

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO HCV 2815/2004

BETWEEN	ALMIRA BLAIR	CLAIMANT
AND	ALLIED PROTECTION SYSTEMS	
	AND SERVICES LIMITED	FIRST DEFENDANT
AND	ALLIED PROTECTION SERVICES	SECOND DEFENDANT

IN CHAMBERS

Mr. Charles Piper instructed by Piper and Samuda for the claimant

Mr. Jeffrey Daley instructed by Blackridge Covington for the defendants

May 30, June 6 and June 16, 2006

**PART 34 OF THE CIVIL PROCEDURE RULES, REQUEST FOR FURTHER
INFORMATION, APPLICATION TO SET ASIDE DEFAULT JUDGMENT**

SYKES J

1. This matter came before me on an application by the second defendant to set aside a judgment in default of acknowledgment of claim form. The application was filed on March 9, 2005. On August 23, 2005, the claimant filed a forty five question request for further information. There is a preliminary point. Mr. Piper submitted that the defendant needed to answer the forty five questions before the application to set aside the judgment could be heard. This was necessary, he submitted, so that the court could focus on the issue between the parties. The issue was whether the judgment should be set aside and not the liability of the defendant. According to Mr. Piper, the answers to the questions would assist the court in determining the strength of the case for the defendant and if it had no reasonable prospect of success then the judgment should not be set aside. Mr. Piper also submitted that

the rule governing the request did not place any limitation on the procedure. The rule does not specify the time at which the request can be made. Therefore, said he, the person who makes the request is at large and can make it at any time.

2. Mr. Daley responded by taking us through the hills, valleys, knolls, vales and beyond of the old law relating to interrogatories and further and better particulars. According to Mr. Daley, the new provision for request for further information is the new nomenclature of what were known as interrogatories and further and better particulars. Therefore the learning there might be of assistance. He submitted that the practice under the old rules was not to order interrogatories or further and better particulars until the defence was filed and the matter was proceeding to trial. He said that the second defendant's has not been filed and to ask the company to answer the questions would be contrary to what is the intended purpose of request for further information, namely, to ferret out more information after the parties have pleaded their respective cases. He concluded by saying that the claimant's request was premature and ought not to be granted.

3. I begin with rule 1.1 (1) of the Civil Procedure Code ("CPR"), which tells us that the rules are "a new procedural code with the overriding objective of enabling the court to deal with cases justly". Dealing with cases justly includes saving expense and ensuring that the case is dealt with expeditiously. This means that when the court is managing the case, it considers any application in the context of the overriding objective as set out in rule 1 unless the rule under which the application is made has its own criteria for dealing with the application.

4. It is true that part 34 of the CPR (requests for information) does not restrict the time at which the request can be made but that does not mean that the lack of restriction means that the court will necessarily order that the questions are answered by this fact alone. It has to be shown how granting answering the questions at this very early stage of the proceedings furthers the aim of disposing of cases expeditiously and in a cost effective manner. Were I to order the defendant to answer these questions it would have the effect of imposing an additional cost on it without any apparent benefit. Additionally, if the defendant is successful in its

application then its defence and witness statements may well answer the questions asked. In other words it would be disproportionate to order the defendant to answer the questions at this stage of the proceedings. The application to set aside is supported by an affidavit. If the claimant wishes she can apply to cross examine the deponent. The preliminary point is decided in favour of the defendant.

