ST. GEORGE WEST COUNTY
PORT OF SPAIN PETTY CIVIL COURT

RULING

CITATION: Lucy James v. Christopher Joseph

TITLE OF COURT: Port of Spain Petty Civil Court

FILE NO(s): No. 157 of 2012

DELIVERED ON: 1st November 2012

CORAM: Her Worship Magistrate Nalini Singh
St. George West County
Port of Spain Petty Civil Court Judge

REPRESENTATION:

Mr. Joseph Sookoo for the applicant

Mr. Ancil Moses for the respondent

TABLE OF CONTENTS

1.0 THE APPLICATION

1.1 This is an application requesting further information pursuant to **Part 35.2(1) of the Civil Proceedings Rules 1998** (hereinafter referred to as "the CPR"). Lucy James (hereinafter referred to as "the claimant") requests that Christopher Joseph (hereinafter referred to as "the defendant") provide her with:

1. The names of the seven men who accompanied him to the claimant's premises and,
2. The full particulars of the items which were removed from the premises during an eviction exercise she hired the defendant to perform.

1.2 Before coming to deal with the application, I will describe the statement of case, the defence and the reply in detail.

2.0 THE FACTUAL BACKGROUND

2.1 The Statement of Case

2.1.1 On the 22nd November 2010 the claimant hired a bailiff (the defendant) to evict her niece from premises belonging to her situated at Acono Road, Maracas St. Joseph. It was agreed that the cost payable for the said eviction was TT $5000.00. This sum was paid to the defendant in two installments with the first installment of TT $1000.00 being paid to the defendant on the 22nd November 2010 and the second installment of TT $4000.00 being paid to the defendant on the 30th November 2010.

2.1.2 According to the claimant, by February 2011, the defendant had not yet evicted her niece and she asked the defendant for a refund of her TT $5000.00. The defendant in turn returned to

the claimant the sum of TT $1000.00. On the 13th April 2012 the claimant filed proceedings against the defendant to recover the balance of money she advanced to him.

2.2 The Defence

2.2.1 The defendant stated in his defence filed and served on the 29th June 2012 that he did not owe any sum of money to the claimant. According to him, on the 4th December 2010, pursuant to the agreement he had with the claimant, he along with his work crew which comprised seven men, went to the plaintiff's premises in vehicles TCA 4951 and PCA 5051. The relationship between the claimant and her niece had by that time deteriorated to an unpleasant state and it was agreed that the claimant would not be present for the eviction. Accordingly, the defendant called the claimant whilst en route, to inform her that he was on his way to her premises to have the eviction done (paragraph 5).

2.2.2 The defendant and his work crew arrived at the claimant's premises at 8:23AM and he identified himself to an occupant who gave her name as "Shelly Ann". The defendant then instructed his crew to remove from the premises, all goods and chattel belonging to the claimant's niece, and place them on the road which adjoined the premises. The items which were consequently removed included living room and dining room sets, a bed, a wardrobe, a fridge, a stove, a gas tank and three barrels of clothing (paragraph 6).

2.2.3 Whilst these items were being removed, Shelly Ann told the defendant "boss me don't care what you do but I getting some help from them young boys around to put back them things

inside later". At this the defendant told her that the claimant had options open to her in law should she choose to reenter the claimant's premises (paragraph 7).

2.2.4 Once all the items were removed, the defendant instructed his work crew to secure the entrance to the part of the premises occupied by Shelly Ann and they proceeded to nail pieces of wood across the said entrance. After this was done, the defendant telephoned the claimant and informed her that the eviction was completed (paragraphs 8-9).

2.2.5 According to the defendant, the day after the eviction was effected -that is, the 5th December 2010, the claimant informed the defendant that Shelly Ann had moved back into her premises. She therefore directed the defendant to return to the premises and again remove Shelly Ann's belongings from her premises. The defendant indicated to the claimant that this would require an additional payment as he had already completed the job he had been hired to do. Upon hearing this, the claimant became angry and abusive and cursed the defendant. After a period of threatening phone calls from the claimant the defendant gave to her the sum of TT $1000.00 (paragraphs 11-13).

