[2018] IEHC 346

THE HIGH COURT

2015 No 227 MCA

IN THE MATTER OF THE PLANNING AND DEVELOPMENT ACTS 2000-2014

AND IN THE MATTER OF AN APPLICATION PURSIUANT TO SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT 2000

AND IN THE MATTER OF AN APPLICATION BY DUNNES STORES

Between:

DUNNES STORES

Applicant

– and –

TACULLA LIMITED

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 12th June, 2018.

I

Overview

1. When an order is made by the High Court, the substance of that order is recorded by a registrar who subsequently draws up a written order dated, pursuant to O.115, r.1, RSC, as of the date when the order is made. Once the order has been drawn up, signed by the registrar and particulars entered into the books of the High Court, it is regarded as having been passed and perfected. This passing and perfection of orders, again pursuant to O.115, r.1, RSC, must be done "*with all convenient speed*". As part of the process of being passed and perfected, a High Court order is indorsed with a date of perfection. This indorsement is important as the period for appeal is measured from the date of perfection. It is, however, inevitable in a human-administered system of justice that, from time to time, administrative mistakes will occur, resulting in an error on the face of an order. This reality is acknowledged in O.28, r.11, RSC (the so-called 'slip rule'), which provides as follows:

> *"Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected without an appeal –*
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> *(a) where the parties consent, and with the approval of the court, by the registrar to the court,*
> *(i) on the application to the registrar in writing of any party, to which a letter of consent to the correction from each party shall be attached or*
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> *(ii) on receipt by the registrar of letters of consent from each party; or*
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> *(b) where the parties do not consent, by the court,*
> *(i) on application made to the court by motion on notice to the other party or*
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> *(ii) on the listing of the proceeding before the court by the registrar on notice to each party."*

2. The scope of the jurisdiction afforded by O.28, r.11, RSC is notably limited. It cannot be used to alter the effect of a judgment with the benefit of hindsight. The within application is essentially concerned with the issue whether (1) where a perfected order of the High Court containing errors is amended by a registrar without (i) the consent of the parties or (ii) an order of the court ordering correction (so other than in accordance with O.28, r.11), (2) that perfected order is given a new, later date of perfection (being the date of the amendment), and (3) the effect of (2) is to enable a party to lodge an appeal against the order of the High Court which (a) on the face of the amended order is within time, but (b) having regard to the original date of perfection is out of time, the court may order, *inter alia*, the substitution of the original date of perfection within the re-perfected order.

II

Factual Background

3. In the within proceedings, Dunnes Stores seeks relief under s.160 of the Planning and Development Act 2000 in respect of an unauthorised development carried out at and on the public road in front of a licensed premises known as *Harry's on the Green*, which is situate in the Stephen's Green Shopping Centre at South King Street, Dublin. Taculla is the lessee and licensee of *Harry's*. Dunnes is a prominent retailer and operates a department store in the Stephen's Green Shopping Centre.

4. On 21st November, 2017, the court set 13th and 14th March, 2018, as the dates for the hearing of the within application and gave directions regarding the filing of submissions. Taculla was represented by counsel in court on 21st November and raised no issue concerning the filing of any additional affidavits. In fact, the last affidavits filed in the case had been those of Taculla and were served on 31st July, 2015, in advance of an interlocutory application being heard on that date, following which hearing Taculla, through its directors, gave certain undertakings to the court.

5. On 27th February, 2018, Taculla's current solicitors filed a notice of change of solicitors, replacing the firm of Kevin Tunney, Solicitors, which had in turn replaced the firm of Freehill Solicitors as Taculla's solicitors in the proceedings. The notice of change of solicitor was served on 5th March, 2018.

6. On 12th March, 2018 – the day before the long-scheduled hearing date and months after directions had been given – Taculla's solicitors, at about 1 p.m., served three additional affidavits raising substantial issues, these affidavits having been sworn by a director of Taculla, a planning consultant and a director of the former lessee of the premises.

