

JERSEY / JUDGMENT

C. I. Architects Ltd -v- Callaghan and Takilla Ltd [2016] JRC 178 (04 October 2016)

[2016] JRC 178

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judgment

THE MASTER:

Introduction

1. This judgment represents my decision in respect of an application for specific discovery brought by the plaintiff, which was heard on 12 th September, 2016. 2. The relief sought by the plaintiff's summons is as follows:- "1. The First Defendant shall within 7 days provide the Plaintiff with copies of the documents listed in Schedule 1 not disclosed in its List of Documents for discovery verified by affidavit filed on 21 March 2016 and provide a full and complete List of Documents verified by affidavit together with copies of any other documents enumerated but omitted from its original List of Documents;
2. The Plaintiff may within these proceedings make use an email sent to LWR Law by the First Defendant on 24 February 2016 @ 12.40 a copy of which is at Schedule 2;
3. The Second Defendant shall within 7 days provide the plaintiff with copies of the documents listed in Schedule 3 not disclosed in its List of Documents for discovery verified by affidavit filed on 21 March 2016 and provide a full and complete affidavit of discovery with copies of any other documents enumerated but omitted from its original List of Documents;
4. The Second Defendant shall include copies of the Takilla Company records including minutes of meetings, redacted as appropriate, and each Resolution of the Directors made in regard to the management of Eulah and the involvement of the Plaintiff." 3. In summary, the issues that emerged during argument concerned the following:- (i) Whether the plaintiff might make use of an email sent to its advocates by the first defendant on 24 th February, 2016; (ii) Whether the first and second defendants should be required to produce documents disclosed by the plaintiff but not disclosed by the first and second defendants; and (iii) Whether documents relating to the relationship between the first and second defendants in relation to the first and second defendants' dealings with the plaintiff should be disclosed. 4.

I also address later in this judgment the extent to which the third category of documents sought falls within the categories of documentation sought by the plaintiff. Factual background 5. The plaintiff's claim is for non-payment of invoices issued for work carried out in relation to a property known as 'Eulah' owned by the second defendant. 6. Up until November 2013 the second defendant was owned by the first defendant who was also a director. 7. Since November 2013 the second defendant has been owned by a discretionary trust of which the first defendant is a beneficiary. The reason for this change of ownership appears to be that the second defendant wished to borrow funds from Royal Bank of Canada (Channel Islands) Limited. By reference to a letter dated 17 th December, 2013, from Royal Bank of Canada (Channel Islands) Limited, it appeared to be a condition of the offer of a facility that the administration and directors of the second defendant were to be provided by "RBC". RBC while not defined appears to be a reference to entities within the RBC group within the Channel Islands. In any event I was informed that the trustee at all times has been RBC Trustees (CI) Limited and that the directors of the second defendant were provided by RBC Trust Company (International) Limited who also provided company administration services to the second defendant. 8. Paragraph 9 of the order of justice pleads as follows:- "That at all times the first defendant represented to the plaintiff that:- he was the ultimate beneficial owner of Eulah the property being owned by the second defendant; that the second defendant is beneficially owned by Eulah Trust of which he was settlor and a beneficiary; he was in a position of influence concerning second defendant; and that he was authorised to engage the plaintiff in relation to the work he instructed the plaintiff to prepare and provide." 9. Paragraph 27 of the order of justice pleads as follows:- "That at all times the first defendant and the second defendant led the plaintiff to believe that notwithstanding that the first plaintiff could not sign on behalf of the second defendant, the first defendant was in a position to manage the development and all other matters concerning Eulah as hitherto including giving instructions to the plaintiff, in particular as he was the person designated by the second defendant in accordance with the plaintiff's standard terms and conditions of business. At no time did the second defendant withdraw that authority to deal directly with the first defendant." 10. At paragraph 33 of the order of justice the allegation is made that the first defendant continued to represent to the plaintiff "...that he had ultimate control of the company and trust as hitherto". 11. The claims for unpaid fees were therefore made against the first and second defendants in the alternative. 12. Both defendants deny any contract was breached with the plaintiff in respect of the unpaid fees. In respect of this denial it is right to note that both defendants accept that the plaintiff was retained in relation to two other matters concerning Eulah by the second defendant which related to an application for change of use of Eulah and advice on whether or not to appeal the proposed listing of Eulah as a listed building. Both defendants argue that these matters were separate to the claim for unpaid fees which relates to a separate project to obtain planning consent to convert Eulah into a number of luxury apartments. This project has been referred to by the parties as the outline planning application ("OPA") which description I adopt. Both defendants deny that the plaintiff was ever retained in relation to the OPA. The allegations at paragraphs 9 and 27 are also denied by both defendants in their

