

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. NO. M-424 of 2001

BETWEEN

GORDON BARTLETT

Petitioner

AND

DAPHNE BARTLETT

Respondent

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Ms. Lynette Seebaran-Suite instructed by Ms. Nadiya Gower De Chabert
Mr. Kemrajh Harrikissoon S.C. leads Mr. Alex Ramlal and Mr. Narad Harrikissoon instructed by Ms. Ambika O. Harrikissoon

Date: 27 January 2022

**DECISION ON THE SUMMONS FILED ON THE 22 DECEMBER 2021 AND 10
JANUARY 2022**

1. The law sets out the procedure when a party to ancillary relief in matrimonial proceedings seeks further information. The Matrimonial Proceedings and Property Act and in particular the Rule 61 (4) of the Matrimonial Causes Rules provides that:

“(4) Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of

that other party, or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such documents, and may, in default of compliance by such other party apply to the Court for directions”

2. By letter of 29 October 2021, Daphne Bartlett the respondent to these ancillary proceedings (the respondent), made a request of Gordon Bartlett the petitioner to these ancillary proceedings (the petitioner), for further information. The request was in relation to certain paragraphs in two affidavits sworn by the petitioner on the 18 January 2018 and 30 September 2019. The respondent also sought further information on other matters relevant to the application to the ancillary relief application.
3. On the 5 December 2021, the respondent filed in the court the information contained in the letter dated 29 October 2021 and served on the petitioner seeking further information.
4. The petitioner responded by letter dated the 22 November 2021. The respondent not satisfied that she was provided with further information, filed this alleged “Summons” on the 22 December 2021.
5. The petitioner, by summons filed on the 10 January 2022 has asked the court to dismiss the respondent’s filings of the 22 December 2021. As such the court is called upon to decide the following issues:
 - a. Was a Summons filed pursuant to Rule 61(4) of the Matrimonial Causes Rules; and
 - b. If the answer is yes, is the respondent entitled to any directions.
6. In support of the petitioner’s objections to the application on the ground that there is no summons properly before the court, he alleges that:

- a. There are two applications filed by the respondent, one on the 5 December 2021 and the other on the 22 December 2021; and
 - b. The application filed on the 22 December 2021 is not a summons and it does not call upon the court to give directions, consequently the court has no jurisdiction to hear and determine the matters.
7. In any event, the petitioner contends that the respondent is not entitled to the reliefs sought because firstly, there has been delay in making the applications. Secondly, the respondent has satisfactorily answered the requests, and finally only one opportunity is afforded for financial disclosure and that opportunity has passed.
8. The respondent's position is that her application falls within Rule 61(4) of the Matrimonial Causes Rules. Further, she alleges she has one application and it is the summons filed on the 22 December 2021.

Reasons

9. The legal requirements set out in Rule 61 (4) would require any respondent to:
- a. Write and serve a letter requiring the respondent to give further information
 - b. The further information must concern any matter contained in any:
 - i. affidavit filed by or on behalf of that other party,
 - ii. or any other relevant matter,
 - iii. or to furnish a list of relevant documents
 - iv. or to allow inspection of any such documents
 - c. If the served party defaults in compliance with the request in the letter, the aggrieved party may apply to the Court for directions.

10. The respondent submits that she has complied with all the requirements of Rule 61 (4) of the Matrimonial Causes Rules. With this assertion, the court agrees. It is not disputed that the respondent wrote and served a letter on the petitioner dated 29 October 2021. In that letter, the respondent requested further information pertaining to the petitioner's affidavits filed on the 18 January 2018 and 30 September 2019. The respondent also sought further information on other matters relevant to the application for ancillary relief. The letter itemized the paragraphs of the affidavits from which the information was sought as well as the other information relevant to the application for ancillary reliefs.
11. On the 5 November 2021, the respondent filed a document headed "REQUEST FOR PARTICULARS OF INFORMATION RELATIVE TO THE AFFIDAVITS OF THE PETITIONER FILED ON 30 SEPTEMBER 2019 AND 18 JANUARY 2018 AND INFORMATION RELEVANT TO THE RESPONDENT'S APPLICATION FOR ANCILLARY RELIEF". This filing comprised the details of what was served by the respondent on the petitioner. It contains no applications to the court and seeks no reliefs.
12. The court accepts the respondent's assertion that this was simply to satisfy the court that she had, as required by Rule 61 (4) of the Matrimonial Causes Rules, made the request by letter to the petitioner for further particulars of information in the two affidavits and information relevant to the application for ancillary relief.
13. The respondent alleges that the petitioner's response did not comply with the request and there was therefore default within the meaning of Rule 61 (4) of the Matrimonial Causes Rules. It is in those circumstances the respondent filed the "Summons" on the 22 December 2021.

