

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2021/0004

BETWEEN:

**[1] NEIL CAVE
[2] SHANE GOODGIE**

Appellants

and

**[1] CARL BURKE
[2] ROBERT LABADIE**

Respondents

Before:

The Hon. Mde. Gertel Thom

Justice of Appeal

The Hon. Mde. Margaret Price-Findlay

Justice of Appeal

The Hon. Mr. Gerard St. C. Farara

Justice of Appeal [Ag.]

Appearances:

Mr. Satcha S. Kissoon and Ms. Jenell Gibson for the Appellants

Mr. Justin L. Simon KC for the Respondents

2022: October 18;
November 11.

Interlocutory appeal – Request for information – Rules 34.1 and 34.2 of the Civil Procedure Rules 2000 – Whether order for compliance with request for information necessary to dispose of claim fairly – Disclosure – Whether learned judge erred in limiting disclosure to periods of the respondents’ appointment

On 6th April 2018, the appellants and Mr. Eric Ward commenced proceedings in the High Court of Justice in the State of Antigua and Barbuda against the respondents ‘being the President and Treasurer respectively of [the] Leeward Islands (sic) Airline Pilots Association (“the LIALPA”)', an unincorporated body. In the claim form they sought, certain declarations, orders, injunctive, and other reliefs. These included an order requiring the

respondents 'to submit copies of all audited and unaudited financial statements and bank account statements to the claimants and to all members of LIALPA inclusive of all expenditure for the period during which [the respondents] purported to act on behalf of LIALPA and specifically from the period 2012 up to and including the date of an Order made herein' ("the substantive proceedings"). On 3rd May 2018, a judge of the High Court made a representation order ("the Representation Order") in the substantive proceedings appointing both respondents as representative defendants in the said proceedings on behalf of all members of the LIALPA, except the appellants, for the purposes of the said action.

On 6th November 2019, the appellants filed a notice of application ("the November 2019 application") for orders pursuant to rule 34.2 of the Civil Procedure Rules 2000 ("CPR") to compel the respondents to provide to the appellants the information requested in a Request for Information filed by the appellants in the substantive proceedings on 4th July 2019 ("the Request"). This was the appellants' second application for disclosure orders, the first being an application dated 6th April 2018 ("the April 2018 application") filed the same day as the fixed date claim form and the statement of claim in the substantive proceedings. The April 2018 application was determined by the written judgment and orders of a judge of the High Court dated 21st June 2018 ("the June 2018 Order"). Paragraph 2 of the June 2018 Order, made by consent, provided, *inter alia*, for the respondents to deliver to the appellants copies of audited financials of the LIALPA for the period July 2012 to June 2015. The respondents have complied fully with the terms of paragraph 2 of the June 2018 Order.

The November 2019 application was heard and determined by the learned judge on 2nd February 2021. In paragraph 1 of the order of February 2021 ("the February 2021 Order"), the learned judge ordered *inter alia* that the disclosure order can only attach to the period when the respondents were actually in control of the LIALPA's funds, meaning during the period that the first respondent, Carl Burke, was the President, and the period when the second respondent, Robert Labadie, served as Treasurer. The learned judge deemed these periods to be September 2016 to 2019 for Mr. Burke, and September 2016 to the present for Mr. Labadie. Paragraph 2 of the February 2021 Order, which has not been appealed, provided that the audited reports for that period (as stipulated in paragraph 1 of the said Order) are to be handed over to the appellants no later than 26th February 2021 at the cost of the respondents.

Being dissatisfied, the appellants appealed against paragraph 1 of the February 2021 Order. The sole issue for the Court's determination was whether the learned judge erred when she found that the respondents, having been sued in a representative capacity given their role in the LIALPA, are limited only to disclosure for the financial affairs of the LIALPA conducted during the periods of their appointment.