2.2.6 On the 13th April 2011 the claimant informed the defendant that she wanted the balance of her TT $4000.00 returned to her as well (paragraph 14).

2.2.7 In these circumstances the defendant contends that the claimant is not entitled to the sum of TT $4000.00 which is now claimed by the claimant as he performed his obligation under their agreement (paragraph 17).

2.3 The Reply

2.3.1 By way of reply, the claimant denied the events of the 4th December 2010. She further denied that the conversation of the 5th December 2010 occurred (paragraph 3). Additionally the claimant stated that the name of the person to be evicted was "Genevieve" who was not known to anyone as "Shelly Ann" (paragraph 4). The claimant also specifically denied that threatening calls were made by her to the defendant (paragraph 5).

3.0 THE ISSUES

3.1 The issue which arises for determination by me is whether the Court should order the defendant to furnish the claimant with:

1. the names of the seven men who accompanied him to the claimant's premises and,
2. the full particulars of the items removed from the premises.

4.0 THE LAW

4.1 The Approach of the Courts To Applications For Further Information

4.1.1 Part 35 of the CPR provides in relevant part as follows:

> **"Right of parties to obtain information**
>
> **35.1** (1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.
>
> (2) To do so he must serve a request for information that he wants on that other party.
>
> (3) He must state in his request precisely what information he wants.

Orders compelling reply to request for information

35.2 (1) If a party does not give information which another party has requested under rule 35.1 within a reasonable time, the party who served the request may apply for an order compelling him to do so.

(2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.

(3) When considering whether to make an order the court must have regard—

(a) to the likely benefit which will result if the information is given;

(b) to the likely cost of giving it; and

(c) to whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order".

4.1.2 The corresponding provision in England is the **Part 18 of England's Civil Procedure Rules**. This states as follows:

"(1) The court may at any time order a party to –

(a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in a statement of case.

(2) Paragraph (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under paragraph (1), the party against whom it is made must–

(a) file his response; and

(b) serve it on the other parties,

within the time specified by the court".

4.1.3 Admittedly these two provisions are not similar. Indeed this point was made by Jamadar JA in **Real Time Systems Limited v. Renraw Investments Limited, CCAM and Company Limited & Austin Jack Warner t/a Dr. Joao Havelange Center of Excellence CA No. 238 of 2011** at paragraph 26 when he stated that:

"Generally and in this case in particular, Part 35 in Trinidad and Tobago is significantly different from its apparent counterpart in England and little help can be derived from any comparison between the two".

That said the fact remains that for the most part, both jurisdictions apply the request for information provisions in a liberal manner. Indeed the approach is one of promoting openness rather than secrecy between litigants.

4.1.4 This is evident in local jurisprudence. So in *Real Time Systems Limited v. Renraw Investments Limited, CCAM and Company Limited & Austin Jack Warner t/a Dr. Joao*

Havelange Center of Excellence (supra) the attitude of placing "all cards on the table" was endorsed by Jamadar JA at paragraph 9 when he made the point that;

> "9. The thrust of the CPR, 1998 is towards litigation with full disclosure at the earliest opportunity and against tactical non-disclosure for the purposes of gaining strategic advantages in the conduct of litigation (emphasis mine)".

4.1.5 In so far as the development of England's jurisprudence is concerned, the trend mirrors the approach adopted locally. So in the matter of **Josh Harcourt v. FEF Griffin (Representative of Pegasus Gymnastics Club), Ovidiu Rugina & Iqnut Trandaburu [2007] EWHC 1500 (QB)** the claimant was 16 years old when he suffered severe spinal injuries in an accident which occurred in the gym that was owned by the first defendant. The second and third defendants were coaches employed by the first defendant. As a result of the accident the defendant became a tetraplegic. Liability was initially denied by the defendants, but it was later agreed that they would pay damages assessed at 75%. The claimant stated that the claim was likely to be worth around £8 million to £10 million. The defendants contested that assessment and the claimant became concerned about the ability of the defendants to satisfy the judgment. Consequently, he made a request under CPR Part 18 for further information to ascertain the extent of the insurance coverage of the defendants. The claimant argued that this was relevant information as it would make no sense to engage in a contested quantum phase if ample coverage did not exist. It was held that disclosure would only be ordered if it could be established that there was some legitimate concern which existed to the effect that an award might not be satisfied. Put simply there had to be some basis for suggesting that disclosure was necessary. In

the circumstances the defendants were ordered to reply to the CPR Part 18 request. In arriving at this decision Irwin J affirmed the principle of openness at paragraph 10:

> "…it appears to me that the wording of CPR. Rule 18 requires to be interpreted reasonably liberally. The purpose of the jurisdiction must be taken to be to ensure that the Parties have all the information they need to deal efficiently and justly with the matters which are in dispute between them. Moreover, the wording need not be taken to imply that there must be a live disagreement about the relevant issue, since on very many occasions parties are properly required to furnish information pursuant to CPR r 18 precisely to discover whether there is or is not a live disagreement between the parties on a given point. The whole thrust of the new approach to civil litigation enshrined in the Civil Procedure Rules is to avoid waste of time and cost and to ensure swift and, as far as possible, proportionate and economical litigation. Therefore, I have no hesitation in finding that if there is no rule of law or significant rule of practice to the contrary, then the wording of CPR r 18 is broad enough to cover information of this kind (emphasis mine)".

4.1.6 Even in cases where applications for the provision of information have been refused by the courts, there has always been a recognition that the trend is toward a more open approach to civil litigation. This much was evident in the case of **West London Pipeline and Storage Ltd. and Another v. Total UK Ltd. and Others [2008] EWHC 1296.** In this case, the defendants admitted negligence in relation to an explosion at an oil storage terminal. The defendants claimed that a third party defendant, TAV, had been negligent in the design, manufacture and supply of a switch which failed and this failure was responsible for the explosion. TAV in turn

sought disclosure from the defendants of material gathered by them in the course of their investigations into the incident, including the outcome of investigations that the operator of the terminal had undertaken as part of the safety management system it was required to have by the 1999 Regulations. This request was refused by the defendants who held the view that the investigations were covered by litigation privilege. The issue for the court to decide was whether the court could go behind the affidavit asserting that privilege attached to documents and order disclosure. In refusing the application, his Lordship Steel J had this to say at paragraph 30:

> "It follows that there is in my judgment no jurisdiction to make the order sought. I have reached this conclusion with some considerable hesitation – not least because it is contrary to the view of Irwin J in Harcourt. The trend is strongly towards a more open approach to litigation. Albeit the potential for prejudice to the Defendant and his insurers must be borne in mind, in the modern age of "cards on the table" the question is readily posed why should not the one factor which may be key to a Claimant's view of the merit of pursuing a claim, namely what is the limit of cover and will the costs eat it up anyway, be known? By the same token, concerns as the appropriate share of court resources to be allocated to a case ought to include allowance for the prospects of an effective recovery. But I am not persuaded that the provisions of CPR, however liberally interpreted, have led to a significant change in law and practice. In notable contrast, as I understand it, the Federal Rules of Civil Procedure now expressly impose an obligation of disclosure of potential insurance cover for any judgment" (emphasis mine).

4.1.7 With this approach in mind I turn now to the exercise of my discretion under Part 35 of the CPR 1998.

4.2 A Consideration of The Part 35 Application

4.2.1 A consideration of Part 35 of the CPR 1998 suggests that in deciding whether or not to grant a Part 35 application, the court must address three primary matters. One is that the information which is sought must be about "any matter which is in dispute in the proceedings" **(Part 35.1(1) of the CPR 1998).**

4.2.2. Secondly, the court must be satisfied that the order is made because it is "necessary in order to dispose fairly of the claim or to save costs" **(Part 35.2(2) of the CPR 1998).**

4.2.3 Thirdly, when considering whether to make an order the court must have regard to the following considerations:

(a) the likely benefit which will result if the information is given

(b) the likely cost of giving it, and

(c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order **(Part 35.2(3) of the CPR 1998).**

4.2.4 I turn now to a consideration of each of these three matters.

4.3 Does The Request Pertain To A Matter Which is In Dispute In The Proceedings?

4.3.1 For a request for further information application to be granted the information sought must be relevant to "any matter which is in dispute in the proceedings". This mirrors the wording in England's CPR Part 18(1)(a) which allows litigants to apply for clarification of "any matter which is in dispute in the proceedings". The point was made in the text **Disclosure Litigation Library by Paul Matthews & Hodge Malek (London: Sweet & Maxwell, 2001 2nd ed.) at paragraph 14.032** that there "is probably no real difference between (the Part 18 test) and the test for interrogatories" which was that the interrogatories must have related to a "matter in question". As such the older English cases albeit on interrogatories are useful in shedding light on the meaning of the term "any matter which is in dispute in the proceedings" as are cases dealing with England's CPR Part 18.

4.3.2 From a consideration of the statement of case, the defence and the reply which were filed in this matter, it is clear that the basis of the claim advanced by the claimant is that moneys were advanced to the defendant for the conduct of an eviction and this was not done. The defendant on the other hand alleges that it was fully performed and so no money is now due to the claimant. The central matter which is therefore in dispute in this case is whether the eviction exercise was conducted or not.

4.3.3. In my judgment, information relating to the names of persons accompanying the defendant during the alleged eviction exercise and the details of the items removed during this alleged eviction has bearing on, and the response might form a step in, establishing liability. Accordingly it falls within the definition of the term "matter which is in dispute in the

proceedings". This approach is illustrated in **Blair v. Haycock Cadle Company [1917] 34 T.L.R. 39** which was a case that concerned the price of goods sold and delivered. The defence which was raised was that the goods were supplied to a company. The plaintiffs replied that the company was acting as an agent of the defendant and then proceeded to apply for leave to interrogate the defendant as to whether he had formed the company, whether its purpose was to manage a theater, whether he owned any of the shares and whether he had supplied monies for the purpose of the theater. The court allowed the interrogatories on the basis that it might form a step in establishing the defendant's liability. In delivering the ruling this is what The Lord Chancellor had to say at page 40:

> "In the present case questions were put as to the relations between the defendant and the company, to whom alone, as the defendant alleged, credit was given. It was not necessary that the answers should be conclusive on the question at issue. It was enough that they should have some bearing on the question and that they might form a step in establishing liability".

4.3.4 I find further that information relating to the names of persons accompanying the defendant during the alleged eviction exercise and the details of the items removed during this alleged eviction are directed to a matter which would tend either to support the applicant's case or destroy the other party's case. Therefore it falls within the definition of the term "matter which is in dispute in the proceedings". Indeed this was the approach taken in cases relating to interrogatories. One is **Playmouth Mutual Co-op v. Traders Publishing Association [1906] 1KB 403 at pages 416-417** where the point was made by Stirling LJ that:

> "I would refer to what was said by Lord Esher M.R. in *Hennessy v. Wright* which was an action of the same kind as the present. He said: 'The objection taken by the defendant is that the answers to the interrogatories in question cannot disclose anything which can be fairly said to be material to enable the plaintiff either to maintain his own case or to destroy the case of his adversary. It must be admitted that, if the answers could be material for either of these purposes, the interrogatories ought to be answered, but I think it must equally be admitted that, if the answers could not be material for either of these purposes, we ought not to order the defendant to answer. The question, therefore, is whether the answers to the interrogatories objected to could, in our view, be material for either purpose.' Interrogatories by one party are therefore generally admissible if they are directed to matters which would tend to destroy the other party's case; as, for instance, it is contended in the present case these interrogatories would do by shewing that the comments made by the defendants were not made in good faith and without malice".

4.3.5 I also find that information relating to the names of persons accompanying the defendant during an alleged eviction exercise and the details of the items he removed during this alleged eviction are material facts in this case and as such fall within the definition of the term "matter which is in dispute in the proceedings". This gateway was specifically endorsed by Cotton J in **Attorney-General v. Gaskill [1881–2] 20 Ch. 519** where at page 528 he stated that:

"a party has a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings".