14. The First Schedule to the Matrimonial Causes Rules provides Prescribed Forms to be used in stated circumstances and for stated Rules. There is no Prescribed Form for applications for directions when it is alleged that default was made pursuant to Rule 61 (4). It therefore seems reasonable that such Summons should be a standard form of a summons which identifies the:
- a. court;
 - b. nature of the claim;
 - c. parties; and
 - d. purpose of the hearing.
15. There is no heading, which states "Summons". The documents, however states at the end that "This summons was taken out..." by the attorneys representing the respondent. However, if that is not sufficient, the documents itself must be examined. On examination, the "Summons" filed by the respondent identifies the court as the High Court of Justice, before a Judge in Chambers at the Hall of Justice Knox Street and the claim as H.C.A No. M-424 of 2001.
16. It identifies the parties. The parties are clearly identified as Gordon Bartlett Petitioner and Daphne Bartlett Respondent. As to the nature of the hearing, the "Summons" states that it is for orders detailed in paragraph 1.
17. The purpose of the hearing is summarised in the "Summons" and detailed in the affidavit filed in support of the "Summons". The purpose of the hearing must include that it is for directions from the court. Paragraph 4 of the Summons informs the petitioner that the respondent is constrained to "ask the Court for an order directing the Petitioner to respond to the request". The request is that contained in the letter of the 29 October 2021 and served on the petitioner.

18. Apart from the heading Summons, there is little to no difference between the “Summons” filed by the respondent on the 22 December 2021 and the Summons filed by the petitioner on the 10 January 2022.
19. The court is therefore satisfied that the “Summons” filed on the 22 December 2021, is a Summons within the meaning of Rule 61 (4) of the Matrimonial Causes Rules.
20. Therefore, the court resolves the first issue in the affirmative. There is a Summons properly before the court and that Summons was filed on the 22 December 2021. The court does not agree that the application of the 22 December 2021 was a second application or a second Summons.
21. Having decided that a Summons was filed by the respondent on the 22 December 2021, next the court must consider whether there was default made by the petitioner in his response dated 22 November 2021 to the respondent’s letter of the 29 October 2021.
22. Firstly, in relation to the request related to the affidavits sworn on 28 January 2018 and 30 September 2019, I find that there was default. However, the court does not agree with the submission that the request was prolix, oppressive, scandalous and amounted to nothing more than a fishing expedition. The court agrees with paragraph 18/12/20 of the Supreme Court Practice 1997 as cited and relied on by the petitioner:

“the question whether and what particulars should be ordered is one of discretion.”
23. The petitioner also submits that the court should refuse the application because of delay. The petitioner relies on paragraph 18/12/20 of the Supreme Court Practice 1997 which states that:

“The court may refuse to order particulars of a pleading to which a part would otherwise be entitled, where there has been inexcusable delay in making the application or the application is made at a late stage e.g. when there might be a substantial risk that a fixed date of trial would have to be vacated”

24. The petitioner referred the court to Rule 3 of the Matrimonial Causes Rules that the rules of the Supreme Court shall apply and where the Matrimonial Causes Rules require anything to be done, it shall be treated as if it were a provision of the Rules of the Supreme Court.

25. Further, in *Astrovlanis Compania Naviera S.A. v Linard (Gold Sky)* [1972] 2 WLR 1414 at 1424 when considering the question of delay Lord Justice Emmanuel Davis said:

“My clear conclusion is that the established practice runs counter to every provision in the Supreme Court Practice to which we have been referred, and its very existence receives not a single mention in that vast compendium. Accordingly, it follows that if the matter stopped there, I should be for allowing this appeal. But it does not, because, as my Lord has said, there has been inexcusable and indefensible delay on the plaintiff's part in applying for the particulars now sought. The defence having been served as long ago as January 11th, and pleadings closed on June 29th 1971, no request for particulars was made until the 17th day of this present month of February 1972, in a case fixed to be heard on February 28th, which is next Monday. It should, of course, have been made long ago and, although Mr. Goff has presented us with a kind of timetable of events, nothing like an adequate explanation for the great delay has been adduced, were we now to order the particulars sought, there seems a substantial risk that the fixed date of trial would have to be vacated, with consequent indefensible inconvenience and expense to the defendant. I would, therefore, but for this reason alone and none other, respectfully concur with the Master of the Rolls in holding that this appeal should be dismissed.”

26. This matter has been engaging the court's attention for years. During that time, the matter has been assigned to different judges. The efforts at case management have been long, detailed and at times contentious. The trial was scheduled to commence on the 25 January

2022. Unfortunately, due to the Covid-19 pandemic and breakout of covid infections at the office of the court appointed joint expert, the completion of the expert's report has be delayed. The only reason the trial did not commence was the delay in the completion of the expert's report.