respective answers; the allegation at paragraph 33, which is against the first defendant only is further denied by him. The applicable legal principles 13. There was no dispute between the parties on the applicable legal principles on a specific discovery application which are summarised in *Vilsmeier v AI Airports International Limited and PI International Limited*

- [2014] (1) JLR Note 26. 14. The first paragraph of the reported note contains the relevant test as follows:- "On an application for specific discovery, an applicant is required to show (a) a prima facie case that the defendant has, or has had, documents that have not been disclosed; (b) that the documents in question are relevant to matters in issue in the case- relevance is determined, primarily, by reference to the issues pleaded; and (c) that an order for specific discovery is necessary for disposing fairly of the case (*Victor Hanby Associates Ltd. v. Oliver* , 1990 JLR 337 , applied; *Trustcorp Ltd. v. Barclays Private Bank & Trust Ltd .*, 2007 JLR N [24], applied). Specific discovery should not be ordered where it is sought solely for cross-examination as to credit (*Thorpe v. Greater Manchester Police* (Chief Const.),
- [1989] 1 W. L. R. 665, applied)." 15. In relation to whether an order for specific discovery is necessary for disposing fairly of a case, in *Hard Rock Limited & Anor v HRCKY Limited*
- [2016] JRC 157 in a judgment handed down on 9 th September, 2016, at paragraph 13 what was meant by necessity was discussed as follows:- "Just because something may exist and may be relevant does not mean it is necessary to make a discovery order for the issues between the parties to be explored fairly at trial. Necessity can cover a number of factors including an evaluation of what steps are required to produce documents, how much material has to be reviewed and how relevant the category of documents sought is likely to be when set against the value and complexity of the claim." 16. The above extracts from *Vilsmeier* and *Hard Rock* are the approach I have taken in relation to the present application. I now turn to consider the individual categories of documents sought. The email of 24 th February, 2016, sent at 12:40 17. It is convenient to deal with this email first as it is a separate issue from the other applications for specific discovery. 18. What the application sought was permission to use an email sent by the first defendant to Mrs Alison Brown of LWR Law, an English solicitor employed by the plaintiff's legal adviser. This email followed an email from Mrs Brown sent on 24 th February, 2016, at 11am to Advocate Stephen Baker at Baker & Partners acting for the first defendant and Advocate Mark Boothman of Carey Olsen acting for the second defendant. The email was copied to the respective legal assistants employed by Carey Olsen involved in the case and Advocate Whittaker. 19. The email was forwarded to the first defendant by Advocate Baker at 11:48 leading to an email from the first defendant to Mrs Brown. The first defendant's email was sent at 12:40. It is this email the plaintiff now seeks to use. 20. At 12:45 Mrs Brown sent an email to Advocate Baker setting out that the email sent by the first defendant at 12:40 had been received in error. The email was sent to the plaintiff by Mrs Brown at 13:25. At 13:59 Advocate Baker asked by email that the email be deleted and at 14:02 Mrs Brown emailed Advocate Baker confirming that she would delete the first defendant's email. 21. By May 2016 the position

had changed and Messrs. Baker & Partners were informed that the plaintiff intended to make use of the email sent by the first defendant to Mrs Brown on 24 th February, 2016, at 12:40. While Mrs Brown as set out above on 24 th February at 12:45 indicated to Advocate Baker that the email received from the first defendant had been received in error, in an email sent on 5 th May, 2016, she explained that she had forwarded the email to Advocate Whittaker at 12:44 and a copy of the email was forwarded to the plaintiff at 13:25 on 24 th February, 2016, i.e. before Mrs Brown's email sent at 14:02 where she gave confirmation that she would delete the email received from the first defendant. 22. The parties were agreed that the relevant principles were governed by the decision in *Café de Lecq v Rossborough (Insurance) Brokers Limited*