Held: dismissing the appeal against paragraph 1 of the February 2021 Order, affirming the order made by the learned judge in the court below, and awarding costs of the appeal in the sum of \$2,500.00 to the respondents to be paid within 21 days of the date of this judgment, that:

1. An order pursuant to CPR 34.2 for a party to comply with a request for information made pursuant to rule 34.1(2), will not be made by the court unless it is necessary in order to dispose fairly of the claim or to save costs. In ascertaining whether this requirement has been met by an applicant, a court ought to take a broad view of the claim and of the issues of fact and of law pleaded by both the claimant and the defendant, but which are, at that stage in the proceedings, yet to be considered and determined. The judge ought, therefore, to carefully examine the pleaded cases and issues on both sides, and not take too stringent a view of the likely outcome of such issues. This is necessary having regard to the requirement for fairness in rule 34.2(2) as between both the claimant and the defendant.

Rules 34.1(2) and 34.2(2) of the **Civil Procedure Rules 2000** applied; **Meighoo v Persad et al and another v General Contractors Company Ltd.** TT 2014 HC 320 applied.

2. In the instant matter, the learned judge was required to consider the appellants' pleaded case in the fixed date claim form and in the amended statement of claim, and to also consider the defence filed by the respondents in response thereto. From the appellants' pleaded case, it is pellucid that each and every allegation, be it of fact or of alleged wrongdoing, breach of trust, breach of the Constitution and By-laws of LIALPA, and breach of the **Antigua and Barbuda Labour Code** made against the first and/or the second respondents, relate to and concern only the period from 7th September 2016 when they were, as pleaded by the appellants, lawfully elected to the Executive Council of LIALPA; and only in relation to their office as, respectively, President and Treasurer, de facto or de jure, of the Executive Council of LIALPA. No allegation of any sort has been made in the amended statement of claim or otherwise against either respondent, relating to any period prior to 7th September 2016, or otherwise than in their office as President and Treasurer of the LIALPA. Moreover, all the allegations relative to possible financial irregularities or expenditures of the funds of LIALPA, relate to the period from 7th September 2016 when, presumptively, the respondents were signatories on the bank accounts of LIALPA and, it is alleged, had a duty to prepare and put before the members of LIALPA audited accounts for each year during their tenure.
3. Against this pleaded case by the appellants, the learned judge did not err in holding that any order for disclosure of information relative to the financial and other matters of LIALPA prior to 7th September 2016 when the respondents were elected to their respective offices on the Executive Council of LIALPA, are not matters which are necessary in order to fairly dispose of the claim in the instant matter. Moreover, the learned judge was correct in limiting the scope of the documents to be disclosed under paragraph 1 of the February 2021 Order to the period when each of the respondents held such offices.

JUDGMENT

- [1] **FARARA JA [AG.]:** On 6th November 2019, the appellants (claimants in the court below) filed a notice of application (“the November 2019 application”) in Claim No: ANUHCv2018/0163 (“the substantive proceedings”) before the High Court of Justice in the State of Antigua and Barbuda, for orders pursuant to rule 34.2 of the Eastern Caribbean Supreme Court **Civil Procedure Rules 2000** (“CPR”), to compel the respondents to provide to the appellants the information requested in a Request for Further Information filed by the appellants in the substantive proceedings on 4th July 2019 (“the Request”). This was the appellants’ second application for disclosure orders, the first being an application dated 6th April 2018 (“the April 2018 application”) filed the same day as the fixed date claim form and statement of claim in the substantive proceedings). The April 2018 application was determined by the written judgment and orders of Henry J dated 21st June 2018 (“the June 2018 Decision and Order”) and is addressed further below.
- [2] The November 2019 application came before Smith J (“the learned judge”) on 2nd February 2021. The application was supported by the affidavit of the first appellant, Neil Cave. After hearing counsel for the parties, the learned judge made the following orders (“the February 2021 Order”):
- “(1) The disclosure order can only attach to the period when the Defendants were actually in control of the Association’s funds meaning when Captain Burke was the President and when Mr. Labadie served as Treasurer. The Court deems this period to be September 2016 to 2019 for Captain Burke and September 2016 to the present for Mr. Labadie.
 - (2) The audited reports for that period are to be handed over to the Claimants no later than 26th February 2021 at the cost of the Defendants.
 - (3) The matter is to be set for mediation with a date to be set by the Mediation Coordinator. The mediator to be agreed between the parties as well as a second mediator to be agreed.
 - (4) Costs in this application awarded in the sum of \$1,000.00 to be paid to the Claimants no later than 26th February 2021.

