

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No. 278 of 2017

BETWEEN

**SHANE BEST
T/A BEST EFFECTS**

CLAIMANT

AND

**THE EUPHORIC EVENTS
COMPANY LIMITED**

FIRST DEFENDANT

DANIEL EVELYN

SECOND DEFENDANT

Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High Court.

2018: November 06

2019: December 20

Ms. Sharon E. Smith, Attorney-at-Law for the Claimant.

Ms. Verla DePeiza, Attorney-at-Law for the Defendants.

DECISION

Introduction

[1] This is an interlocutory application by the Claimant seeking the disclosure of the First Defendant's banking information.

Background

- [2] By a claim filed on 23 February 2017, the Claimant brought his action against the Defendant for the payment of a debt in the sum of \$22,070.00. This figure was said to represent monies due pursuant to an agreement between the parties. A statement of claim was annexed to the claim.
- [3] An amended statement of claim was filed on 23 June 2017. The Claimant alleges that he provided lighting services for an event held by the First Defendant on 13 February 2016. The lighting services included materials, equipment and labour.
- [4] The Claimant did not receive a down payment prior to the event. On raising this with the Second Defendant, the Claimant alleges that the Second Defendant advised him that “The First Defendant’s bank account was overdrawn but gave assurances that payment would be made after the event even if the Second Defendant had to obtain financing from his father to make up any shortfall”. (See para.6 of Amended Statement of Claim).
- [5] The Claimant says that he provided the services to the First Defendant in reliance on the Second Defendant’s representations. After the event, the Claimant was not paid for his services, despite several demands for payment. The Claimant alleges breach of contract and fraudulent misrepresentation. He claims the sum of \$22,070.00, interest, costs, and any further relief that the

Court deems fit.

- [6] The Defendants filed an amended statement of defence on 08 August 2017. The First Defendant admitted engaging the services of the Claimant, but put the Claimant to proof of the amount due. The First Defendant asserted that the event was unsuccessful, and that it had applied for protection under the bankruptcy legislation. (Cap.303).
- [7] The Second Defendant denies that he gave any indemnity or personal guarantee to the Claimant on behalf of the First Defendant. He put the Claimant to strict proof, and claimed the protection of the corporate veil.

The Application for Information

- [8] The Claimant's application was filed on 08 December 2017, requesting the following information relating to bank accounts held in the name of the First Defendant:
1. the name and branch location of all bank accounts held in the name of the First Defendant;
 2. the status of all bank accounts held in the name of the First Defendant;
and
 3. bank statements for all bank accounts held in the name of the First Defendant from 01 January 2015 to the time of the application.
- Costs were also claimed for the application.

[9] The grounds of the application as laid out in the application and the supporting affidavit are that:

1. disclosure of the information requested is necessary for the fair and timely disposition of the claim in keeping with the overriding objective; and
2. previous requests made to the Defendants for the information were declined.

The Submissions

[10] The Claimant relies on Part 34 of the Supreme Court (Civil Procedure) Rules, 2008 (“the CPR”). His counsel points to the Defence which states that the First Defendant is unable to satisfy its obligations to either the Claimant, or to anyone else. The argument is that there is a dispute as to whether the First Defendant can satisfy its debt to the Claimant. The banking information is said to be critical to resolving the dispute, and necessary for a fair disposal of the claim, and to save costs. Counsel for the Claimant contends that if the Court is guided by Rule 34.2 (3) of the CPR, there would be no difficulty in making the order sought by the Claimant.

[11] Counsel for the Defendants responded as if the application was one for disclosure under Rule 28 of the CPR. Therefore, the Defendants resist the disclosure of banking information on the basis that the Defendants filed no

document with bank accounts, and that in any event the Claimant's application is premature. It is argued that the banking records of the First Defendant would become an issue only if the Court finds that the First Defendant is indebted to the Claimant. Counsel contends that the information sought by the Claimant is irrelevant to the issues between the parties; does not advance the claims for breach of contract and fraudulent misrepresentation; and is unnecessary for the fair and timely disposition of the proceedings.

The Legal Requirements

[12] Part 34 of the CPR contains four provisions that are reproduced *in toto* as follows:

“34.1(1) this Part enables a party to obtain from the other party information about any matter which is in dispute in the proceedings.

(2) To obtain the information referred to in sub-rule (1), the party must serve on the other party a request specifying the information sought.

34.2 (1) Where a party does not within a reasonable time provide information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party 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 to

- (a) the likely benefit which will result if the information is provided;
- (b) the likely costs of providing 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.

34.3 A party may use any information which that party obtains

- (a) in response to a request under rule 34.1; or
- (b) in compliance with an order under rule 34.2,

only for the purpose of proceedings in which the request or order was made.

34.4 Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.12”.

[13] The Kodilinye’s explain that requests for information under Rule 34.1:

“....are used for four main purposes:

- (a) to obtain clarification of points raised in an opponent’s statement of case;
- (b) to seek information about any matter in dispute, whether or not raised in a statement of case, including facts that

might be expected to be contained in the witness statements; and

- (c) to narrow the area of dispute between the parties and avoid surprises; and
- (d) on the court's own initiative, to ascertain material facts or to find out information for case management purposes".

(See Gilbert and Vanessa Kodilinye, "Commonwealth Caribbean Civil Procedure", 4th ed., 2017 at page 170).

[14] The Claimant satisfied Rule 34.1(2) by forwarding a written request for information to counsel for the Defendants. That correspondence is dated 11 July 2017, and states that:

"Re: CV0278/2017 Shane Best t/a Best Effects v. The Euphoric Events Company Limited *et al* Request for Information under Part 34 [CPR]

The matter at caption refers.

Please provide the following information for the [First Defendant].

1. Account information relating to **all** bank accounts held in the name of the [First Defendant]:
 - a. Name of bank and branch location; and
 - b. Number of accounts held, account numbers and status of account (s).
2. Monthly statements for **all** bank accounts held by the [First Defendant] for the

period of January 1, 2015 to December 31, 2015; and

3. Monthly statements for **all** bank accounts held by the [First Defendant] for the period of January 1, 2016 to December 31, 2016.

This is a request for information only. The information requested should be provided within 28 days of the date of this letter”.

- [15] Counsel for the Defendants declined to provide the information on the basis that the request was premature. In a letter dated 12 July 2017, counsel for the Claimant was advised that:

“[The Defendants] have not admitted any debt to [the Claimant]. In any event, and generally speaking after a judgment is obtained it is the Court that is entitled to request financial information and to examine a debtor as to means”.

- [16] The Claimant has established the prerequisites to his Part 34 application. Although the notice of application makes no reference to Part 34, it was made abundantly clear, in the correspondence to the Defendants’ counsel, that the request for information was made pursuant to Part 34 of the CPR. (See para. [14] supra). Therefore, the omission in the Claimant’s application should not have confused or misled the Defendants.

- [17] This is not an application for discovery under Part 28 of the CPR. It follows that the Defendants cannot object to providing the information on the basis of

Rule 28.14. Their objections have to be grounded in Part 34. And in this regard the Court notes that the Defendants contend that the information required is not about a matter in dispute in the proceedings. They also submit that the information would not assist in the fair disposal of the claim or save costs. The Defendants have not argued that the financial resources of the First Defendant are likely to be insufficient to enable it to comply with a Part 34 order. In addition, the Defendants did not indicate to the Court the likely costs of providing the information requested.

[18] Despite the absence of some critical submissions from the Defendants, the Court must still exercise its discretion in this matter taking into consideration the relevant principles, such evidence as there is, and the submissions made on behalf of the parties.

A Matter In Dispute

[19] Rule 34.1(1) of the CPR requires that the information sought must be about any matter in dispute in the proceedings. The Defendants say that the financial statements of the First Defendant are not relevant to any dispute revealed by the statements of case. On the other hand, the Claimant perceives a direct relationship between the debt claimed and the information requested. In his view the information would reveal whether the First Defendant was ever in a position to pay the Claimant for his services.

[20] The learned editors of the White Book posit that:

“In most instances whether or not a matter is “in dispute” will be apparent only from a reading of the parties’ statements of case and, therefore, the disputed matter will be contained or referred to in a statement of case....The “matter” upon which clarification or additional information is sought, though described as a matter “in dispute”, need not be one on which there is a live disagreement between the parties, since on very many occasions parties are required to furnish information precisely for the purpose of discovering whether there is such disagreement”. (Civil Procedure”, Vol.1, 2016 at para. 18.1.2).

[21] What then are the matters in dispute in this case? The First Defendant has not denied that the Claimant provided the alleged services. The area of contention is what is due to the Claimant for his services. The First Defendant says that the Claimant submitted various invoices to it for different amounts of money. The Claimant was required to prove the amount of money due for his services. In the absence of an allegation by the Defendants that the Claimant’s services were provided gratis, the Defendants must be taken to have admitted a debt to the Claimant. What is being questioned is the amount of the debt.

[22] The First Defendant also claimed that it is unable to pay the debt, and that it has sought bankruptcy protection. There is no evidence before the Court that the First Defendant has been declared a bankrupt. Therefore, the amount of the debt, and the First Defendant’s ability to pay are relevant. In an affidavit

in reply filed on 12 April 2017, the Claimant produced an email, purportedly from the Second Defendant, in which the Second Defendant admitted receiving correspondence from the Claimant's counsel. Although the Second Defendant did not admit that the First Defendant owed the Claimant anything, the email spoke about the prospect of imminent future lucrative work coming the way of the First Defendant.

[23] It is the Defendants who raised the issue of the ability of the First Defendant to pay any sums due and owing to the Claimant. And the Claimant has also alleged that, prior to the event, the Second Defendant represented to him that the First Defendant had no money, but that the Claimant would be paid. The banking information requested by the Claimant would indicate whether or not the First Defendant can pay the Claimant whatever sum is adjudged to be owed to the Claimant. However, the Court agrees with counsel for the Defendants that that time has not yet come. Judgment has not yet been entered on behalf of the Claimant. There is no liability for the First Defendant to pay anything until such an order is made, and the amount of the debt determined.

[24] The Court is of the view that making the order sought at this time would not facilitate the expeditious or cost effective disposal of the case. The information sought would not clarify any issues between the parties, or cause the Court to enter judgment for the Claimant. It would be disproportionate to

order the First Defendant to provide the information requested at this stage of the proceedings. (See Sykes J in **Blair v. Allied Protection System and Services Ltd, (2006)** Sup. Ct. Ja, No. 361 of 2004; referred to by Kodilinye, supra. para. [13], at page 172, text to fn 5).

Disposal

[25] The application is dismissed and I will now hear the parties on costs.

Sonia L. Richards
Judge of the High Court