



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

**IN THE COMMERCIAL DIVISION**

**CLAIM NO. SU2022CD00558**

<b>BETWEEN</b>	<b>JADE SHERLENE CAMELA CAMPBELL</b>	<b>CLAIMANT/ 2<sup>ND</sup> ANCILLARY DEFENDANT</b>
<b>AND</b>	<b>JAMAICA MONEY MARKET BROKERS LIMITED</b>	<b>1<sup>ST</sup> DEFENDANT/ 1<sup>ST</sup> ANCILLARY DEFENDANT</b>
	<b>CAROL ALECIA CAMPBELL (Co-Administratrix estate Alfred Campbell deceased)</b>	<b>2<sup>ND</sup> DEFENDANT/ 1<sup>ST</sup> ANCILLARY CLAIMANT</b>
	<b>DONNA MARIE CAMPBELL (Co-Administratrix estate Alfred Campbell deceased)</b>	<b>3<sup>RD</sup> DEFENDANT/ 2<sup>ND</sup> ANCILLARY CLAIMANT</b>

**Civil Procedure- Application for security for costs – Whether dual residence- Whether Claimant ordinarily resident outside the jurisdiction- Whether there is a probability of the claim being stifled- Specific disclosure and request for information – Whether employee’s address confidential and not to be disclosed-Whether information requested is “directly relevant”.**

**Ingrid Lee Clarke Bennett, Renae Robinson and Jhade Lindsay instructed by Kingdom Chambers for the Claimant.**

**Symone Mayhew KC and Lesley-Ann Stewart instructed by Mayhew Law for the 1st Defendant.**

**Rachel Dibbs for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.**

**HEARD: 20<sup>th</sup> and 27<sup>th</sup> July 2023.**

**BY VIDEO CONFERENCE**

**COR: BATTS J**

- [1] The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants seek security for costs as well as orders consequent on two requests for information. One request was directed to the 1<sup>st</sup> Defendant and the other against the Claimant.
  
- [2] \$3,300,000 is the amount of security applied for in the Amended Notice of Application, filed on the 6<sup>th</sup> July 2023. The application is supported by a Further Affidavit of Urgency of Carol Campbell filed on the 6<sup>th</sup> July 2023. Paragraph 16 of that affidavit refers to the Particulars of Claim which state the Claimant's address as being in the United States of America. The affidavit points out that the Claimant made other filings in this matter which refer to a Jamaican address and that she has a dual residence. A draft Bill of Costs is exhibited.
  
- [3] The Claimant resists the application on several bases. She says she has ties to the jurisdiction as her mother and other relatives still live here. She also has bank accounts with sums which are not insignificant. She also says that an order for security for costs should not be made as she never intended to bring a claim against the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. They were joined at the instance of the Court. Therefore, she alleges, the costs of the claim are more than anticipated. The Claimant says she cannot afford to pay the amount asked as security for costs. She also says that there is other litigation involving the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants concerning the matrimonial home. Half of that property should also be counted as an asset of hers within the jurisdiction.

[4] In considering this matter I bear in mind that, as held in ***Cablemax Limited et al v Logic One Limited*** JM 2010 CA 8 per Morrison JA, the following factors ought to be considered,

- a) Whether the Claimant's case is bona fide and not a sham.
- b) The strength of the Claimant's case and its likelihood of success.
- c) Whether the Order for security for costs is being made oppressively and whether it could stifle a genuine claim.
- d) Whether the Claimant may be prevented from continuing the claim if the order for security for costs is made.
- e) The possibility of injustice if the Claimant is prevented from pursuing the claim against the possibility of injustice to the Defendant if no security is ordered because the Claim ultimately fails but the Defendant is unable to recover its costs.
- f) Considering the amount of security to order whether the full sum or only such as the court considers reasonable although not nominal ought to be ordered.

[5] Having considered the submissions (both written and oral) and the evidence, I am satisfied that the Claimant resides outside the jurisdiction. Although she has funds in her bank account these may be easily depleted or moved outside the jurisdiction. They provide no dependable hedge against costs. Her entitlement to the matrimonial home is a matter in issue and, on the evidence before me, I cannot treat it as property of the Claimant. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, being executors of the estate, are necessary parties to this claim because the issue is whether the money in the JMMB account falls within the estate or belongs to the Claimant. It would be unfortunate if the estate, having been successful, is forced to absorb the costs of this litigation. Therefore, it seems to me that, it is just and equitable that the Claimant be ordered

to provide security for the costs of the action. I will however not grant a full indemnity as I accept that the Claimant will be hard pressed to provide that

amount. I do not wish to unduly inhibit her pursuit of this claim which seems bona fide and cannot, at this stage, be said to be a sham. My order is therefore as follows:

*“That security in the amount of J\$800,000.00 be provided by way of a payment into Court in the name of this action to abide its result. The payment is to be made on or before the 25<sup>th</sup> October 2023 failing which the claim will stand dismissed”.*

[6] Insofar as the applications for Information and Specific Disclosure, against the 1<sup>st</sup> Defendant, are concerned objection was taken only to paragraph (e) of the Notice of Application filed on the 6<sup>th</sup> July 2023. The others with minor adjustments were unopposed. Mrs. Mayhew KC argued that an employee’s address and telephone number were confidential. Furthermore, as the First Defendant intended to call her as a witness it was unnecessary to grant disclosure. In my view confidentiality does not a privilege make. The question is whether it is relevant and it certainly is. The 1<sup>st</sup> Defendant has pleaded that this person was the one who interacted with the deceased. A major issue in this case is what instructions did the deceased give, in relation to accounts held jointly by himself and the Claimant who is his ex-wife and, whether the instructions were given effect by the 1<sup>st</sup> Defendant. It is therefore in the pursuit of their defence and counterclaim that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants wish to interview this person and issue a witness summons. There is no suggestion that she is in danger or otherwise prejudiced by the disclosure which will be for the purpose of this claim only. There is no property in a witness and the Defendants are entitled to enquire of her whereabouts just as they would be if the pleaded bit of evidence was an object or a video recording. Disclosure will therefore be ordered.

[7] For the reasons stated above my order, on the Amended Notice of Application filed on the 6<sup>th</sup> July 2022, is as follows:

*“The 1<sup>st</sup> Defendant shall preserve and disclose within 30 days of today’s date:*

*a) all video footage, if any, from on or around the 5<sup>th</sup> September,*

*2018 showing Mr. Alfred Campbell's attendance at its premises.*

- b) *All customer sign in registers, if any, for September 5, 2018 showing Mr. Alfred Campbell's attendance at its premises.*
- c) *All account access logs, if any, from the 1<sup>st</sup> Defendant's computer systems for September 5, 2018 showing Mr. Alfred Campbell's attendance at its premises.*
- d) *Monthly, quarterly, or annual bond settlement account statements for accounts numbered 5710374 and 5701593 for the period January 2016 to December 2019 created from the 1<sup>st</sup> Defendant's own bond reconciliation systems and those sent to bond holder Mr. Alfred Campbell as required by applicable legislation.*
- e) *Information on Nicole Henry Dewar such as her last known address and telephone number to enable the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' legal representative to interview her and/or issue a witness summons to her. Such information is to be retained and used solely for the purpose of this claim."*
- f) Copies of certificates and bond holdings being the ones relevant to the issues in this case and issued to Mr. Alfred Campbell or required to be issued.
- g) In the event paragraph (f) cannot be complied with, copies of all registers of bondholders redacted as necessary, showing the bonds relevant to this case issued to or in the name of Alfred Augustus Campbell or Alfred Campbell as required by law to be kept by security dealers, issuers of bonds under the Financial Services Act or such other governing legislation applicable to the 1<sup>st</sup> Defendant."

[8] The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants applied for further information from the Claimant by a Further Request for Information filed on the 15<sup>th</sup> September 2021 and a Request for Specific Disclosure filed on the 15<sup>th</sup> September 2021. These were issued pursuant

to guidance on the construction of the words “*directly relevant*” which appear in that section of the rules, see ***Attorney General v BRL Limited and Village Resorts Limited*** [2021] JMCA Civ 14. In that case McDonald Bishop JA at paragraph 103 of her judgment applied the case of ***Miguel Gonzales and Suzette Saunders v Leroy Edwards*** [2017] JMCA Civ 5, and stated:

*“[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 by the CPR. I endorse the view of the court as expressed by F Williams JA in Miguel Gonzales and Suzette Saunders v Leroy Edwards [2017] JMCA Civ 5 at paragraph [22], that:*

*“[22] ... [A] pre-requisite 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 if” 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.” (Emphasis supplied)”*

At paragraph 109 McDonald-Bishop JA further stated:

*“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.**” (My emphasis added)*

- [9] The Claimant objects to the disclosure orders on the basis that the Defendants may be utilizing this process to assist in their general administration of the estate. The orders they say should be restricted to matters related to this case. That I

accept. The Claimant is also rightly concerned about the multiplication of costs in a claim whose original purpose was limited. Relevance is determined primarily by possible probative value. The question therefore is, does the material impact in one way or another the issue in the case and does it do so directly. The credibility of a witness is usually an issue that arises. It is important to bear in mind that these rules are intended to save the costs and time of litigation. If therefore, during cross-examination, a witness could be asked to produce certain documents it is a good indication that they are directly relevant. Ordering disclosure at the pretrial stage will therefore save the cost and delay of producing them in the course of trial.

[10] With these considerations in mind my orders, in relation to the Request for Specific Disclosure and Further Information against the Claimant, are as follows:

*“The Claimant is to provide and/or disclose:*

- a. *The name, title and, authority of the person responding on its behalf to the Request for Information and Disclosure.*
- b. *The date of the sale of the two town houses, the purchase price and, the amount of that retained in the deceased’s account at JMMB # 5701593 as alleged.*
- c. *The date when the balance of the proceeds of sale of the two townhouses was wired to her as alleged by the Claimant.*
- d. *A list of the dates and receipts for all deposits, contributions or payments made by the Claimant into JMMB account #5701593 as alleged by the Claimant.*
- e. *All emails and correspondence between Mr. Alfred Campbell and the Claimant which directly relate to the account and the bonds in issue in this claim.*
- f. *All pre-nuptial agreements, if any, which directly relate to the account and the bonds in issue in this claim.*
- g. *Any and all powers of attorney, granted by Mr. Alfred Campbell to the Claimant, which directly relate to the account and the bonds in issue in this claim.”*

[11] In the final analysis the Civil Procedure Rules are designed to make the litigation process effective and efficient. Pre-trial disclosure provides an avenue by which, if correctly utilized, parties can save costs and time. The exercise of my discretion in this case is designed to achieve precisely that objective.

**David Batts**  
**Puisne Judge**