



[2023] JMSC Civ 157

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2020CV04392**

**BETWEEN                      DIANDRA BRAMWELL                      CLAIMANT/RESPONDENT**

**AND                              ANDRENE GIBSON                      DEFENDANT/APPLICANT**

**IN CHAMBERS**

**VIDEO CONFERENCE**

Miss Georgia Hamilton instructed by Georgia Hamilton & Co. appeared for the Applicant/Defendant.

Mr. Lemar Neale instructed by Nea/Lex appeared for the Claimant/Respondent.

**Heard: 19<sup>th</sup> and 28<sup>th</sup> July 2023**

**Civil Procedure – Specific Disclosure – Requirements for specific disclosure – Time for ordering Specific Disclosure - Whether the documents to be disclosed are directly relevant – Whether Specific Disclosure is necessary to dispose fairly of the claim or to save costs – Civil Procedure Rules 2002 (as amended) – CPR 1.1, 28, 34.1, 64.6 and 65.8 (3) – Defamation Act section 20(3) – General Consumption Tax Act sections 26 and 28**

**MASTER CARNEGIE (AG)**

[1] On the 28<sup>th</sup> day of July 2023, I delivered this judgment orally. Counsel for the Respondents requested leave to appeal and same was refused. Consequently, on request of Counsel that I provide my notes, I have decided to reduce my oral judgment to writing.

**BACKGROUND**

[2] The Application at bar arose out of a Claim filed on November 13, 2020, by the Claimant (hereinafter referred to as the Respondent) to recover damages for defamation for various statements made by the Defendant (hereinafter referred to

as the Applicant). Paragraph 6 of the Particulars of Claim reflect that on September 24<sup>th</sup> 2020, the Defendant published or caused to be published via email to all the members of The Proprietors Strata Plan No. 2875, words which are false and defamatory. The Particulars of Claim highlighted the words considered false and defamatory in the email. Excerpts of the email and Particulars are reflected below–

*EMAIL*

*“Proprietors,*

*... In our phone conversation you said you were upset because my AC was on all weekend. MY A/C CAN BE ON EVERY DAY OF THE YEAR, ALL DAY IF I CHOOSE. **When I signed my mortgage there was no clause saying I would be under the finger of an English immigrant and a deceitful lawyer...**”*

*PARTICULARS OF CLAIM*

*8. The said words were referred, referable and were understood to refer to the Claimant.*

*9. Further or alternatively, the said words bore and were understood to bear the meaning pleaded at Paragraph 6 above by way of innuendo as all members of The Proprietors, Strata Plan No 2785 to whom the said words were published would have, and in fact, understood the words complained of to bear the meanings set out herein.*

*10. The said words were calculated to disparage the Claimant in her profession as an Attorney-at-law, and as a member of the Jamaican Bar Association. The intended effect of the publication was to lower the Claimant in the estimation of right-thinking members of society generally or to expose her to public odium, contempt and ridicule.”*

**[3]** Consequently, the Respondent claims:

1. General Damages;
2. Aggravated and/or Exemplary Damages;
3. Interest at 1% above the commercial bank’s lending rate pursuant to Section 3 of the **Law Reform (Miscellaneous Provisions) Act**;
4. Costs; and
5. Such further or other relief as the Court considers necessary or appropriate.

**[4]** The Defence includes the paragraphs reflected below –

*“ ...*

*7. In respect of paragraph 7, the Defendant will say the statement complained of meant the Claimant has been the Defendant will say that the statement complained of meant the Claimant has been known to her to mislead and be deceptive in their dealings during their attorney/client relationship and in her role as the Secretary of the Strata Committee.*

8. If which is not admitted the statement further meant the meanings alleged at paragraph 7 of the Particulars of Claim, the Defendant will say that the said words are not materially different from the truth.

9. In its natural and ordinary meaning as set out in paragraph 7 hereof, the statement is substantially true and/or not materially different from the truth and if any of the words in the Defendant's statement are not proven to be true such words do not materially injure the Claimant's reputation having regard to the truth of the remaining portions of the Defendant's statement.

**Particulars of Mistaken/Misleading Impression Given by the Claimant to the Defendant and which were later discovered by the Defendant to be misleading or untrue**

...

b. Mis/representing as at 3 July 2019 and again on 18 September 2019 that she had jurisdiction to waive GCT charges due on legal fees payable to her on account of representing the Defendant's interests in the said transactions;

...

10. In respect of paragraphs 8, 9 and 10 of the Particulars of Claim, paragraphs 7, 8 and 9 of this Defence are repeated.

11. If necessary, in response to this claim, the Defendant will rely on section 20(3) of the Defamation Act, 2013.

## PROCEDURAL HISTORY

[5]The procedural history of the Claim thus far –

1. The Defence was filed June 15<sup>th</sup> 2021;
2. A Reply to the Defence was filed on June 29<sup>th</sup> 2021.
3. Report of Mediation filed March 29<sup>th</sup> 2022, indicating that Mediation was unsuccessful.
4. A Case Management Conference was set for May 29<sup>th</sup> 2023, where on said date the matter was adjourned to July 19<sup>th</sup> 2023, with a notation that the Application for Court Orders filed May 4<sup>th</sup> 2023 to be served on the Respondent.
5. An Amended Notice of Application for Court Orders of the Application for Court Orders filed May 4<sup>th</sup> 2023 was filed on July 4, 2023, which reflected the following orders sought by the Applicant -
  - (a) That the Respondent make a specific disclosure of the General Consumption Tax (GCT) number for the Claimant as at 3<sup>rd</sup> July 2019 and 18<sup>th</sup> September 2019 and the date the Claimant was registered as a GCT paying person; and disclosure and inspection of the Claimant's GCT Certificate of Registration covering the period 3<sup>rd</sup>

July 2019 to 18<sup>th</sup> September 2019 and Claimant's GCT return for that period.

- (b) The proceedings herein stayed pending the hearing of the Notice of Application for Court Orders and the Respondent's compliance with any orders made herein for specific disclosure and inspection.
- (c) That the time for hearing of this Notice of Application be abridged
- (d) That costs herein and costs associated with this Application be awarded to the Defendant.
- (e) That there be such further and/or other relief as this Honourable Court deems just.

**[6]** The grounds on which the Applicant seeks the foregoing orders are –

- i. On the 1<sup>st</sup> of February 2022, the Defendant served the Claimant with a Request for Information & Disclosure dated 1<sup>st</sup> February 2022 seeking confirmation of the Claimant's GCT registration and compliance for the period of July 2019 to September 2019 during which the Claimant represented the Defendant in the purchase of a property which is relevant to the subject matter of this claim.
- ii. That the Claimant has failed/or refused to disclose and or provide the requested documents and information, and the Defendant verily believes that this information is critical to the question of whether the Claimant misrepresented herself as GCT compliant at the material time, thus substantiating the Defendant's defence of truth;
- iii. The Defendant is unable to obtain the requested information from the Respondent without Court's intervention and has no other means of obtaining the requested information;
- iv. The Defendant is of the view that the disclosure of the said documents is necessary in order to fairly dispose of the claim herein and/or save judicial costs, as the information therein is crucial to substantiating the Defence filed therein.
- v. The granting of the orders herein will enable the Court to deal with the matter expeditiously and fairly and is in keeping with the overriding objectives of this Honourable Court; and
- vi. The granting of the orders herein is in the interests of justice.

[7] The Respondent's submission in response to the Application was filed July 18<sup>th</sup> 2023.

## **SUBMISSIONS**

[8] The submissions made on behalf of the Parties both oral and written are summarised accordingly.

### **The Applicant**

[9] The Applicant is asserting that, among other things, when the term "deceitful lawyer" was used the Applicant meant to convey that during her course of dealings, with the Respondent, the Respondent has been known to mislead and be deceptive. Counsel asserted that such, started when the Respondent represented the Applicant in the purchase of a unit in PSP 2875.

[10] The submission on behalf of the Applicant was that one of the ways the Respondent misled the Applicant during their dealings while she represented her as an attorney-at-law, was by holding out herself as someone who deals with GCT. Counsel's submission was that this was not so and that the Respondent misled the Applicant into thinking she had waived GCT charges reflected on her invoices. Counsel relied on exhibits which indicated that there was a fifty per cent (50%) mark down on the transaction for the unit in PSP 2875.

[11] It was further advanced by Counsel that the Respondent's Reply to the Defence filed is to assert that at no time did she give the impression that she had the authority to waive GCT, and that no GCT was charged to the Applicant. Counsel submitted that on the 1<sup>st</sup> of February 2022, the Applicant served a Request for Information on the Respondent, in respect of the Respondent's GCT status. To date the Respondent has not acted on the Request for Information.

[12] Counsel drew reference to CPR 11.3(1) which states –

*"So far as is practicable all applications relating to pending proceedings must be listed for hearing at the at case management conference or pre-trial review."*

[13] Counsel relied on CPR 28.6 and 28.7 in support of the grounds for orders for specific disclosure and case law. In support, Counsel for the Applicant relied on the decisions of **Jamaica Association of Composers Authors & Publishers (JACAP) vs KLAS Sports Radio Limited** [2021] JMSC Civ 112 –

*“Disclosure is the proceedings by which one party to an action must disclose to the other party, by means of a list, the existence of all documents which are or have been in his control and which are directly relevant to one or more of the issues that arise for the court’s determination.”*

### **Whether disclosure is directly relevant to one or more issues joined between the Parties**

[14] In support of the issue of whether the documents sought on disclosure are directly relevant, Counsel relied on **Miguel Gonzales & Anor v Leroy Edwards** [2017] JMCA Civ 5 where the meaning of ‘directly relevant’ in the context of the CPR was expressed by F Williams, JA in the following way –

*“[22] By these provisions, a prerequisite for disclosure is a finding that a document is, not just relevant in the usual layman’s sense, but “directly relevant” within the meaning of the rule. The rule uses the phrase “only of” in delimiting the matters to be considered in deciding whether a document satisfies the definition. This means that a finding that a document is directly relevant can only be made in the three circumstances outlined in the rule.”*

[15] Counsel advanced that in the case of **Attorney General of Jamaica v BRL Limited & Anor** [2021] JMCA Civ 14, McDonald Bishop JA endorsed the dicta in **Miguel Gonzales** (supra) and said –

*“[103] The fact that the documents “may” be relevant, or merely relate to an issue in dispute is not sufficient to render them specifically disclosable within the ambit of the CPR; they must be ‘directly relevant’ as defined in the CPR...”*

[16] Further submissions advanced by Counsel was that the Parties met as lawyer and client. During that lawyer-client association, a series of invoices was issued to the Respondent starting July 3<sup>rd</sup> 2019 where two (2) invoices were issued which reflected Attorney’s fees inclusive of GCT of 16.5% and after calculations of the Respondent’s fee and entry for 50% mark down less GCT. It was submitted that on the last invoice, in the series of invoices dated September 18<sup>th</sup> 2019, the Respondent purportedly discounted her fees by 57% to include a waiver of the amounts the Respondent always calculated as representing GCT.

[17] Counsel submitted that the Applicant has alleged that the Respondent misled her by issuing these series of invoices giving the impression that she was a GCT collecting person and she could waive/discount GCT. Further the impression was conveyed that the Respondent was affording the Applicant a whopping discount. The Applicant's position is that because of the repetitive statements, she came to the belief that the Respondent had been deceiving and misleading in her dealings as counsel. It was submitted that the Respondent has not denied issuing any of the invoices nor has she challenged their authenticity.

[18] Counsel further submitted that one of the issues for the Court will be to determine the status of the Claimant as a GCT collecting person, as well as her invoices which set out clear references to GCT and GCT calculations. It was advanced by Counsel that in this context a power to waive or to "offer discount" must first be accompanied by a right or entitlement to deal with or collect GCT. The starting point, Counsel submitted, must therefore be the Respondent's status as a GCT collecting person as at the date that the said invoices were issued.

**Whether these documents are or have been in the Claimant's possession or control**

[19] On this submission, Counsel advanced that only persons duly registered to collect GCT can make such a representation of having the power to waive GCT. Having the power to waive GCT, Counsel submitted, should come with the power to collect GCT.

[20] Counsel in support of this submission placed reliance on **General Consumption Tax Act** ("GCT Act") sections 26 and 28, which provide for the obligation of GCT collecting persons and whether they are registered voluntary or by imposition. In both situations Counsel advanced that persons are issued with a certificate which must be displayed. It is a requirement under the GCT Act that the Respondent must make these things known. The issue of the representation on the invoice is what was her status at the time under the GCT regime.

[21] Counsel submitted that the Applicant cannot think of any costs outside of costs of photocopying that would attach to the Respondent's need to comply with this order for specific disclosure.

**Whether an order for specific disclosure is necessary in order to dispose fairly of the Claim or to save costs.**

[22] Counsel advanced that the order for specific disclosure would assist in resolving the issue as to whether the Respondent's representations in respect of her aforementioned invoices amounted to the Applicant being misled or deceived. Counsel further advanced that the court will be assisted in the just disposal of the proceedings as to the Respondent's true status as it relates to the matter of GCT and, as a corollary, the import of the extensive GCT references in said invoices.

[23] In closing this point, Counsel submitted that disclosure may assist both sides in assessing the strength of their respective positions on this issue. Further, it was submitted that Counsel for the Respondent's submission that her GCT status was irrelevant is a circular argument because the Particulars of Claim reflects that the Respondent is an attorney and the information requested is relevant and beneficial as part of the Defence and cannot be resisted.

**Is it the right time for this Application?**

[24] In support of the argument by Counsel that the timing of the Application is not detrimental, Counsel submitted that in the case of **Dayman v Canyon Holdings Ltd.** [2006] 1 WLUK 59, the court had jurisdiction to make an order for specific disclosure at any time whether or not standard disclosure had taken place.

[25] In concluding her submissions Counsel advanced that given the directions in the Rules regarding the timing of these applications, the Case Management Conference is a proper forum for this application to be made. Specific Disclosure as at this time and ahead of the preparation of witness statements will likely save judicial time and costs.



## The Respondent

[26] Counsel for the Respondent advanced that the sole issue for determination is whether the documents requested by the Applicant are directly relevant to one or more matters in the proceedings. In support of their position, Counsel placed reliance on CPR 28 more specifically 28.1(4); 28.6(5) and 28.7 and case law in respect of said Civil Procedure Rules as highlighted below.

[27] Counsel relied on Court of Appeal decision in **Miguel Gonzales** (supra) and **Attorney General of Jamaica v BRL Limited & Anor** (supra) as to the meaning of the term “directly relevant”.

[28] Counsel further relied on the case of **African Strategic Investment (Holdings) Limited, Randgold and Exploration Company Limited v Christopher Paul McDonald Main** [2012] EWHC 4423 (Ch), where Mr. Livesy QC (sitting as a deputy judge of the Chancery Division) stated at paragraph 6 of the judgment –

*“Where a party makes an application for specific disclosure, the primary exercise for the court is to identify the factual issues that would arise for decision at the trial in accordance with an analysis of the pleadings. An order for disclosure should be limited to documents which are relevant to the pleaded issues.”*

[29] Counsel further submitted that, the case of **African Strategic Investment** (supra) was affirmed by the English Court of Appeal in **Harrods Limited v Times Newspaper Limited** [2006] EWCA Civ 294 where Chadwick LJ had this to say –

*“In my view the judge was plainly correct to approach the application for further disclosure on the basis that it was essential, first to identify the factual issues that would arise for decision at the trial. Disclosure must be limited to documents relevant to those issues. And, in seeking to identify the factual issues which would arise for decision at the trial, the judge was plainly correct to analyse the pleadings. The purpose of the pleadings is to identify those factual issues which are in dispute and in relation to which evidence can properly be adduced. It is necessary, therefore, to have in mind the issues as they emerge from the pleadings and are relevant in the present context.”*

[30] Counsel for the Respondent adopted the view that the threshold in Part 28 of the Jamaican CPR is not as wide as the UK. The UK requires “relevance” while Jamaica requires that the documents be “directly relevant.” In support of this submission Counsel relied on the words of McDonald-Bishop JA in **Attorney General of Jamaica v BRL Limited & Anor** (supra) where she stated –

*“[109] Even if the documents were directly relevant within the legal sense of that term, that would not have been the end of the enquiry. The CPR makes it clear that a finding that documents are directly relevant does not end the enquiry as to whether an order for specific disclosure should be made. The matters stated in rule 28.7 must also be considered. Those matters involve a consideration of the benefits to be derived from disclosure. This rule embodies the concept of proportionality, which is comprised, in part, in the overriding objective. There is no real benefit to be gained from the disclosure of these documents in respect of time, costs and resources.”*

**[31]** The submission by Counsel was that the Applicant is attempting to justify her reference to the Respondent as a deceitful lawyer by saying that the Respondent misrepresented to her that she had jurisdiction to waive GCT charges due on fees and the case is not about GCT.

**[32]** Counsel’s further submission was that the court has to look at the entire email to see the context in which the Respondent used the offending words. The offending words, Counsel advanced, was in the context of a dispute within the strata and the alleged deception in relation to the dispute surrounding the use of the Defendant’s apartment.

**[33]** Counsel asked the question, during his submissions, how can the Respondent saying that she can waive GCT is deceptive as it would be a benefit to the Applicant. Counsel stated that based on the Defence, the issues for resolution at trial are:

- a. Whether the words are capable of bearing defamatory meaning.
- b. If the answer to a. is in the affirmative whether the words are in fact defamatory.
- c. Whether the words were published on an occasion of qualified privilege.
- d. Whether the words are substantially true.

**[34]** Counsel asserted that the documents being requested are not directly relevant to the disposal of any of the above issues, which is borne out by the fact that the context in which deception is used in the first paragraph of the email, has nothing to do with GCT. Counsel’s stance was that it therefore means that the Applicant must have been prepared to prove the offending words at trial without the documents being sought.

[35] In concluding, Counsel drew further reference to McDonald-Bishop JA in **Attorney General of Jamaica v BRL Limited & Anor** (supra) which he indicated is apt that the fact that the documents “may” be relevant, or “merely related” to an issue in dispute is not sufficient to render them specifically disclosable within the ambit of the CPR. Counsel continued by highlighting that there is no real benefit to be derived from the disclosure sought and that the disclosure sought is not proportionate in keeping with the overriding objective. It is for the reasons outlined in Counsel’s submission that Counsel submitted that the Application should be dismissed.

## ISSUES FOR DETERMINATION

[36] The issues which fall to be determined in the Application at bar are –

- (i) The time for making an application for orders for Specific Disclosure
- (ii) Whether the documents requested for Specific Disclosure are directly relevant to the substantive claim.
- (iii) Whether the Disclosure is necessary to dispose fairly of the claim or to save cost.

## LAW AND ANALYSIS

### The time making an Application for Orders Specific Disclosure

[37] The Claim is at the stage of pleadings where parties are obliged to seek information which would help to determine issues at an early stage. This Application at bar is no different as the parties are at the stage of Case Management Conference. The parties being able to ventilate matters at an early stage furthers the overriding objective and both parties must be given an opportunity to ventilate the issues (see: CPR 28.7(1)).

[38] In **Blackstone’s Civil Practice 2022, 22<sup>nd</sup> Edition p. 996**, it was discussed by the authors that –

*“A party who wishes to obtain copies of particular documents which are believed to be in the custody of another party may make an application for specific disclosure under **CPR, r. 31.12 and PD 31A, para. 5.1**. Applications for specific disclosure are most frequently made after standard disclosure has been given, and the disclosed documents have been inspected. There is no restriction in this respect, and the court also has jurisdiction to order specific*

*disclosure before standard disclosure has taken place (Dayman v Canyon Holdings Ltd. [2006] 1 WLUK 59. An early application may not accord with the overriding objective, particularly if its effect is to increase costs. Until an issue is pleaded specific disclosure will not be ordered (Taranissi v British Broadcasting Corporation [2008] EWHC 2486 (QB))."*

**[39]** Therefore, from the authority as stated above, it is clear that there is no restriction in the court making an order for specific disclosure before an order for standard disclosure, save and except such order will not be made before an issue is pleaded. In the application before me, pleadings have been made as evidenced by the Defence and the Reply to same.

Whether the documents requested for Specific Disclosure are directly relevant to the Substantive Claim.

**[40]** It is to be noted that the cases relied on by both parties in their respective submissions as to the definition of directly relevant is common to both parties and the court adopts the cases relied on in their submissions on this point.

**[41]** The starting point of whether or not to make an order for specific disclosure is CPR 34.1 and 28, the relevant portions of which are reflected below –

*"34.2 (1) Where a party does not give information which another party has requested under rule 34.1 within a reasonable time, 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 given;*
- (b) the likely cost of giving it; and a*
- (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 the order.*

*"28.1 ---- (4) For the purposes of this Part a document is "directly relevant" only if –*

- (a) the party with control of the document intends to rely on it;*
- (b) it tends to adversely affect that party's case; or*
- (c) it tends to support another party's case.*

*28.2 Duty of Disclosure limited to documents which are or have been in party's control*

*(1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.*

*(2) For this purpose a party has or has had control of a document if –*

- (a) it is or was in the physical possession of that party;*
- (b) that party has or has had a right to possession of it; or*
- (c) that party has or has had a right to inspect to take copies of it. ---*

*28.6(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.*

*28.7 (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.*

- (2) It must have regard to –*
  - (a) the likely benefits of specific disclosure;*
  - (b) the likely costs of specific disclosure; and*
  - (c) Whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.*

*(3) Where, having regard to paragraph (2)(c) the court would otherwise refuse to make an order for specific disclosure, it may however make such an order on terms that the party seeking that order must pay the other party's costs of such disclosure in any event.*

**[42]** The gravamen is that for an order for specific disclosure to be made such must be considered against the circumstances of each case and whether the criteria under CPR 28 have been met.

**[43]** In this regard, **Winfield & Jolowicz Tort, 20<sup>th</sup> Edition p. 342**, provides that in cases involving the tort of Defamation, the elements of a cause of action are:

- (i) a defamatory statement that –
  - (a) refers to the claimant;
  - (b) that is published (i.e., communicated to at least one person other than the claimant); and
  - (c) That causes damage to the claimant.
- (ii) the Claimant must also be a type of person who can bring proceedings in defamation.

**[44]** Consideration as to whether specific disclosure of the documents should be ordered in respect of the Application at bar has to be in the context of the cause of action. I say this to say that Counsel for the Respondent argued that it is a consideration for the Respondent as to whether the documents are directly relevant in the proceedings having regard to the context of the communication which contains the words subject of the Claim. This submission was made having regard

to what Counsel for the Respondent states is that the cause of action is one of Defamation not one involving GCT and the context is one which is in the context of a dispute within the strata. While I agree that the Claim filed may not be about GCT, the Defendant's pleadings reflect the intention, if necessary, to rely on the Defence of truth, having regard to the what the pleadings indicate, is the Claimant misrepresenting her ability to waive GCT, thereby rendering the case as one involving GCT.

[45] In Jamaica, the law of Defamation is governed by the **Defamation Act** (the Act). Part V of the Act provides for defences under the Act for a claim brought for defamation. One such defence under the Act is the Defence of Truth (previously known as the defence of justification) under Section 20. The relevant section is section 20(3) of the Act which provides –

*“20.(1) ---*

*(3) In proceedings for Defamation, a defence of truth shall succeed if –*

*(a) the defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or*

*(b) where the proceedings are based on all or any of the matter contained in the publication, the defendant proves that the publication taken as a whole was in substance true, or was in substance not materially different from the truth, if the words not proven to be true do not materially injure the claimants' reputation having regard to the truth of the remaining imputations.”*

[46] Reflected in Counsel for the Respondent's pleadings is that in their natural ordinary meaning, the underlined words as published or caused to be published by the Defendant bore and were capable of bearing the following meaning –

- (a) The Respondent was deceitful;
- (b) Practises law in a deceitful manner unethical and improper; and
- (c) The Claimant practices law in a manner that has brought the legal profession of which she is a member into disrepute...

[47] The Particulars of Claim reflects that the Respondent is an Attorney-at-law and as part of the Applicant's Defence, it is reflected that the Respondent misrepresented that she could waive GCT Act.

[48] While I note the submissions made on behalf of the Respondent in respect of the defence of privilege, the Applicant's pleadings reflect the intention to rely on the defence of truth if necessary. Included in the Applicant's submissions was the requirement to be registered under the GCT Act. The sections referred to by Counsel for the Applicant are set out accordingly –

*“26. – (1) Where a person carries on a taxable activity and the gross value of the person's total supplies is not less than the values specified in Regulation 2(3) and (4) of the General Consumption Tax Regulations 1991, such person shall apply to the Commissioner General to be registered as a registered taxpayer.*

*(2) Where a person carries on a taxable activity and the gross value of the persons supplies is less than the value specified in Regulations 2(3) and (4) of the General Consumption Tax Regulations 1991, such persons may apply to the Commission General to be registered as a registered tax payer.*

*(3) Where a taxable activity is carried on by two or more persons as a partnership, the application shall be made to the Commission General for registration of the partnership under this Act.*

*(4) An application made under subsection (1) shall be made within 21 days after the attainment of the threshold specified in Regulations 2(3) and (4) of the General Consumption Tax Regulations, 1991, so however that the circumstances so warrant extend the time specified in this subsection –*

*(a) on receipt of an application under section 26(1) the Commissioner General shall register the applicant as a registered tax payer if the Commissioner General is satisfied that –*

*(i) in the month of application and the eleven months immediately preceding the month of application, the gross value of the applicant's supplies is not less than the value specified in regulation 2(3) of the GCT Regulations 1991;*

*(ii) in respect of a period of less than twelve months immediately preceding the date of the application, the average, monthly value of the applicant's gross supplies is not less than the value specified in regulation 2(4) of the GCT.*

*(iii) the applicant is a manufacturer of prescribed goods;*

*(b) under 26(2), the Commissioner General may register the applicant, as a registered tax payer.*

*28. – (1) Where the Commissioner General has reason to believe that a person who is liable to be registered under this Act is not so registered, the Commissioner General shall register that person and the provisions of section 27(2) shall apply mutatis mutanda to registration under this section.*

*(2) Where pursuant to subsection (1), the Commissioner General registers a person, the date of that person's registration shall be the date on which the gross value of supplies made by that person was equivalent to the amount respectively specified in regulations 2(3) or (4) of the General Consumption Tax Regulations, 1991.*

*(3) Where the Commissioner General registers a person pursuant to subsection (1), the person may, in accordance with section 40(1), object to the decision of the Commissioner General.”*

[49] The amendments to the GCT Act in 2020, did not remove the requirement of persons who fall within the threshold to be registered under the GCT Act.

[50] The submissions made on behalf of the Applicant was that she seeks to prove the truth of her statement in the publication as to whether the Respondent is registered as per the Sections 26 and 28 of the GCT Act. In this regard, though the substantive claim may not be about GCT, I have determined that the order for specific disclosure (save and except for GCT returns) is directly relevant and falls within the meaning of CPR 28.1(4)(b) and (c) (see: **Attorney General v BRL Limited and Village Resorts Limited** (supra)). The documents (save for the GCT returns) are directly relevant to the pleadings of the defence of truth, given that the Applicant has drawn reference to the Respondent's representation as to her ability to waive GCT.

Whether the Disclosure is necessary to dispose fairly of the claim or to save cost

[51] In the circumstances, I have determined that the order for specific disclosure is necessary to fairly dispose of the case and to save costs (see: **Miguel Gonzales** supra)). The Claim is at the stage of pleadings where the parties are obliged to seek information which would help to determine issues at an early stage. The parties being able to ventilate matters at an early stage furthers the overriding objective and both parties must be given an opportunity to ventilate the issues (see: CPR 28.7(1) and (2)).

[52] I should emphasize that at this interlocutory stage my role is not to conduct a trial. However, paramount in any determination is for the court to further the overriding objective as reflected in CPR 1.1. As part of the case management powers, it is my duty to ensure that furthering the overriding objective includes, inter-alia, that justice is being done between parties. This includes that the parties are put on equal footing, saving expense, and to facilitate the claims being dealt with expeditiously and fairly and allotting to it an appropriate share of the court resources, while taking into account the need to allot resources to other cases. In this regard, I agree with Counsel for the Applicant that allowing for the specific disclosure would put the parties in position to determine the strength of each other's case.



[53] Further, having regard to the requirement of the GCT Act, for GCT registration to be displayed would not require the exertion of financial resources in obtaining same. Therefore, the documents identified for specific disclosure are documents that would not be financially onerous for the Respondent to provide in the circumstances.

[54] Additionally, the Parties being aware of each other's case would allow for a just and efficient disposal of the matter to save cost (see: **First Global Bank Limited v Rohan Rose & Anor** (unreported) Claim Nos. 2010CD00046 and 2011CD00015 delivered the 19<sup>th</sup> of August 2011 where the Supreme Court of Jamaica highlighted that orders for specific disclosure are limited to documents that disclosure would be necessary for the case to be disposed of fairly and to save costs).

## **COSTS**

[55] Both parties were given an opportunity to make oral submissions in respect of Costs which have been summarized accordingly.

[56] Counsel for the Applicant argued that Costs should be awarded to the Applicant having regard to the fact that a request for information was made prior to the filing of the Defence which was not acted on by the Respondent. Counsel submitted that the Notice of Application for Court Orders (the application at bar) was made because of the failure of the Respondent to act on same. It was Counsel for Applicant's further submission that both Counsel made submissions and argued vigorously in respect of the Application at bar. Finally, by virtue of the Applicant being granted the Orders for Specific Disclosure, Costs usually follows the event and therefore on those grounds Costs should be awarded to Applicant.

[57] Counsel for the Respondent submitted that it is the court's discretion as to whether to award costs. However, Counsel submitted that the subject Application is being heard prior to the Case Management Conference where orders for disclosure are usually made, the Application for Specific Disclosure could be made at that time. Counsel argued that the Notice of Application being heard outside of the scheduled

Case Management Conference for the making of such orders indicate that no costs should be awarded to the Applicant.

**[58]** In response to the submissions by both Counsel, I rely on CPR 64.6(1) which provides –

*“64.6(1) If the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.*

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CPR 65.8(3)(a) is applied in conjunction with CPR 64.6(1). CPR 65.8(3) provides that –

*“65.8(3) The court must however take account of all the circumstances including the factors set out in rule 64.6(4) but where the application is –*

- (a) One that could reasonably have been made at a case management conference or pre-trial review;*
- (b) To extend the time specified for doing any act under these Rules or an order or direction of the court;*
- (c) Amend the statement of case; or*
- (d) For relief under 26.8 (relief from sanctions),*

*the court must order the applicant to pay the costs of the respondent unless there are special circumstances.*

**[59]** I have determined that costs are to be awarded to the Applicant having regard to the circumstances (see: CPR 64.6(1) and (3)). Further, I have determined same having regard to Counsel’s submission that the request for information was made prior to the scheduled Case Management Conference which was not acted upon and as per CPR 64.6(1). Consideration must be given to the fact that the date given for the hearing of the Application was assigned by the court. Having regard to the authorities cited above, there is no bar in respect of the request for specific disclosure prior to standard disclosure being made. I see no reason therefore to depart from the general rule as set out in CPR 64.6.

## **CONCLUSION**

**[60]** Consequently, I have determined in the circumstances that specific disclosure of the documents reflected in the Amended Notice filed should be allowed, save and except disclosure on returns as same would not be directly relevant to the ability to waive GCT. I make the following orders therefore –

1. Specific disclosure is granted in respect of the GCT number for the Claimant as at 3 July 2019 and 18 September 2019, the date the Claimant

was registered as a GCT paying person; and disclosure and inspection of the Claimant's GCT Certificate of Registration covering the period 3 July 2019 to 18 September 2019.

2. CMC adjourned to December 7<sup>th</sup> 2023
3. Time for specific disclosure of the documents referred in order no 1 of this order is on or before September 29<sup>th</sup> 2023 and inspection of same shall take place on or before October 13<sup>th</sup> 2023;
4. Leave to appeal is refused;
5. That costs herein and costs associated with this Application be awarded to the Applicant/Defendant to be taxed; and
6. Applicant/Defendant's attorney-at-law to prepare, file and serve orders herein.