(5) The substantive matter to be relisted for report on 1st April 2021.”

- [3] The appellants, being dissatisfied with paragraph 1 of the February 2021 Order, sought and obtained leave to appeal the said order from a single judge of this Court on 30th March 2021. The notice of appeal was filed on 20th April 2021. It specifies that the appellants appeal only item 1 (paragraph 1) of the February 2021 Order. There has been no appeal against any of the other limbs of the said order, including paragraph 2 (as stated above) by which the learned judge limited the disclosure ordered to the audited reports for the period or periods stipulated by paragraph 1.
- [4] The respondents, in their written submissions in the appeal, contended that the notice of appeal was not filed within 21 days of the order being appealed as required by the CPR but, instead, some 77 days thereafter and, accordingly, the appeal is out of time. The order granting leave to appeal dated 30th March 2021 was not part of the record of appeal in this appeal. Learned counsel for the appellants undertook to provide the Court with a copy of that order. Accordingly, the appeal proceeded on the basis that it had been made timeously.

The claim and subsequent orders

- [5] The claim in the substantive proceedings was commenced by fixed date claim form filed on 6th April 2018. The respondents in this appeal were the two named defendants, as “[t]he President and Treasurer respectively of [the] Leeward Island Airline Pilots Association [“the LIALPA”] sued on their own behalf and on behalf of all other members of LIALPA except the claimants”. It is common ground that the LIALPA is an unincorporated body or association. As such it is not a ‘person’ in law capable of suing and being sued in its own name. The filing of the claim was accompanied by a statement of claim. There were three named claimants, the first two are the appellants, and the third, Mr. Eric Ward. The claimants sought against the respondents (qua defendants) “being the President and Treasurer respectively of [LIALPA] sued on their own behalf and on behalf of all other members of LIALPA except the Claimants”, certain declarations, orders and reliefs.

- [6] The first, third and fourth reliefs relate to or concern the LIALPA only. The second concerns both the LIALPA and the first and second respondents. These four reliefs are: (1) a declaration that the current Executive Council of LIALPA is ultra vires the Constitution and the by-laws of the LIALPA and invalid; (2) an order enjoining all persons including the first and second respondents, from acting or purporting to act as members of the Executive Council; (3) an order requiring elections to be held forthwith for members of the Executive Council in accordance with the Constitution and by-laws of the LIALPA; and (4), alternatively, an order requiring that the LIALPA be dissolved in accordance with its Constitution and by-laws.
- [7] The fifth to eight reliefs sought in the claim are against the first and second respondents personally. These are: (5) a declaration that the first and second respondents are in breach of the requirements of the Constitution and by-laws of the LIALPA and provisions of the **Antigua and Barbuda Labour Code**,¹ in that they have failed to supply copies of all audited financial reports to the members of LIALPA including but not limited to the [appellants]"; (6) an order requiring the first and second respondents "to submit copies of all financial statements and bank account statements to the [appellants] and to all members of LIALPA inclusive of all expenditure for the period during which the first and second [respondents] purported to act on behalf of LIALPA and specifically from the period 2012 up to and including the date of an Order made herein"; (7) an injunction restraining the first and second respondents "in their capacity as trustees or otherwise ...howsoever from using any monies belonging to or held in the name of [LIALPA] whether by way of issuing cheques, withdrawing cash or otherwise"; and (8) "an inquiry into the use of LIALPA's funds by the [respondents] and an account of any LIALPA monies found to have been improperly used together with an Order requiring the return of any such monies to LIALPA from the [respondents]".

