

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2023/0123

BETWEEN:

[1] ISABELLE PIQUENET

[2] ERIC PIQUENET

Claimants/Applicants

And

[1] THE ESTATE OF ENZO ADDARI

[2] SUSANNA ADDARI

[3] ANTIGUA SLIPWAY LTD.

Defendants/Respondents

Appearances:

Mr. Rushaine Cunningham for the Claimants

Mr. Hugh Marshall Jr. for the Defendants

2026: January 15th, 23rd

Ruling On Application for Specific Disclosure

[1] **WILLIAMS, J.:** This is an application filed on 23rd January 2025 for specific disclosure pursuant to **Rule 28.5** of the **Civil Procedure Rules (Revised Edition) 2023** seeking disclosure of documents relating to the beneficial ownership of a Swiss bank account identified as “Ospite”.

[2] The application is opposed by all Defendants. I have considered the application, the affidavits filed together with the parties’ written and oral submissions. It should be noted that hearing of the application was delayed due to a change of counsel representing the defendants.

- [3] The claimants seek recovery of US\$200,000.00 paid to the defendants pursuant to an Agreement for Sale of Business dated in or about 2017, contending that the consideration wholly failed. They allege that the restaurant business purportedly sold did not exist as a going concern, was not capable of being sold, and that the defendants lacked title or sufficient interest in the business premises, goodwill and any pending contracts or engagements.
- [4] The defendants deny liability and maintain that the claimants received the benefit of the bargain and traded the business over several years. The instant application concerns the payment of US\$105,000.00 of the purchase price by way of wire transfer to an offshore bank account in Switzerland known as the "Ospite" account. The claimants therefore request that the first, second and third defendant's do disclose and permit the inspection of the corporate documents containing information on the ultimate beneficial ownership of the entity called "Ospite."
- [5] The application is opposed by an affidavit sworn to by the second defendant Susanna Addari filed on 19th March 2025. She states that she is the Managing Director of the third defendant and was appointed to represent the Estate of Enzo Addari (the first defendant) in these proceedings. She avers that the Swiss bank account referred to as "Ospite" was held solely by her late husband, Enzo Addari and that she was never an owner of, nor had access to the account. She further states that following his death the account was closed and no longer exists and that she has located no documents relating to it among his remaining personal papers.
- [6] Ms. Addari contends that Swiss banking laws prevent disclosure of any information relating to the account without an enforceable Swiss court order, rendering her unable to comply with the disclosure sought. She further asserts that the identity of the beneficial owner of the Ospite account is not relevant to the issues for determination, which concern whether there was a total failure of consideration and not whether the sums were paid. She maintains that she was joined to the proceedings on an erroneous belief that she personally received US\$100,000.00,

which she categorically denies and that any disclosure order would be disproportionate, costly and unnecessary.

Summary of the Claimants' Submissions

[7] The claimants submit that there is a live issue on the pleadings as to whether the second defendant, Susanna Addari, was the ultimate beneficial owner of funds paid into the Swiss bank account referred to as "Ospite". The grounds of application are as follows:

1. "The Court has power under Rule 28.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition 2023) to make an order for specific disclosure.
2. Pursuant to CPR Rules 28.4 and 28.12, parties are required to disclose all documents directly relevant to matters in issue and the duty of disclosure is continuous until the proceedings are concluded.
3. On the pleadings, there is a live issue as to the ultimate recipient of the Claimants' purchase monies. The Claimants contend that the 2nd Defendant, Susanna Addari, was the ultimate beneficiary of US\$105,000.00, transferred to an offshore bank account in the name "Ospite". The Defendants contend that Enzo Addari owned the Ospite account and that Susanna Addari ought not to be a party to the proceedings.
4. Having regard to those issues, specific disclosure is necessary, as no documents have been provided by the Defendants to address this issue, despite it being an assertion raised in their Defence.
5. The costs associated with the requested disclosure are likely to be minimal, since the documents sought should already be in the possession of, or accessible to, the Defendants.
6. The documents sought are relevant to the matters in issue in the claim.
7. The Court will benefit from the disclosure in order to dispose of the claim justly.
8. Making the order would cause no prejudice to the Defendants.

9. Conversely, if the order is not granted, the Claimants would be unfairly disadvantaged and prejudiced, as they would be unable effectively to challenge the Defendants' assertions in their Defence.
10. No trial date has yet been fixed, and there is therefore no likelihood of any trial date being affected by the grant of the order."

[8] The claimants contend that this issue is directly relevant because their Statement of Claim pleads that a substantial portion of the purchase price was paid into that account. Further they allege that since the second defendant ultimately benefitted from these funds this justifies her joinder as a defendant.

[9] The claimants rely on CPR 28.5 and 28.6 and submit that disclosure is limited to documents that are directly relevant and necessary for the fair disposal of the claim. They argue that the beneficial ownership of the "Ospite" account satisfies that test.

[10] They further submit that without disclosure, the court would be left with untested assertions, undermining the fairness of the trial. In response to objections based on cost, foreign jurisdiction, or bank secrecy, the claimants argue that such considerations do not automatically defeat an application for disclosure and that the second defendant has the means and capacity to comply with any order made.

Summary of the Defendants' Submissions

[11] The defendants submit that the application fails at the threshold because the documents sought are not directly relevant to any matter in issue as pleaded. They contend that the core issues in the case are whether there was a breach of the agreement for sale and whether the consideration failed and that these issues do not depend on the destination or beneficial ownership of the funds paid.