27. Therefore, it seem obvious, that the court must consider the issue of delay in making the application relative to the affidavits of the 18 January 2018 and 30 September 2019. In one instance, the request by letter, for further particulars was made more than three and a half years after the affidavit was sworn and filed and in the other instance approximately two years after the affidavit was sworn and filed.

28. The court examined the evidence with a view to considering the issue of delay. The affidavit in support of the summons was filed on the 22 December 2021. The affidavit comprised eight paragraphs. None of the eight paragraphs addressed the issue of delay. There is no evidence from which I can make a finding that the delay was justified or excusable or that in keeping with the overriding objective to treat with cases justly, this court should resolve the matter by directing the petitioner to answer the request for further particulars.

29. The court, nevertheless considered the fact, that the trial date was vacated and whether in those circumstances there would be more harm to the petitioner if directions are given or more harm to the respondent if there are no directions to provide further particulars.

30. Given the history of this matter and all the efforts at management of the case, the court finds that more prejudice will befall the petitioner if directions are given to provide further particulars. Both parties know the case they have to meet, both parties should have been prepared for trial, baring the disclosure of the expert's report. To permit the

application at this stage would require new evidence from the petitioner.

31. If the court does not grant the application for directions, the respondent will not be prejudiced as the petitioner can be subjected to cross-examination on the paragraphs identified in the two affidavits. The respondent will have the opportunity to make submissions to the court on the evidence, and how the court should treat with same. The decision as to what weight if any to give to evidence is for the court.

32. Secondly, with respect to the application for directions for the disclosure of further information relevant to the Respondent's application for ancillary relief, the respondent requests that the petitioner:

a. "Peruse the document annexed hereto and marked "B" and indicate whether the items listed therein or any of them are owed by you whether legally or beneficially".

b. Of bank accounts listed in the letter dated 23rd September 2021 from RBC Royal Bank (Trinidad and Tobago) Limited produced by Lee Anna Haynes at the virtual court hearing on the 4 October 2021, annexed thereto and marked "C":

i. State whether Mungal Ramkissoon, the person referred to as a joint bank account holder with the petitioner is Sherry Ann Bartlett's father.

ii. State whether Bridget Mohammed, the person referred to as a joint bank account holder with the petitioner is Sherry Ann Bartlett's daughter

c. In respect of the deeds DE201801882070 and DE201800247064 annexed hereto and marked "D" where in Bridget Mohammed

is shown as the purchaser of parcels of land comprising one acre one rood and nine perches and 0.397 hectares respectively at a price of \$1,500,000.00 and \$788,500.00 respectively” State whether the petitioner provided the purchase price for the said parcels or any portion thereof, how and in what specie provided and from what accounts.

- d. Of bank accounts – “provide a listing of all bank accounts operated by the petitioner, owed by the petitioner, owed jointly by the petitioner with any other person and whether held in Trinidad and Tobago or abroad, and all accounts which the petitioner is a signatory, over the period 2014 to the present.

Provide statements of account for the said accounts over the period 1st January 2014 to the present (where not already provided on the 4th October 2021).”

33. With respect to matters at a. and c. above, there is no evidence from the respondent where and when the information on which they require further particulars was derived. What is the source? How is the court to determine that it is relevant to matters before the court. The affidavit, which supports the application filed on the 22 December 2021, does not provide any evidence on the source of the information nor any other evidence, which is of assistance to the court in determining what, if any directions would be appropriate.

34. Regarding the request at paragraph 32 d. above, there is no evidence from which the court could determine that this request is any different from the information provided by the petitioner and filed in his statement of means.

35. With respect to the matter above in paragraph 32 b. – the court believes that this information is relevant to the application for ancillary relief and that the letter sent to the petitioner is sufficiently timely in relation to when the information became known to the respondent. The court is also satisfied that the petitioner is in default of answering or providing the particulars requested. The response provided on the 22 November 2021 does not provide the particulars requested.

36. Whether those persons are related to the petitioner's current wife and whether those persons if related hold or held joint accounts with the petitioner, are relevant to the matters the court would be required to determine in the application for ancillary relief.

37. On the second issue, the court is satisfied that the respondent is entitled to some of the directions sought in the Summons filed on the 22 December 2021.

Disposition

38. Consequently, the court therefore issues directions the petitioner to respond, by affidavit on or before the 11 February 2022 to the following request made by the respondent:

- a. Of bank accounts listed in the letter dated 23 September 2021 from RBC Royal Bank (Trinidad and Tobago) Limited produced by Lee Anna Haynes at the virtual court hearing on the 4 October 2021:
 - i. State whether Mungal Ramkissoon, the person referred to as a joint bank account holder with the petitioner is Sherry Ann Bartlett's father; and
 - ii. State whether Bridget Mohammed, the person referred to as a joint bank account holder with the petitioner is Sherry Ann Bartlett's daughter.

39. Costs to be cost in the cause.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran