And they are to be paid forthwith.

And as I've said, I don't expect there will be much to be paid if they seek to tax those costs because they've filed a notice of intention to abide. But Mr Morison did appear today by audio-link. So any costs that occurred in the interim period, there wouldn't be any that would be recoverable, if that exists.

Your next port of call, subject to whatever advice you take or whatever you want to do is, I think you've got an appointment in this court on 13 December. And I think you've made an application to attend that by audio-link. So if you don't get contacted, you need to contact the court yourself. You need to ring the court and say, "I have a hearing."

THE APPELLANT: Yeah.

STEVENSON DCJ: And, "Put me through". And you need to make a file note of who you spoke to and at what time you made the telephone call. But you need to get through. And you need to, obviously, make sure that you are available to be contacted. So that's a fall-back position, if that helps.

THE APPELLANT: Yes. Yes, it does.

STEVENSON DCJ: Anything else? Any other questions?

THE APPELLANT: So I don't have the option of paying the 14,000. No.

STEVENSON DCJ: All right. Thank you, Mr Laughton, for your attendance.

The court will adjourn.

AT 4.10 PM THE MATTER WAS ADJOURNED UNTIL
THURSDAY, 13 DECEMBER 2018