¹ Cap 27, Laws of Antigua and Barbuda, 1975.

The May 2018 Representation Order

- [8] The November 2019 application was preceded by an order dated 3rd May 2018 made by Henry J, on application by the appellants (“the Representation Order”), appointing both respondents as “representative defendants on behalf of all members of the [LIALPA], save and except for the claimants, for the purposes of this action alone”. This order is also not part of the record in the appeal. It was subsequently supplied to the Court by counsel for the appellants. Paragraph 2 of the Representation Order states: “...this Order be communicated to the members of LIALPA by placing copies hereof in the member’s mail boxes at the V.C. Bird International Airport and by email disseminated to the general LIALPA membership”.

The June 2018 Decision and Disclosure Order

- [9] As stated above, the November 2019 application was also preceded by the June 2018 Decision and Order of Henry J determining the April 2018 application filed on 6th April 2018 by the appellants. By the April 2018 application, the appellants sought certain interim restraining or injunctive orders pursuant to Part 17 of the CPR. They also sought an order requiring the respondents “to deliver copies of all financial statements for the [LIALPA], audited and unaudited, together with copies of all bank statements for the said [LIALPA] for the period 2010 to date of such order to the [appellants] forthwith”. The June 2018 Decision and Order, which we understand from counsel was not appealed, was also not part of the record of appeal. A copy was supplied to the Court by counsel for the appellants after conclusion of the hearing. By that decision, Henry J dismissed the application for interim orders to enjoin all persons purporting to act as members of the Executive Council of LIALPA, including the first and second respondents (as named defendants) and to restrain them “in their capacity as trustees or otherwise howsoever in any way from disposing of, dealing with or diminishing the value of certain assets or in any way issuing cheques, withdrawing cash or otherwise dealing with the assets of LIALPA.” In dismissing this limb of the April 2018

application, Henry J concluded, *inter alia*, that: “[t]he application before the court suffers from a lack of supporting evidence necessary to satisfy the court that the balance of convenience lies in favour of granting the injunction”²; and “[t]he allegations of mismanagement of Association funds have not been supported by evidence. Furthermore, the court is not satisfied that the current Executive Council [of the LIALPA] is *de jure* and its actions *ultra vires*”.³

[10] As to the limb of the April 2018 application seeking disclosure orders, the learned judge surmised: “[t]hose points regarding the financials upon which the parties have reached agreement, will be reduced to a consent order of the court.” The disclosure orders made by Henry J (by consent) are as follows:

“2. With regard to the request for an order requiring the defendants to deliver copies of certain financial statements and bank statements, the parties have reached agreement as follows:

- (a) The first and second [respondents] shall provide to the [appellants] audited financials for the years July 2012 – 30 June 2013, July 2013 – 30 June 2014, July 2014 – June 2015 on or before 4:30pm 9th May 2018 by depositing copies thereof at the [appellants] address for service.
- (b) The first and second [respondents] shall write to RBC located at High Street, St. Johns and to Republic Bank Barbados Ltd located at the Sir Grantly Adams Airport, Christ Church Barbados on or before Wednesday 9th May 2018 to enquire about the cost and length of time it will take to obtain from the bank, Bank Statements for LIALPA for the period 1st July 2012 through 30 June 2017.
- (c) The [appellants] shall bear all financial costs associated with the production of the Bank Statements referred to in item 2 above.
- (d) Upon receipt of the response, the [respondents] will seek the approval of the [appellants] then make the requests to the Bank for the said Statement along with payment of the costs from the Claimant[s].

² Para.[33] of the order of Henry J.

³ Para.[35] of the order of Henry J.

- (e) Upon receipt of the said Statements from the Bank, the [respondents] will serve copies of the said Statements at the [appellants] address for service within 10 days.
- (f) All parties and accountants to sign Confidentiality Agreement regarding the Bank Statement.”

[11] By paragraph 3 of the June 2018 Order of Henry J, the said judge dismissed the application to remove the third claimant (Mr. Eric Ward) as a claimant in the proceedings, and ordered that the claimants are to file and serve an amended statement of claim on or before 12th July 2018; the defendants were to file their defence within 21 days of service of the amended statement of claim; with a reply by the claimants, if necessary, within 14 days of service. The appellants’ amended statement of claim was filed on 25th March 2019. The sole amendment is the addition of a sentence at the end of paragraph 3 in these terms: “[t]he Third Claimant [Eric Ward] ceased being in the employ of LIAT in February 2018 and at that time also ceased being a member of LIALPA”. Apparently, sometime thereafter, Eric Ward was removed as a claimant in the substantive proceedings. The respondents filed their defence to the amended statement of claim on 10th April 2019. No further pleadings have been filed in the substantive proceedings.

[12] The respondents complied fully with paragraph 2 of the June 2018 Order of Henry J (as set out above) by delivering to the appellants copies of the audited financials for LIALPA for the period 1st July 2012 to 30th June 2015, and bank statements for the period 1st July 2012 to 30th June 2017. The appellant asserts that these documents “included details of loans made, a breakdown of services for which invoices had been paid, including legal services, explanation of telephone usage, travel meals and accommodation on LIALPA’s account, and detailed information on the cheques issued during the ordered period” – 2012 to 2017. They say that it is as a result of this disclosure that the Request on 4th July 2019, which the respondents refused (by their lawyer’s letter dated 11th July 2019) to comply with, that led ultimately to the November 2019 application to compel compliance with the Request.

Ground of Appeal

- [13] The appellants rely in their notice of appeal on one ground, namely:
- “The learned judge erred in fact and in law when she found that the Defendants/Respondents having been sued in a representative capacity given their role in the [LIALPA] are limited only to disclosure for affairs conducted during the periods of their appointment.”

Appellants’ Submissions

- [14] The appellants point out that the respondents are sued both in their personal capacity and in a representative capacity appointed by order of the court in the substantive proceedings. As such, they are the court appointed representatives on behalf of LIALPA and are liable to comply with any interlocutory order made in the proceedings directed to the said Association. In fact, the respondents did comply with the June 2018 Order made by Henry J, which order was not confined to any period whilst the respondents were, respectively, President and Treasurer of the LIALPA, but covered disclosure from 2012 to 2017.
- [15] The appellants rely on the provisions of CPR 34.2(1) which permits a party to civil litigation to apply to the court for an order that another party which has failed to comply within a reasonable time with a written request served on them, do so. CPR 34.2(2) stipulates that such an order may not be made unless “it is necessary in order to dispose fairly of the claim or to save costs”. Rule 34.2(3) provides:
- “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
 - (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.”
- [16] In support of the appellants’ submissions that the November 2019 application satisfied the requirements of CPR 34.2, they rely on their pleaded case in the amended statement of claim. Specific reliance was placed on paragraphs 6 and 7 as to the two capacities in which both respondents were sued; and paragraph 26

referring to a letter dated 11th December 2017 from their legal counsel to the first respondent, Mr. Burke, requesting, *inter alia*, a breakdown of the expenditure of LIALPA for the period 2012 to the date of the said letter, which request was ignored. They also point to paragraph 8 of the prayer for relief by which they seek an order in these terms: “8. Inquiry into the use of LIALPA’s funds by the defendants and an account of any LIALPA monies found to have been improperly used together with an Order requiring the return of any such monies to LIALPA from the defendants.”