7. Having considered the new affidavit evidence furnished by Taculla's solicitors, Dunnes was advised by its advisors that the matters

therein required a response and that the case could not proceed on the allotted hearing-days. Consequently, on 13th March, 2018, counsel for Dunnes drew this Court's attention to what had occurred, pointed out that the late delivery of the affidavits made it impossible for Dunnes to proceed with the case and sought an adjournment on the basis that the court would make a wasted costs order.

8. Before continuing with the chronology of events, it is worth noting certain aspects/consequences of the late-furnishing of the affidavit evidence. Court time was wasted in reading papers. One or more other cases could have been advance-scheduled for the designated hearing dates. The time of Dunnes and its advisors was to some extent wasted preparing for a case that had been pleaded on one basis and which, at the last moment, took a different turn. The fact that there was a change of solicitor, scant days before a long-scheduled hearing, has not been entirely explained. Nor is it clear why, when the additional affidavits were in contemplation and preparation, opposing counsel (and the court) could not have been, and were not, told that the long-arranged hearing dates would need to be re-scheduled. As it happens, from the court's (and hence taxpayer's) perspective, the wastage arising from the unexpected adjournment was mitigated by the fact that the court was able to arrange to hear other cases. However, it was just good fortune that this was so; there was no certainty that it would be so; and that it was so is slim comfort to Dunnes, which had retained senior counsel, junior counsel and a firm of solicitors to commence a particular case on a particular date, with those lawyers doubtless readying themselves to proceed with that case, as pleaded, on the scheduled days. An offending party cannot reasonably turn up in such circumstances and assume that words of apology will necessarily and in all instances obviate the potential for adverse financial consequence to follow in respect of any wasted costs that its actions to that point have engendered.

9. Moving on with the chronology, the court granted the wasted costs order sought by Dunnes. That order was perfected on 13th March, 2018. As perfected, the order contained errors in that it named Beauchamps Solicitors as the solicitors for Dunnes (whereas William Fry, Solicitors, the current solicitors, had in fact filed a notice of change of solicitor on 11th May, 2016) and it named Freehill Solicitors as solicitors for Taculla (whereas Patrick O'Neill & Co., Solicitors had filed a notice of change of solicitor on 27th February, 2018).

10. Taculla failed to bring a within-time appeal against the costs order. Instead, on 29th March, 2018, Taculla's solicitors wrote to William Fry seeking consent to an extension of time so as to allow late filing of the appeal. On 5th April, 2018, William Fry wrote to Taculla's solicitors and indicated that Dunnes would not grant the consent sought.

11. On 9th April, 2018, Taculla's solicitors wrote to William Fry, indicating that there were, on their count, two errors in the costs order, being that Taculla's solicitors were incorrectly named and also that the order did not include the name of a Mr David Boland as respondent even though he seemed to been previously joined to the proceedings. The letter indicated that the Court of Appeal Office would not accept papers from Patrick O'Neill & Co. and that Taculla's solicitors had asked the registrar to amend the order.

12. On 11th April, 2018, William Fry wrote to Taculla's solicitors, pointing out that Mr Boland had been removed as a respondent to the proceedings by order of the High Court dated 31st July, 2015. The letter further noted that "*as regards your firm being named as solicitors for the respondent*…[a]*ny such amendment is of no consequence to the substance of the Order or to the date of its perfection*."

13. On 12th April, 2018, Taculla's solicitors purported to serve a copy of the notice of appeal which had been filed in the Court of Appeal Office together with a copy of the costs order dated 13th March, 2018. However, the order as served contained an amendment to refer to Patrick O'Neill & Co (it continued to name Beauchamps as solicitors for Dunnes). Moreover, the order as served was stated to have been perfected on 11th April, 2018 and stated "*ORDER AMENDED ON THE 11TH DAY OF APRIL 2018 PURSUANT TO ORDER 28 RULE 11 OF THE RULES OF THE SUPERIOR COURT AS AMENDED BY SI 271 OF 2009 IN THE TERMS UNDERLINED*". The only underline was the reference to Patrick O'Neill & Co., as solicitors for Taculla.