[2011] JLR 182 . Advocate Whittaker in her skeleton argument helpfully summarised those principles as follows:- "It is the party giving discovery and inspection of documents who must decide which (if any) privileged documents to allow the other party to see; An advocate receiving and considering such documents made available by the other party owes no duty of care to that other party; he is entitled to assume that any privilege which might have otherwise have been claimed for such documents has been waived. So where, a party has given inspection of documents which mistakenly includes privileged documents it will generally be too late for him to claim privilege in those documents; The Court may grant the use of an injunction preventing the use of a document provided inadvertently where inspection has been procured by fraud or where the document has been made available for inspection as a result of an obvious mistake. A mistake will be obvious where:- (a) The receiving lawyer realises that the document has been disclosed by a mistake; or (b) It would be obvious to a reasonable Advocate or Ecrivain in his position that a mistake has been made." 23. In this case while the parties were aware I have no jurisdiction to grant any form of injunction preventing use of a document, which is a matter for the Royal Court only, the parties were content for me to rule on whether or not the email was privileged and to apply the above principles. 24. Advocate Whittaker contended that the relevant email was not privileged because it simply contained a factual statement. It did not contain any legal advice, seek legal advice or any discussion of legal advice received. Accordingly, it could not be privileged. 25. Advocate Gollop argued firstly that it was clear that the email had been sent in error and this had been realised by Mrs Brown by virtue of her communications sent on 24 th February, 2016, to Advocate Baker at 12:45 and 14:20. 26. Furthermore in an affidavit filed by Clara Hamon an English Solicitor employed by Baker & Partners on behalf of the first defendant sworn on 9 th September, 2016, Miss Hamon deposed at paragraphs 12 and 13 as follows:- "12. It later became apparent that the plaintiff inferred a meaning from the email that was incorrect. The plaintiff was aware of the circumstances in existence at the time as a result of without prejudice correspondence between Baker & Partners and LWR Law in February and March 2016 which were that the defendants were exploring the possibility of joint representation in order to reduce costs. This explains the proposal in the privileged email. When it became apparent that the plaintiff still intended to seek to rely on this email, Baker &

Partners wrote to LWR Law on 2 August 2016 to correct this mistaken inference as to what lay behind the email.

13. The email has been read out of context and the plaintiff has assumed a meaning that suits its purpose but which is not correct. The plaintiff seeks to take advantage of the situation in which the first defendant is hamstrung from explaining in full what is meant by his communication with his lawyer without having to provide details to the Court of privileged discussions with his lawyer and without prejudice communications. Explanations have been provided on behalf of the first defendant as far as is possible without waiving privilege. In our view the email should not be relied upon." 27. At the hearing I observed that I could not tell who the email had been sent to. While it was addressed to Steve, I did not know whether that meant Advocate Baker. However, it was possible it might be a reference to a Steve at RBC. No affidavit evidence had been filed by the first defendant explaining to whom he meant to send the email. Accordingly I gave the first defendant permission to file a separate supplemental affidavit explaining to whom he intended to send the email and whether "Steve" was a reference to Advocate Baker or to some other Steve. I gave this permission because there was a significant difference between an email intended to be sent to a legal adviser and an email sent to someone in RBC. While it was implicit in the affidavit of Miss Hamon that the email was intended to be sent to Advocate Baker, given the rival contentions of the parties, I felt it was necessary for the position to be clarified by the first defendant before reaching my decision. Subsequent to the hearing, the first defendant filed a second affidavit confirming that he meant to send the email sent to Mrs Brown at 12:40 to Advocate Baker. 28. In light of the affidavit received from the first defendant in which he confirmed that he intended to communicate with Advocate Baker and paragraphs 12 and 13 of the affidavit of Miss Hamon, I am satisfied that the communication was meant to be sent to Advocate Baker. While the email concerned simply contains a factual statement, I am also satisfied that this was in the context of seeking legal advice on the issue of whether or not the defendants could be represented jointly. It should also be remembered that legal advice privilege is an extremely important protection and is not one that is easily lost (see the unreported decision in *Vilsmeier v AI Airports International Limited* and *PI International Limited*).