- [17] The appellants cite the dicta of the High Court of Trinidad and Tobago (Seepersad J) in the **Meighoo v Persad et al and another v General Contractors Company Ltd**.⁴ There the judge considered the principles applicable to determining an application under Part 35 of the Civil Procedure Rules 1998 of Trinidad and Tobago, which provisions are akin to Part 34 of the ECSC CPR. Seepersad J surmised that there are three primary matters which are required to be considered on applications under Part 35. These are: (i) the information which is sought must be about “any matter which is in dispute in the proceedings” (Part 35.10); (ii) the court would only grant an order compelling a reply to the request for particulars if it is “necessary in order to dispose fairly of the claim or to save costs” (Part 35.2(2)); and (iii) when considering whether to make an order the court must have regard to the following considerations: (a) the likely benefit which will result if the information is given, (b) the likely cost of giving it, and (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 such an order (Part 35.2(3)).
- [18] As to the first requirement, is the information relative to a matter in dispute, the appellants argue that the information sought in the Request is relevant to the dispute between the parties in the substantive proceedings. They rely on this passage from the judgment of Seepersad J as being apposite:

⁴ TT 2014 HC 320.

“This Court holds the view, that the request for information relating to particular bank account, bank statements and information relating to employees of the Third defendant company and whether any taxes or national insurance has been paid by the Third defendant are all pivotal in determining whether the Third defendant is a sham company and thus falls within the definition of the term ‘matter which is in dispute in the proceedings’.”

- [19] As to the second requirement, whether the Request is necessary in order to dispose fairly of the claim or to save costs, the appellants place heavy reliance on this statement as being of particular relevance to the chronological facts regarding disclosure by the respondents in the instant matter:

“This Court holds the view that granting the request for further particulars would dispose fairly of the claim, in light of the fact that some information has already been provided as requested as to the status of the company, and any further information would add to what is already known or has been given to the claimant.”

- [20] They submit that the respondents having already provided the information and documents covering the period 2012 to 2017 in compliance with the June 2018 Decision and Order, it is manifest that the requested information, flowing from what was disclosed in the first disclosure exercise, is necessary in order to dispose fairly of the claim and to save costs in the substantive proceedings. Accordingly, they submit, this second requirement or consideration was also satisfied, and the learned judge ought not to have limited paragraph 1 of the February 2021 Order to disclosure by the respondents only during the period they held the offices of President and Treasurer in LIALPA, which Order ought to be set aside by this Court. In doing so the learned judge failed to have regard to the Representation Order, and to the fact that the respondents were sued both in their personal capacity and as the court appointed representatives of LIALPA. They also submit that the learned judge’s determination was flawed in that she ignored, erroneously, that the respondents had complied fully with the June 2018 Order for disclosure covering the earlier period when neither of them held office on the Executive Council of LIALPA. Moreover, the period 2012 to 2016 is, on the

appellants' pleaded case, relevant to and necessary in order to dispose of the claim fairly and to save costs – Part 34.2(2).

Respondents' Submissions

- [21] The respondents argue that, notwithstanding that they were sued in a representative capacity, paragraphs 5,6,7 and 8 of the reliefs in the prayer to the claim relate to them personally as members of the then Executive Council and in their capacity, respectively, as President and Treasurer of LIALPA. It is common ground on the pleaded cases that the respondents' term of office began in 2016. They were re-elected in 2017 for a term of 2 years. However, the first respondent, Mr. Burke demitted office in September 2019, and the second respondent, Mr. Labadie, who held the office as Treasurer at the time the February 2021 Order was made, has since resigned. Accordingly, as matters stand, neither respondent holds any office on the Executive Council of LIALPA and are not in a position to comply with any disclosure order made by the court on behalf of LIALPA.
- [22] The respondents submit that having examined the pleadings, the learned judge below was correct in her ruling that a disclosure order can only attach to the period when the respondents were actually in control of the funds of LIALPA, that is, September 2016 to 2019 for Mr. Burke, and September 2016 to the present for Mr. Labadie.⁵ Paragraph 6 of the prayer for relief in the claim form, they submit, is addressed to the respondents personally and there is no pleaded allegation that the respondents were members of the Executive Council of LIALPA during the period 2012 to 2018 in their personal capacity, as alleged by the appellants in their written submissions.⁶
- [23] Mr. Simon KC, learned counsel for the respondents, pointed to the terms of the Request which sought details of a number of matters between 2012 and 2016. These were details of certain specified loan sums for the years 2012 to 2016. By

⁵ Para. 18 of the respondents' written submissions.