14. By letter dated 13th April, 2018, William Fry wrote to Taculla's solicitors, referring to O.28, r.11, RSC and noting that Taculla had sought to vary the terms of the costs order as perfected on 13th March, 2018, without obtaining Dunnes' consent or an order from the court. On the same date, William Fry wrote to the registrar who had dealt with the matter and pointed out that Dunnes' consent had neither been sought nor granted to a change of the terms of the costs order, in particular to the date of perfection thereof. The effect of such change, William Fry noted, was to enable Taculla to lodge an appeal in the Court of Appeal which (a) on the face of the amended order, was within time, being within ten days of the date of perfection, but which (b) having regard to the original date of perfection was significantly out of time, *i.e.* it bestowed on Taculla a resurrected ability to bring an on-time appeal, instead of leaving it with the need to make application for an enlargement of time to bring an appeal, if it were minded to bring such application.

15. On 16th April, 2018, the registrar who dealt with the matter emailed William Fry to indicate that the substantive changes to the costs order were clerical. However, she properly and laudably acknowledged that the change in the perfection date was an error and should not have been changed. The following day the matter came back before this Court, when Taculla's counsel again sought a stay on the costs order pending the outcome of an appeal to the Court of Appeal. This application was refused, though it remained the position as of the date of hearing that no payment had in any event been made.

16. On 18th April, 2018, William Fry wrote to Taculla's solicitors requesting a letter of consent, pursuant to O.28, r.11, to an amendment of the amended perfection date of 11th April 2018 which appeared on the amended order and the insertion of the original date of perfection of 13th March, 2018. The letter made clear that in the absence of such confirmation, application would be made to this court pursuant to O.28, r.11(b) to have the date of perfection of the costs order amended.

17. On 19th April, 2018, Taculla's solicitors wrote to indicate that they considered it appropriate for the Court of Appeal to deal with all issues relevant to the proceedings. Consistent with this position, they did not provide the consent sought by Dunnes. As a result, the court is now presented with a notice of motion dated 24th April, 2018, in which Dunnes seeks an order pursuant to O.28, r.11(b)(i), RSC, amending an error in the order made on 13th March 2018, to reflect the correct date of perfection of the said order as 13th March, 2018, rather than 11th April, 2018, and (ii) correcting the name of the solicitors for Dunnes to read 'William Fry', instead of Beauchamps.

III

Some Submissions Made

18. To the contention that matters should be left to the Court of Appeal, Dunnes maintains that Taculla is incorrect in this regard, contending that (i) the Court of Appeal has no jurisdiction to amend the clerical errors in the costs order made by the High Court, (ii) the appropriate court to make such amendment is the High Court, in circumstances where Taculla appears to have refused the letter

of consent required by O.28, r.11(a). Dunnes further maintains that the amendment to reinstate the correct date of perfection is necessary to avoid potential confusion, as there are different copies of the same High Court order now in circulation with different dates of perfection marked thereon.

19. Taculla submits that the 'slip rule' (i) has no application as the perfection of court orders is a matter for the registrar, not for the court, (ii) has no application to the date that appears on an order, (iii) even if it can be applied to the date that appears on a court order, has no application to the circumstances at hand because what occurred was not a 'clerical mistake' or an "*error arising from an accidental slip or omission*" but something deliberately done by the Registrar, and (iv) in any event matters should now be left to the Court of Appeal.

IV

Case-Law

20. In *McCaughey v. Stringer* [1914] 1 I.R 73, O'Connor MR was presented with a situation, after an order had been passed and entered, in which (a) the original order made for payment of certain monies outstanding referred to the amount as set out in the notice of motion, but (b) the amount sought in the notice of motion was an incorrect amount. O'Connor MR ordered an amendment of the order even though there had been no mistake on the part of the court (the mistake, as O'Connor MR put it, at 75, had been "*induced by the form of the notice of motion*"). The case is authority for the proposition that the court has jurisdiction to correct an error in an order arising from an accidental slip on the part of the person who obtained the order and seeks to have it corrected (not a proposition of direct application on the facts of the within application). It is also an example of a court intervening to amend an order after it had been passed and entered.