4.3.6 In my view the requested information puts this matter outside the realm of such cases as **Mireskandari v. Associated Newspapers Ltd. [2010] EWHC 967** where the application for disclosure failed because the court felt that the application for further information relating to the number of times a judge had acted for a particular client whilst that judge was in practice was information which failed to relate to any issue in the case and seemed rather to be an attempt to "'fish' for further information in the hope that something more substantive may turn up, so as to enable him to argue at some stage in the future that Sharp J should recuse herself if the litigation comes before her again".

4.3.7 In these circumstances I find that the information sought is relevant to the "matter which is in dispute in the proceedings".

4.4 Would Granting The Request Be Necessary In Order To Dispose Fairly Of The Claim Or To Save Costs?

4.4.1 At its lowest, fair disposal of a case must necessarily include advance notice of what witnesses will say. This is the point which was highlighted in the case of **Wallace Smith Trust Co Ltd (In Liquidation) v. Deloitte Haskins & Sells [1997] 1 W.L.R. 257** where Neill LJ cited the reasoning of the first instance judge; Carnwath J, who observed that the:

"(f)air disposal under current procedures normally requires that the parties should have the opportunity to hear and question relevant witnesses in person, and that they should have advance notice of what they will say in the form of witness statements".

Along the same lines as this case are the sentiments of Sir Thomas Bingham M.R. in **Taylor v. Anderton [1995] 1 W.L.R. 447 at page 462:**

"The crucial consideration is, in my judgment, the meaning of the expression 'disposing fairly of the cause or matter.' Those words direct attention to the question whether inspection is necessary for the fair determination of the matter, whether by trial or otherwise. The purpose of the rule is to ensure that one party does not enjoy an unfair advantage or suffer an unfair disadvantage in the litigation as the result of a document not being produced for inspection. It is, I think, of no importance that a party is curious about the contents of a document or would like to know the contents of it if he suffers no litigious disadvantage by not seeing it and would gain no litigious advantage by seeing it. That, in my judgment, is the test (emphasis mine)".

4.4.2 According to Part 10 of the CPR 1988 the defendant has a duty to set out all the facts upon which he intends to rely at trial:

"**Defendant's duty to set out his case**

10.5 (1) The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.

(2) Such statement must be as short as practicable.

(3) In his defence the defendant must say—

(a) which (if any) allegations in the claim form or statement of case he admits;

(b) which (if any) he denies; and

(c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.

(4) Where the defendant denies any of the allegations in the claim form or statement of case—

(a) he must state his reasons for doing so; and

(b) if he intends to prove a different version of events from that given by the claimant, he must state his own version.

(5) If, in relation to any allegation in the claim form or statement of case the defendant does not—

(a) admit or deny it; or

(b) put forward a different version of events, he must state each of his reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence".

This rule requires the defendant to set out "in his defence a statement of all the facts on which he relies to dispute the claim against him". This duty is important because as Jamadar JA stated in *Real Time Systems Limited v. Renraw Investments Limited, CCAM and Company Limited & Austin Jack Warner t/a Dr. Joao Havelange Center of Excellence (supra)* at paragraph 10:

> "the duty on both claimant and defendant to set out fully all facts which ought to be stated in the statement of case and defence respectively, is… to allow a judge to properly manage a matter in the context of the CPR, 1998, with its court driven mandate and the extensive case management powers and responsibilities bestowed on judicial officers. Thus, a court is responsible for "identifying the issues at an early stage," and "deciding promptly which issues need full investigation and trial …", and "ensuring that no party gains an unfair advantage by reason of his failure to give full disclosure of all relevant facts …". The first two of these duties are given priority by placement in the order of responsibilities set out at Rule 25.1, CPR, 1998. Discharging this duty is only possible if both a claimant and a defendant set out fully all relevant facts in support of and in denial of a claim and of the issues that they reasonably know will likely arise".

And at paragraphs 23 to 24:

> "… critical to these powers of management is the specific power to: "take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective." This specific power includes the power to order the delivery of 'further and better particulars' on either a statement of case or a defence".