[2014] JRC 101 at paragraph 13 applying *Brennan v Sunderland City Council*

- [2009] ICR 479). In light of the affidavit of Miss Hamon and the second affidavit of the first defendant, I have reached the conclusion that the email of 24 th February, 2016, sent by mistake by the first defendant to Mrs Brown at 12:40 is part of a privileged chain of communication between the first defendant and Advocate Baker as his legal adviser. Accordingly, the plaintiff is not entitled to rely on it. It is clear that Mrs Brown realised immediately that the document had been disclosed by mistake because within five minutes of receiving the same she emailed Advocate Baker accordingly. While I understand, in view of the plaintiff's other criticisms of the defendants' discovery why the plaintiff changed its mind and sought to make use of the email, once the context of the

email had been explained as summarised in paragraphs 12 and 13 of the affidavit of Miss Hamon, the position originally taken by Mrs Brown was the correct one. It is therefore obvious, once the context of the email was explained, to a reasonable advocate that a mistake had been made. Accordingly this part of the application is refused. Documents omitted from the defendants' lists 29. The second issue I have to decide concerns documents contained in the plaintiff's list of documents but not listed by the defendants. 30. In support of this part of the plaintiff's application schedules have been produced for each defendant which contained specific documents principally between the plaintiff and the first or second defendants which had been listed by the plaintiff but not listed by the first or second defendants. As the duty was on the defendants to list all relevant documents it was said to be clear that both defendants had not properly completed their discovery because they had not listed those documents. Accordingly, I could not regard the first and second defendants' affidavits of discovery as conclusive (applying *Hanby Associates Limited v Oliver*

[1990] JLR 337). 31. The principal argument in response to this application was that it required the defendants to produce further lists of documents setting out documents listed by the plaintiff or documents referred to which the plaintiff already possessed. Such a step was not necessary and accordingly failed the third limb of the test set out in *Vilsmeier* referred to above. 32. It is also right to record that both defendants also argued that a number of the documents were not relevant in any event. For the purpose of this part of my decision, it is not necessary for me to decide whether documents listed by the plaintiff but not listed by the defendants are relevant, because in this case I am satisfied it is not necessary for me to require the defendants to produce lists of documents which the plaintiff already has. For a claim for unpaid fees of just under £50,000, such a step involves parties incurring costs which will not add anything further to bringing the dispute either to a trial or to a resolution. In reaching this view I should make it clear that the defendants should have listed documents that they had received from the plaintiff and the other defendant, (assuming they were relevant) and this decision should not be taken as justifying a party not listing documents it has received simply because it knows that the other party already has its own copy of such a document. The obligation on all parties to a dispute is to list all documents in their possession, custody or power which are relevant. My decision is therefore only that, in this case, while the first and second defendants should have listed the documents referred to in the schedules (subject to questions of relevance), it is now not necessary to require them to do so in a dispute of this size and where the issues are not unduly complicated. Whether the position would be the same in respect of a dispute of a much higher value or complexity is a matter for another day. Documents concerning the relationship between the first and second defendants 33. This category of documentation sought only emerged with clarity during the course of argument. The first point I should therefore deal with is whether or not this category of documents was sought by the plaintiff's summons in light of the submissions by the defendants that the application did not cover this category of documents. 34. The view I have reached is that I accept that the

plaintiff's summons was not a model of clarity. Nevertheless it does seek a full and complete list of documents at paragraphs 1 and 3 and copies of the second defendant's records in relation to the management of Eulah and the involvement of the plaintiff at paragraph 4. The application does therefore fall within the relief sought even if it could have been better expressed. 35. Furthermore, the affidavit filed by Advocate Whittaker in support of the application at paragraph 10 stated:- "During the period of time over which the alleged debt arose, instructions were given to the plaintiff by the first and second defendants in relation to the COU and the LA. These instructions concern the same subject matter, Eulah, are contemporaneous and are between the same parties, and the plaintiff's position is that the method of dealing between the parties and the nature of the contact between the parties is highly relevant to subject matter in this case and should have been disclosed." 36. She further continued at paragraph 11 as follows:- "Further if it is the case that the first defendant and his adult son are the only beneficiaries of the Eulah Trust (the beneficial owner of the second defendant) then they are able to influence and exert control over the second defendant and the trustees of the Eulah Trust, being the plaintiff's belief due to the manner of the first defendant and the second defendant's dealings with the plaintiff." 37. Advocate Whittaker's affidavit also referred to her letter of 21 st March, 2016, which stated that:- "...all documentation held on matters relating to Eulah should be disclosed as being of relevance, since it goes to the nature of the instructions provided by Frank Callaghan, his relationship with both our client and Eulah/Takilla Limited/RBC/The Trust." 38. The same letter also stated:- "Bearing in mind that this case revolves around the extent of authority extended to Frank Callaghan, the question of who made the decisions, how, if at all, those decisions were communicated to Frank Callaghan and whether that party was the correct person to make such decisions, is absolutely fundamental to this case." 39. In light of the above extracts, if I am wrong in my conclusion that the documents sought do fall within the summons, I consider I should still determine this request because I do not consider that any prejudice arises. In this case I am satisfied that the defendants cannot be said to have been taken by surprise by the way in which the matter was put orally in light of the affidavit of Advocate Whittaker and the letter of 21 st March, 2016, from the plaintiff's legal advisers. 40. The first submission made by both Advocates for the defendants in relation to this category of documents was that documents in relation to the change of use application and the listing appeal although they also took place in 2014 were not relevant. This was because separate contracts were entered into between the second defendant and the plaintiff in relation to these matters, invoices were raised pursuant to those agreements and those fees had been paid. 41. Furthermore, Advocate Boothman argued that it was clear that the plaintiff knew that the first defendant had no authority to bind the second defendant by reference to matters set out in the second affidavit of Samantha Pickett concerning the terms of engagement approved by the second defendant. This was clear evidence that the plaintiff knew that the first defendant could not bind the second defendant. Advocate Boothman also relied on exchanges of emails on 7 th May, 2014, where in respect of the OPA the second defendant refused to agree Stages 2 and 3 of proposal put forward by the plaintiff in an email dated 25

th February, 2014, indicating that an application for a Stage 1 only could be completed and signed by the directors of the second defendant. An email from Mr Harding for the plaintiff dated 7 th May, 2014, stated:- "Thank you for your call on 25th April, regarding above when you highlighted that instruction can be given without them coming from RBC Corporate Directors." "Frank is pushing us to get the outline application completed (which we are progressing) but clearly I need RBC Directors approval and RT&C signing and returning (approving our terms set out in my email of 25th February,) before we can finalise the application." 42. Advocate Boothman therefore submitted that there was no basis to contend that the plaintiff could succeed in their claim based on statements made by the first defendant because the plaintiff knew that it had to have the approval of the second defendant in order to be retained. 43. While there may be force to these submissions, ultimately they are matters to be determined at trial. It is not appropriate for them to be determined on any specific discovery application or for me to form a view of the merits of the claim. This is not a strike out or summary judgment application but a case it is accepted requires resolution at trial. 44. In my judgment there is an issue on the pleadings raised by the plaintiff denied by both defendants as to the extent of the authority of the first defendant in relation to Eulah following the creation of the Trust, the transfer of the second defendant to the Trust, the provision of directors by RBC and the entering into of borrowing by Takilla Limited from RBC Wealth Management, (the trade name of Royal Bank of Canada (Channel islands) Limited). The extent of the authority of the first defendant once he ceased to be a director of the second defendant and his influence or control over the second defendant is squarely an issue in these proceedings. I therefore agree with Advocate Whittaker as set out in her letter of 21 st March, 2016, that this issue is at the heart of the dispute. Moreover, the plaintiff in its order of justice at paragraphs 29 to 33 sets out a further basis concerning events in November 2014 as to why it says it was retained by the first defendant on behalf of the second defendant. The documents sought are also relevant to this issue. 45. Furthermore, Advocate Boothman fairly accepted, in relation to Eulah his best recollection was that his clients maintained one single file in relation to Eulah. While therefore separate contracts were entered into between the plaintiff and the second defendant in relation to the change of use and the appeal against listing, there may be records concerning these matters which are relevant to the issue of the authority of the first defendant and/or his ability to influence or control the second defendant. 46. While I agree with the defendants it is not necessary to go back through all historical dealings in particular for a dispute of this size where there has been change of ownership and directors in the intervening period, I have not reached the same view in respect of the period from the second defendant being transferred into the trust in November 2013 until the second defendant in February 2015 refused to pay the plaintiff's invoices. To accede to the defendants' submissions would be to apply too legalistic an approach to the relationship between the defendants. Accordingly, I consider that documents in relation to Eulah between the appointment of RBC Trustees in November 2013 and 5 th February, 2015, when the second defendant refused to make payment which had not already been listed by the plaintiff should be disclosed. The documents that

should be disclosed are those either relating to the authority of the first defendant to bind the second defendant or my discussions between or involving any of the first defendant the second defendant and for any RBC entity and for any RBC entity concerning the retainer of the plaintiff, whether in relation to the OPA, the change of use application or the listing appeal. Any documents also explaining the context of any communications which are necessary to understand those communications and which have not already been disclosed should also be produced. 47. I am also of the view that the affidavit of discovery of the second defendant should not be regarded as conclusive. This is firstly because it does not include documents that should have been listed, even though the plaintiff already had its own copies and which I am satisfied are relevant. 48. Secondly, Advocate Boothman accepted that the second defendant's affidavit of discovery while reviewed by his firm was prepared on the basis that documents relating to the listing appeal or the change of use were not relevant. I should also record that while Advocate Boothman could not explain to me in the course of the hearing whether the entirety of RBC's files in relation to Eulah in relation to 2014 had been reviewed or not, the position was clarified after the hearing. In an affidavit filed in accordance with permission given by me to do so at the hearing, Mr Oliver Lindop, a legal assistant employed by Carey Olsen on behalf of the second defendant, deposed that he had been provided with all of the correspondence held by the second defendant relating to the matters concerning the plaintiff between 1 st July, 2013, and 10 th September, 2015, including the OPA application, the change of use application and the listing appeal. However, the review carried out by Carey Olsen for relevance was limited to documents relating to the apartment OPA project. In view of my finding that there is an issue on the pleadings raised by the plaintiff as to the extent of the authority of the first defendant the approach taken by Carey Olsen to reviewing documents provided by the second defendant was too narrow. 49. Thirdly, it is also clear that any documents concerning the Eulah Trust have not been disclosed. This is because Carey Olsen took the position that records held by the Eulah Trust were separate from any records held by the second defendant. While technically this approach is correct, in this case it is a somewhat artificial approach for the following reasons:- (i) Any such documents even if not in the possession, custody or power of the second defendant are in the possession, custody or power of the first defendant. The second defendant's approach therefore has simply led to documents not being produced which are relevant and which the first defendant is entitled to and obliged to produce. (ii) At paragraph 10 of the second affidavit of Samantha Pickett, she describes their "client" as the first defendant. At paragraph 8 of the same affidavit, she states that RBC Trustees (CI) Limited provides trustee services. This contradicts what was set out in Carey Olsen's letter of 14 th April, 2016, where they describe the trustee as RBC Trust Company (International) Limited. At paragraph 9 of Samantha Pickett's second affidavit she describes RBC Trust Company (International) Limited as not being the trustee but rather the provider of directors, a company secretary, a registered office and administration services to the second defendant. Yet it is clear from the affidavits filed and the documents provided for the hearing that the first defendant, whether he was dealing with the second defendant or in

relation to the trust, dealt with the same individuals. (iii) Furthermore, his legal right to do so can only arise as settlor and beneficiary. When the first defendant was dealing with directors or employees of the relevant RBC entity, the latter at all times had a number of roles i.e. director and trustee. The discussions therefore cut across the different hats being worn by the same individuals at RBC. Not to then provide material because it is held on a trust file rather than a file of the second defendant is an artificial approach. If the trustee had been a separate legal entity or if the trustee had subsequently changed the position might be different in another case. However, such a scenario does not arise in this case, in particular where the first defendant has a right to the information and should have made disclosure in any event. (iv) As I have noted in paragraph 7 above, the reason that the second defendant came to be held in a trust, and that directors and company administration services were provided by RBC arose out of a desire by the first defendant to enter into borrowings from a different division of RBC. As there is a real issue between the plaintiff and the defendants as to whether or not the first defendant could bind the second defendant, limiting documents to those held by the second defendant only does not provide a complete picture. 50. To require the plaintiff to subpoena different parts of RBC to produce relevant documents also adds to cost in a dispute of relatively low value and where relevant documents could have been obtained relatively quickly. Instead significant costs have been incurred in dealing with this application. This includes cost in relation to the affidavits filed after the hearing which were far too lengthy on both sides and contained matters of submission which were not necessary and not asked for. 51. The disclosure that should be given should extend to any discussions between the first defendant and any RBC entity about the retainer of the plaintiff, the first defendant's authority or why the second defendant would not agree the plaintiff's invoices. I note in particular that the second defendant would not agree to the plaintiff being retained in respect of Stages 2 and 3 of the OPA proposed by the plaintiff because to do so would place it in breach of the facility agreement. The facility agreement provides that no material structure alteration to Eulah could occur without the prior written consent of RBC Wealth Management as lender. Why such consent was not forthcoming and what was being said about such development may be relevant to determining the scope of the first defendant's authority and his relationship with the second defendant. 52. I am also satisfied that to require the disclosure that is relevant is also necessary. The extent of the first defendant's authority is at the heart of the plaintiff's claim. While the dispute therefore is for a relatively small amount, the issue in respect of which the discovery is sought is not marginal. The discovery I consider to be provided is also for a defined period in respect of development of a specific property. The enquiry should only be for documents not already in the possession of the plaintiff or not already disclosed by either defendant. While this will put the defendants in particular the second defendant to further costs, I am satisfied that this discovery is necessary to dispose fairly of the plaintiff's case and to determine the contentions raised by the plaintiff. It is not a request that is marginal. 53. I should make it clear that I express no view as to whether or not the plaintiff's contentions will succeed. That is a matter for trial when the plaintiff will have to address the arguments set out

above relied upon by the second defendant. What is clear is the issue of authority is raised on the pleadings and, for the reasons I have stated, is at the heart of the plaintiff's case. This part of the plaintiff's application is therefore granted. ADR 54. Finally, I cannot let this case pass without expressing my concern that if this case is not uneconomic already it will rapidly become uneconomic. I had already ordered by consent a stay in this matter to enable the parties to resolve their differences because of this concern. I was informed however that no mediation had taken place because the first defendant did not wish to incur the cost of instructing his lawyers to attend the mediation. I therefore wish to record expressly the suggestion I made that in this case the only parties essential to resolving a dispute who need to attend mediation were the clients themselves. While a party is entitled to ask to be accompanied by a lawyer, presence of a lawyer is not necessary in order for a mediation to take place and for a settlement to be concluded. I therefore encouraged the parties to reflect on whether or not a mediation could occur with clients only. Lawyers could clearly assist and advise a client in relation to preparing for the mediation and could be available to address any questions of law that arise. Ultimately, however the key decision on whether or not to reach a compromise is a matter for the clients themselves. All parties face potential costs if they lose at trial and should be capable of making an assessment of whether they wish to have the dispute resolved by the Royal Court or whether they wish to compromise and avoid the risk of a failed claim or defence. Any such decision is a matter of commercial judgment and assessment of risk for the parties themselves. I therefore encouraged the parties to reflect on whether settlement discussions with the assistance of a mediator can take place on the basis I suggested. The alternative is that this matter will have to proceed to trial which will turn out to be uneconomic for all parties certainly if they lose but possibly almost irrespective of the outcome of the litigation. I am setting out those observations publicly both for the benefit of the parties and for the assistance of others who find themselves involved in relatively small claims. *Authorities Vilsmeier v AI Airports International Limited and PI International Limited*

[2014] (1) JLR Note 26. *Hard Rock Limited & Anor v HRCKY Limited*

[2016] JRC 157 . *Café de Lecq v Rossborough (Insurance) Brokers Limited*

[2011] JLR 182 . *Vilsmeier v AI Airports International Limited and PI International Limited*

[2014] JRC 101. *Brennan v Sunderland City Council*

[2009] ICR 479 . *Hanby Associates Limited v Oliver*

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