21. The effect of O.28, r.11 was given further consideration by McCracken J. in *Concorde Engineering Co Ltd v. Bus Átha Cliath* [1995] 3 IR 212 (HC). That was a case in which (i) the plenary summons and statement of claim (in a negligence claim in which liability was not disputed) included a claim for interest, (ii) at hearing, the trial court was not addressed on the question of interest, nor was any application or order made in respect of same, (iii) subsequent to the perfection of the order, the plaintiff sought to have it amended to include a provision for interest. Refusing the order sought, McCracken J. observed, *inter alia*, as follows, at 214-5:

> *"In the present case there can be no question of there having been a clerical mistake in the order, and therefore the plaintiff must satisfy me that there was an accidental slip or omission within the meaning of the rule, and also that this is a proper case in which to amend the order, as the rule seemed to make it quite clear that any such amendment is discretionary. Mr Herbert on behalf of the plaintiff has cited two cases to support his claim for an order under the rule. The first of these is a Privy Council decision*, Tak Ming Co Ltd v Yee Sang Metal Supplies Co [*1973] 1 WLR 300 and the second is* Re Inchcape *[1942] Ch 394. In both these cases it was held that the accidental slip or omission could be that of counsel rather than of the judge…..*
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> [T]*he wording of the rule, referring as it does to 'any accidental slip or omission' must be construed as encompassing only matters which were omitted from the judgment or order by reason of a slip or omission. That seems to me to connote that, were it not for the slip or omission, the amendment requested would of necessity have been in the original order. This is the principle which applies in relation to the inherent jurisdiction of the court to amend a judgment or order, which was confirmed in* Belville Holdings v Revenue Commissioners*[1994] 1 ILRM 29. In that case at pp 36/73, the court approved a quotation from* Ainsworth v Wilding *[1896] 1 Ch 673 as stating the correct principle in that the inherent jurisdiction arises*:-

22. '*Where the court itself finds that the judgment as drawn up does not correctly state what the court actually decided and intended.*"'

23. In *McMullen v. Clancy* [2002] 3 IR 493, the Supreme Court was presented with a situation in which a plaintiff had brought professional negligence proceedings that were dismissed, yet in which the perfected order stated "*that the defendant was negligent".* A year later the defendant brought an application seeking an amendment of the reference in the order to his having been negligent. The amendment was ordered and that order was unsuccessfully appealed to the Supreme Court. In giving judgment for the Supreme Court, Murray CJ observed, *inter alia*, as follows:

> (i) at 500-1, as to the circumstances in which a final order of a court may, in common law, be interfered with:
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> > "In Belville Holdings Ltd v Revenue Commissioners *[1994] 1 ILRM 29, Finlay CJ considered the circumstances in which a final order of a court may, in common law, be interfered with. He cited with approval the opinions expressed In* Re Swire *(1885) 30 Ch.D. 239, in which Romer J cited from the judgments in* Ainsworth v Wilding *[1896] 1 Ch 673 at p 678 which were as follows:-*
> >
> > *"Cotton LJ says: 'It is only in special circumstances that the court will interfere with an order which has been passed and entered, except in cases of a mere slip of verbal inaccuracy, yet in my opinion the court has jurisdiction over its own records, and if it finds that the order as passed and entered contains an adjudication upon that which the court in fact has never adjudicated upon, then, in my opinion, it has jurisdiction, which it will in a proper case exercise, to correct its record, that it may be in accordance with the order really pronounced'.*
> >
> > *Lindley LJ says: 'If it is once made out that the order, whether passed and entered or not, does not express the order actually made, the court has ample jurisdiction to set that right, whether it arises from a clerical slip or no'.*
> >
> > *And Bowen LJ says: 'An order, as it seems to me, even when passed and entered, may be amended by the court so as to carry out the intention and express the meaning of the court at the time when the order was made, provided the amendment be made without injustice or on terms which preclude injustice'.'*
> >
> > *Having cited the above passage, Finlay CJ went on to state: 'I am satisfied that these expressions of opinion validly represent what the true common law principle is concerning this question'.*
> >
> > *Hamilton CJ cited with approval the judgment of Finlay CJ in that case in* In re Greendale Developments Ltd (No 3) *[2000] 2 IR 514 at p 527 and summed up its effect as follows:-*

'… it set out in detail the common law principle concerning [this] question, holding that where a final order has been made and perfected it can only be interfered with.