[12] The defendants emphasise that no cause of action is pleaded against any entity called "Ospite", and that no breach is alleged against the second defendant which turns on proof of beneficial ownership of the Swiss account. They further submit that

the court has no power under CPR 28.5 to order disclosure of documents that are merely indirectly relevant or collateral. Even if relevance were established, they argue that the application fails on necessity and proportionality, given the foreign jurisdiction, cost, delay and limited probative value of the documents sought.

- [13] The defendants also rely on the second defendant's affidavit evidence that she never owned or controlled the account and that it was held solely by her late husband and has since been closed. In this regard, they submit that the law does not require a party to prove a negative.

Discussion

- [14] The governing provisions are **CPR 28.5(5)** provides as follows:

“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.”

- [15] **CPR 28.6(1) and (2)** provide as follows:

“(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) The court must have regard to –

- (a) the likely benefits of specific disclosure;
- (b) the likely cost 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.

- [16] The Court of Appeal in **Dr The Honourable Timothy Harris v. Dr The Right Honourable Denzil Douglas**¹ stated at paragraph 15 of the decision as follows:

¹ SKBCVAP2019/0026 decided 19th December 2021 (unreported)

“For the purpose of disclosure, the relevance of the documents is analysed by reference to the pleadings and the factual issues that would arise for decision at the trial. Disclosure must be limited to documents directly relevant to those issues. In seeking to identify the factual issues which would arise for decision at the trial, the judge is obliged to analyse the pleadings. The critical question is whether the documents are directly relevant, and if they are, the court is enjoined to consider whether the order is necessary to dispose of the case fairly. It is necessary to pay regard to the overriding objective of the CPR which is to enable the court to deal with cases justly; this also engages the issue of proportionality.”

- [17] The court also expressly observed that disclosure was not an open-ended “train of inquiry” exercise. The court also stated:

“The court has discretion as to whether to make an order for specific disclosure and will need to be satisfied that the documents are directly relevant within the parameters of the rule. However, the test for relevance is not a matter for the exercise of discretion. What documents parties are entitled to, is a matter of law, not discretion.”²

- [18] The authorities further establish that the court has no power to order specific disclosure of documents which are merely indirectly relevant, speculative, or collateral to the pleaded issues: see **Kathryn Ma Wai Fong v Incredible Power Ltd**³ approving **Barclays Bank plc v Red Oak Operations Ltd**.⁴

The Pleadings Issues

- [19] The claimants’ substantive claim is for repayment of monies paid under an agreement for the sale of a restaurant business. It is therefore necessary to examine paragraph 8 of the Statement of Claim filed on 31st March 2023 which states as follows:

“On instructions from the 2nd Defendant communicated to the Claimants at the corporate offices of the 3rd Defendant, a further payment of

² Ibid. paragraph 16

³ BVIHCM2015/0047 decided 30th January 2020 at paragraph 69 (unreported)

⁴ BVIHCM2014/0126 decided 16th November 2016 (unreported)

US\$100,000.00 was made on or around Friday 20th October 2017 via wire transfer to an offshore bank account in Switzerland bearing the name “OFSPITE”, of which the 2nd Defendant is believed to be the ultimate beneficiary. Throughout the entire period of instalment payments towards the Purchase Price, a further US\$5000.00 was paid to the said offshore bank account by the Claimants towards the Purchase Price.”

[20] The defendants responded to the above in their Defence filed on 15th March 2024. At paragraph 8 of said Defence the defendant’s state:

“In relation to paragraph 8 of the Statement of Claim it is neither admitted nor denied that the 2nd Defendant communicated the said payment to the Claimants, and they are put to strict proof of same. It is admitted that US\$100,000 was transferred to an offshore bank account in Switzerland however the said account was owned by Enzo Addari.

[21] The claimants submit that beneficial ownership of the “Ospite” account is central to the liability and continued joinder of the second defendant. I am unable to accept that submission. The issues of breach of contract and failure of consideration do not depend on who ultimately benefitted from the funds paid, but on whether the defendants delivered what they contracted to sell. The destination of the funds, or the identity of the ultimate beneficiary of a particular bank account, does not advance or undermine the determination of these issues.

[22] At its highest, the disclosure sought might establish whether the second defendant had a beneficial interest in the Swiss account. That inquiry is collateral to the pleaded contractual issues and does not satisfy the test of direct relevance required by CPR 28.5(5).

Necessity and Proportionality

[23] Even if the relevance threshold had been met, I am not satisfied that the disclosure sought is necessary for the fair disposal of the claim. The issues at trial can be fully

and fairly determined by reference to the testimony of the witnesses and the documents already disclosed.

- [24] I also accept the defendants' submissions on proportionality. The disclosure sought would likely require steps to be taken in a foreign jurisdiction, involving delay, complexity and expense. That burden is disproportionate to any limited probative value the documents might have in resolving the issues in dispute. Accordingly, the application for specific disclosure is refused.

Costs

- [25] The defendants having succeeded, the claimants shall pay their costs of this application, such costs to be assessed if not agreed.

Order

- [26] The court therefore orders as follows:
1. The application for specific disclosure is dismissed.
 2. Costs to the defendants to be assessed if not agreed within twenty-one (21) days of this order.
 3. The matter is adjourned to 13th March 2026 for further Pre-Trial Review.
 4. The claimants shall have carriage of this order.

Rene Williams
High Court Judge

By The Court

Registrar