Further at paragraph 34 his Lordship made the point that:

"…Indeed, it would make complete nonsense of the Overriding Objective, if it was that a party could not request and a court order particulars of a statement of case or defence when a pleading was defective or inadequate but not irremediably so. The consequences of such a restrictive reading and interpretation of the CPR, 1998 would considerably undermine the 'noble objectives embodied in Part 25' and contradict the purpose of the express power granted by Rule 26.1(w)" (emphasis mine).

4.4.3 In my view the defendant failed to fully comply with **Part 10.5(1) of the CPR 1988** when he failed to include in his defence, the identity of any alleged persons who may have accompanied him when according to him, he evicted "Shelly Ann" from the claimant's premises. I find further that the defendant failed to fully comply with the provisions of **Part 10 of the CPR 1998** when he failed to provide a detailed list of the items which were alleged to have been seized and moved from the claimant's premises during the alleged eviction. I find further that when the defendant failed to set out the names of persons who accompanied him and the items seized in the alleged eviction exercise, the consequence was that the claimant was deprived of advance notice of witnesses and what they would be expected to say at the trial. I am of the view that these omissions are not irremediable and facilitating a request for further information might be the vehicle to ensure that the claim is disposed of fairly.

4.5 The Considerations A Court Should Have Regard To Pursuant to Part 35.2(3)

4.5.1 Having overcome the two hurdles set out above, I come now to examine the likely benefit which will result if the information is given; the likely cost of giving it; and whether the financial

resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order.

4.5.2 The benefit which will result if the names of the persons who formed part of the defendant's work crew and details of the items they seized are provided to the claimant is that it will promote the spirit of all "cards on the table" approach which appears to the very essence of the CPR 1998.

4.5.3 I am also of the view that another benefit to ordering that further information be provided in this case is it will assist the Court in better managing the trial to achieve the overriding objectives of the CPR 1998. Since there was not full compliance with Part 10 of the CPR 1988, it seems that the best way to remedy this matter may very well be to grant this application. In so doing, it is felt that the Court would be achieving fairness in the manner of treatment meted out to both litigants. This also appears to be the appropriate procedure to adopt in terms of cost effectiveness and it will facilitate this matter being dealt with, with reasonable speed. I am fortified in this view after considering the approach propounded by Jamadar JA in *Real Time Systems Limited v. Renraw Investments Limited, CCAM and Company Limited & Austin Jack Warner t/a Dr. Joao Havelange Center of Excellence (supra)* where at paragraph 24 his Lordship made the point that:

> "…there will always be matters in which a 'pleading', whether a statement of case or a defence, is defective by reason of the inadequacy of facts disclosed, but not to the extent to make it an abuse of process or to constitute such a non-compliance with Parts 8 or 10 to reasonably or proportionally justify striking it out pursuant to

Part 26.2. In such cases a court ought to be able to manage the matter so as to properly identify the issues to be responded to, in say a defence, by making an appropriate order for the supplying and serving of 'further and better particulars' as directed. In my opinion, a purposive reading and interpretation of the CPR, 1998 reveals this intention (emphasis mine)".

4.5.4 I come now to the final point of consideration and it is the likely cost of giving the information and whether the financial resources of the defendant are likely to be sufficient to enable him to comply with such an order. From the defence which was filed in this matter, the defendant stated that he was accompanied by his work crew to effect the eviction at the claimant's premises. It is therefore conceivable that supplying their names and details of the items they seized is not likely to be a costly exercise and so the financial resources of the defendant is likely to be sufficient to enable him to comply with the order of the Court.

5.0 THE ORDER

5.1 For these reasons I am satisfied that the request meets the Part 35 criteria and I order that the defendant provides answers to the request for further information regarding the names of the seven men who accompanied the defendant to the claimant's premises and, the full particulars of the items which were removed from the premises during the eviction exercise which the claimant hired the defendant to perform. This is to be filed and served on the claimant on or before 7 days from the date of this ruling.

5.2 The parties will be heard on the matter of costs.

6.0 POSTSCRIPT

6.1 The Court takes the opportunity to thank Mr. Joseph Sookoo and Mr. Ancil Moses for their focused and cogent submissions which were of great assistance to the Court.

……

Her Worship Magistrate Nalini Singh

Petty Civil Court Judge