(1) in special or unusual circumstances, or

(2) where there has been an accidental slip in the judgment as drawn up, or

(3) where the court itself finds that the judgment as drawn up does not correctly state what the court actually decided and intended."

These principles were also cited with approval in the judgment of the court which I delivered in P v P *[2002] 1 IR 219.*

Order 28, r 11 is an express jurisdiction of the court to correct mistakes or errors in an order of the High Court which would otherwise be final and is no doubt a reflection, at least in part, of the inherent common law jurisdiction of the court to do so.

The plaintiff is correct in stating that there is no ambiguity as to the finding of negligence in the order of September, 1999, although there would certainly appear to be an anomaly given that the proceedings against the defendant were dismissed. However, that is not the point, the question before McGuinness J was whether there had been a mistake or error to which the criteria referred to above applied."

(ii) at 505-6, under the heading "*Undue Delay and Prejudice",* certain points that fell to be made in the context of the significant delay arising in the bringing of the application in *McMullen*. There has been no delay in the within proceedings. However some of the points made by Murray J. seem nonetheless to have a more general resonance, *viz*:

"That there was undue delay on the part of the defendant in applying to have the order corrected cannot be contested….However, that delay has to be looked at in the light of the circumstances of the case and any consequences which flow from it. First of all, there is the question of the principles to be applied. As I have already indicated, the inherent and express jurisdiction of the courts to correct, in particular circumstances, orders which would otherwise be final, serves the public interest and the due administration of justice. It is, however, axiomatic to say that in making any order, a court may have regard to the rights and interest of persons affected by the order…..

On the question of delay, therefore, I am of the view that undue delay is not in itself a bar to the making of an order pursuant to O 28, r 11. It is entirely logical and in the interest of the administration of justice that this should be so. All the court is doing is giving effect to the actual decision which it has made. Any other approach would be, in the words of O'Brien LCJ above, '… to the prejudice of what is right and just'.

In the light of the case law which I have cited, I come to the following conclusions. Even where there has been undue delay in the making of an application to correct an order pursuant to O 28, r 11, this in itself is not a ground for refusing the order unless it would be inequitable to do so because it would prejudice the rights of other parties in the proceedings or rights which had been acquired by third parties in the meantime. A primary consideration is that it is in the interests of justice that effect be given to the true decision of the court. Where there is an ostensible prejudice, the order may be made if it may be made on terms which remedy or preclude that prejudice. My conclusion is reinforced by the words of Bowen LJ, cited with approval by this court, that an order may be amended if that can be done 'on terms which preclude injustice'."

24. In *Sandy Lane Hotel Ltd v. Times Newspapers Ltd and ors* [2009] IESC 75, Hardiman J., giving judgment for the Supreme Court, spent some time on the meaning of the phrase "*clerical errors*" in O.63, r.1(15), RSC. The court does not propose to dwell at any length on this case. This is because O.28, r.11 in addition to referring to "[c]*lerical mistakes in judgments or orders*" also refers to "*errors arising therein* [*i.e.* in judgments or orders] *from any accidental slip or omission*." The application now before this Court arises from the accidental slips or omissions made by the registrar in the order as perfected on 13th March, 2018. She clearly did not intend deliberately to refer to the wrong firms of solicitors. All that has happened since arises from the accidental slip (in including the wrong firms)/omission (of the correct firms) in the perfected order of 13th March. So whether "[c]*lerical mistakes*" for the purposes of O.28, r.11 equate to "*clerical errors*" within the meaning of O.63, r.1(15) (and it is difficult to see that they would not) is not a matter on which the court is required to adjudicate in the within application. To the extent that it is contended, if it is contended, that when O.28, r.11 states "*Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected without an appeal…*", the text "*or errors arising therein from any accidental slip or omission*" ought to be read as referring solely to "*errors*" that are "*clerical mistakes*", this is not accepted by the court. It is not what O.28, r.11 says. O.28, r.11 gives the optional ", *or…*"; the word "*therein*" refers to "*judgments or orders*", not to 'judgments or orders that are tainted by clerical mistakes'; and it would be a distortion of the *ejusdem generis* principle to conclude that the phrase "*any accidental slip or omission*" is a genus that ought to be restricted to "*clerical mistakes*" – for, to borrow from the judgment of Carroll J. in *Cronin v. Lunham Brothers Ltd* [1986] ILRM 415, 417, this is not a case of general words following words which are less general; it is but the identification of an alternative circumstance in which a court may proceed.

25. In *Judkins v. McCoy* [2013] IEHC 82, appeal was made against an order of the Master made on 9th December, 2010, and perfected on 14th December, 2010, with an error in that perfected order being corrected, upon application to the Master, on 2nd December, 2011 (with a new perfected order issuing on 4th January, 2012). If the period within which to bring timely appeal ran from the date of perfection, the appeal was out of time; if it ran from the date of correction, the appeal was brought within time. Though proffered by Taculla as an authority to which the court should have regard, the court respectfully does not see that the decision in that case advantages Taculla's cause. Peart J., at para. 22 of his judgment, observes as follows when it comes to the issue of whether the first defendant needed to seek an extension of time to appeal the Master's order dated 9th December, 2010:

"…I consider the matter to be straightforward. The order being appealed is that by which the Master granted liberty to enter final judgment. The fact that it was later amended as to the amounts for which judgment was to be entered does not in my view mean that time had not started to run from the date of perfection of the order dated 9 December 2010. The errors as to amount did not alter the fact that the order had been perfected. There was nothing to prevent the Plaintiff seeking to appeal that order within the time permitted. I do not understand why that was not done given the obvious grounds which existed for doing so, namely the incorrect figures, the failure by the Master to grant an

adjournment on 9 December 2010, the incorrect procedure adopted by the Plaintiff and the lack of jurisdiction for the Master to deal with the application for liberty to enter final judgment. I do not consider that the fact that in December 2011 that order was amended meant that time for appealing the first order re-commenced to run. In my view an extension of time to appeal is required before the First Named Defendant can appeal the order in question."

26. So Peart J. considered time to run from the original date and, in the context of an appeal from a decision of the Master, then moved on to consider whether an extension of time was justified.

27. In *Kavanagh v. Healy* [2015] IESC 37, one of the complaints raised was that a particular order of Kearns P. had never been reduced to writing. This complaint was given fairly short shrift by the Supreme Court, with Clarke J., as he then was, observing, *inter alia*, as follows, at paras. 3.12-14:

> *"3.12* …[Mr Kavanagh] *complains that the initial order of Kearns P was what he described as a 'ghost order' because it was never drawn up in writing. He says that this deprived him of the opportunity of appealing against the order. It is important to start by emphasising that an order made orally by a judge is an order of the court. It does not require to be in writing to be valid and binding.*
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> *3.13 This much is clear from Ord 115 of the Rules of the Superior Courts which provides that an order 'when drawn up, shall be dated the day of the week, month and year on which the same was made, unless such court shall otherwise direct, and shall take effect accordingly. Every such order shall be passed and perfected with all convenient speed.*
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> *3.14 It is clear, therefore, that the rules speak of the order by reference to the order made in court by a judge rather than the document by which that order is 'drawn up' or 'perfected'. The written document is simply a means of recording, in a very formal way, what the court order actually said. The court order is what the judge says in court. Indeed there are, in that context, from time to time, applications made by parties to court (sometimes successfully) to suggest that the written order as drawn up does not accurately reflect what the judge said in court and inviting the judge to direct that the written order be changed in some material respect. Such applications do not involve a party inviting a judge to change a judge's order after the case is over (that would neither be appropriate nor permissible) but rather seek to have it ensured that the written record of the judge's order is correct and properly reflects what the judge did say in court. This emphasises that it is the order made by the judge in court that is the order of the court. The drawn up or perfected document is simply a record of that oral order."*

28. Taculla (i) notes, by reference to *Kavanagh*, that written orders merely reflect, in a formal way, what a court says, (ii) contends that the various cases to which the court has been referred by Dunnes (*McCaughey, Concorde Engineering and McMullen*) are all cases in which an order made did not accord with what was said in court, (iii) further contends in effect that the so-called 'slip rule' (a) is concerned with ensuring that a written court order reflects what was said in court, and no more, and (b) on a related note, that amendments under the slip rule are confined to the curial part of the judgment and can do no more. Point (iii) is respectfully rejected by the court for the reasons set out later below.

V

Some Points Arising

(i) What Should Taculla Have Done?

29. Taculla failed to bring a within-time appeal against the costs order. It initially set about matters correctly. On 28th March, 2018, its solicitors wrote to William Fry seeking consent to an extension of time so as to allow late filing of an appeal. Once Taculla received the letter of 5th April, 2018, in which William Fry indicated that Dunnes would not consent to an appeal in respect of the costs order, then it was incumbent on Taculla (if it still wished to have the order amended) to bring an application under O.28, r.11(b)(i), RSC or to ask the registrar to have the proceeding listed before the court pursuant to O.28, r.11(b)(ii), RSC.

(ii) Appeal Could Never Have Been Brought in Time

30. Leaving aside (and one cannot leave aside) the fact that Taculla, entirely through its own fault, was late in bringing its appeal, what is one to make of Taculla's contention that unless the date of the order was amended to the later date of perfection, Taculla was closed out from bringing an appeal through no fault of its own? This contention is not correct for a number of reasons. First, it ignores the fact that Taculla is solely and exclusively to blame for the fact that it did not bring its appeal on time. That has nothing to do with the registrar, the substance of the court order, or Dunnes. Second, the court has indicated above how Taculla ought to have acted once it received the letter of 5th April, 2018, in which William Fry indicated that Dunnes would not consent to an enlargement of the time to bring an appeal…it ought to have come back to the High Court and sought the necessary amendment pursuant to and in accordance with O28, r.11(b), RSC. Third, once that amendment was made, Taculla could then have proceeded to the Court of Appeal and sought an enlargement of the time for bringing an appeal, if it so wished.

(iii) Perfection of Court Orders Has Nothing to Do With Court?

31. Taculla contends that the perfection of court orders is a matter for the registrar, not for the court. While the process of the perfection of a court order is clearly a matter that is done and, if the court might respectfully observe, very well done, by court registrars, it is clear from (i) the wording of O.28, r.11 that the court itself has jurisdiction to correct both "[a.] [c]*lerical mistakes in judgments or orders or* [b.] *errors arising therein* [*i.e.* in judgments or orders] *from any accidental slip or omission*", and (ii) from (a) the wording of O.28, r.11 and (b) the case-law considered above, that the power of the court in this regard extends to perfected orders. And if one stands back for a moment, one can see why this must be so: the judge in court is and must be the ultimate master of court proceedings from the very commencement of proceedings, right through to the perfection of orders and (in the instances contemplated by O.28, r.11 and as elaborated upon by case-law) even beyond the point of perfection.

(iv) O.28, r.11 Does Not Extend to the Correction of an Erroneous Date on a Court Order?

32. As mentioned in the previous part of the within judgment, Taculla (i) notes, by reference to the judgment of the Supreme Court in *Kavanagh*, that written orders merely reflect, in a formal way, what a court says, (ii) contends that the various cases to which the court has been referred by Dunnes (*McCaughey, Concorde Engineering and McMullen*) are all cases in which an order made did not accord with what was said in court, (iii) further contends in effect that the so-called 'slip rule' (a) is concerned with ensuring that a written court order reflects what was said in court, and no more, and (b) on a related note, that amendments under the slip rule are confined to the curial part of the judgment and can do no more.

33. As to point (iii), this is respectfully rejected by the court for at least two reasons:

> (a) it requires one to disregard the express text of O.28, r.11 which provides for correction of "[c]*lerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission*". There is nothing in the express text of O.28, r.11 which suggests that it does not extend to the whole body of a court order;
>
> (b) such an interpretation would make no practical sense. To give a couple of examples, if the court could only correct those elements of a court order which reduced to writing what had actually been stated in court (what counsel for Dunnes referred to at hearing as the 'curial part' of the court's order) then, absurdly, *e.g.,* (i) a High Court order which mistakenly commenced 'THE SUPREME COURT' instead of stating 'THE HIGH COURT' would be incapable of correction under O.28, r.11, and (ii) an order issued in the early days of a new year and which made the mistake whereby documents executed in the early days of a new year mistakenly insert the previous year's number would likewise be incapable of correction under O.28, r.11.

34. The court cannot but note in passing that if Taculla was right as to point (iii), then the error/amendment which, to use a colloquialism, 'started the ball rolling' in terms of bringing matters to their present juncture – being the insertion of the correct firm of solicitors – could not be made under O.28, r.11 RSC as that was not an issue which was touched upon in court (and the names of the representing firms do not, to borrow again from the phraseology of counsel for Dunnes, sit within the curial part of the court's order).

(v) What Occurred was Not a Clerical Mistake or an Error Arising from Same.

35. Taculla contends that O.28, r.11, RSC has no application to the circumstances at hand because what occurred was not a 'clerical mistake' or an "*error arising from an accidental slip or omission*" but something deliberately done by the Registrar. The court has already addressed the interpretation of O.28, r.11 previously above. Suffice it to note here that O.28, r.11, in addition to referring to "[c]*lerical mistakes in judgments or orders*" also refers to "*errors arising therein* [*i.e.* in judgments or orders] *from any accidental slip or omission.*" The application now before this Court arises from the accidental slips or omissions made by the registrar in the order as perfected on 13th March, 2018. The registrar clearly did not intend deliberately to refer to the wrong firms of solicitors in the order as perfected on 13th March, 2018. All that has happened since arises from the accidental slip (in including the wrong firms)/omission (of the correct firms) in the perfected order of 13th March. Thus her re-dating of the perfected order so that it referred to 11th April, 2018 (which she acknowledges herself to have been done in error) is clearly an error arising from the fact of her original slip or omission in naming the wrong firms of solicitors in the original order as perfected on 13th March, 2018.

(vi) Matters Should Be Left Now to the Court of Appeal.

36. It need hardly be stated but it is worth noting in any event that the court fully accepts that whatever happens before the Court of Appeal is a matter exclusively for the Court of Appeal. However, this Court is presented with a situation in which there are different copies of the same High Court order now in circulation with different dates of perfection marked thereon. It is entirely logical and in the interest of the administration of justice that the court should now remedy this difficulty.

(vii) Prejudice.

37. Such amendments as have been sought of the court by Dunnes do not in any way prejudice Taculla. Taculla's appeal has always been out of time, not because of the registrar's actions or the content of the order as perfected on 13th March, 2018 or because of some action by Dunnes, but simply because Taculla did not act in time. By contrast, were the court to decline to accede to the application by Dunnes that the correct date of the perfection of the court's order (13th March, 2018) be inserted in place of 11th April, 2018, the effect would be that the court had bestowed on Taculla a resurrected ability to bring an in-time appeal. The change of name of solicitors on the order from 'Beauchamps' to 'William Fry' likewise does not prejudice Taculla in any way.

VI

Conclusion

38. For the reasons stated above, the court will grant an order pursuant to O.28, r.11, RSC (i) amending an error made in the order of the court made on 13th March 2018, so as to reflect the correct date of perfection of the said order (being 13th March, 2018 and not 11th April, 2018), and (ii) correcting the name of the solicitors for Dunnes to read 'William Fry' instead of 'Beauchamps'. For the avoidance of doubt, the court makes no criticism of the registrar who drafted the orders.