⁶ Para. 19 of the respondents' written submissions.

the said Request, the appellants also sought details for the years 2012 – 2018 of the columns labelled as “Bad Debt”, the columns labelled “Miscellaneous”, a breakdown and details of services provided to all Legal and Professional Services, all spending on travel, meals and accommodation for LIALPA, and details of individual telephone bills for each of the assigned Executive Member’s phones. It also sought detailed information in relation to 134 cheques issued during the period 6th July 2012 to 2nd June 2017; and information on all remaining cheques for 2017 through to 2018. It was submitted that none of this information between 2012 and 2016 is or could be relevant to or necessary for the court disposing fairly of the claim. Accordingly, the requirement of CPR 34.2(2) was not satisfied, and the learned judge was correct in making the order that she did.

- [24] As to the particulars of the Request itself, Mr. Kissoon, learned counsel for the appellants, in reply to the oral submissions by counsel for the respondents, drew the Court’s attention to the cheque listed at paragraph 7 item No. 33 which states: ‘29 AUG 13 CHQ DEPOSIT (C. BURKE) \$10,000’. As I understand it, the purpose of this was to point to some matter evincing that, at least the first respondent, had something to do with the bank account of LIALPA during the period prior to September 2016, when he held the office of President on the Executive Council. However, neither the Request or the November 2019 application or the first appellant’s affidavit in support thereof, sought to explain in which capacity the first respondent was connected with this cheque. Was he the payee or a signatory? More importantly, it is not the pleaded case for the appellants that the first respondent (or the second) had any dealing with the bank accounts and/or financial matters of LIALPA prior to his appointment as President. Accordingly, there is no pleaded case upon which the appellants can seek to make this assertion. It is not enough to say that the appellants in their amended statement of claim have not specified any period with respect to which either respondents had or may have had some dealings with the financial affairs of LIALPA. Indeed, such a contention is incorrect on their pleaded case, as mentioned above.

Analysis and Conclusions

- [25] The relevant provisions of Part 34 of the CPR are set out at paragraph [15] above. The fundamental test or requirement is that an order for a party to comply with a request for information made pursuant to CPR 34.1(2), will not be made by the court 'unless it is necessary in order to dispose fairly of the claim or to save costs.' A court in ascertaining whether this requirement has been met by an applicant, ought to take a broad view of the claim and of the issues of fact and of law pleaded by both the claimant and the defendant, but which are, at that stage in the proceedings, yet to be considered and determined. The judge ought, therefore, to carefully examine the pleaded cases and issues on both sides, and not take too stringent a view of the likely outcome of such issues. This is necessary having regard to the requirement for fairness in CPR 34.2(2) as between both the claimant and the defendant.
- [26] In the instant matter, the learned judge was required to consider the appellants pleaded case in the fixed date claim form and in the amended statement of claim, and to also consider the defence filed by the respondents in response thereto. The respondents were sued both in their personal capacity and as the court appointed representatives of LIALPA. This much is made clear by paragraph 7 of the amended statement of claim. By paragraph 8, it is averred that the first and second respondents (along with the first claimant Mr. Burke), were elected to the Executive Council of LIALPA on 7th September 2016 – the first respondent as President, the first appellant as Vice President, and the second respondent as Treasurer. There follows a number of pleaded allegations against and in relation to the conduct of the first respondent in his capacity as President, and of the second respondent as Treasurer of LIALPA from September 2016 onwards, the details of which do not warrant repeating in full here.
- [27] Suffice it to be said that these pleaded allegations relate both to the first and second respondents in their respective offices on the Executive Council, as a part of "the 2016 Council", "the 2017 Council" and beyond. The amended statement of

claim alleges infringement of the mandate of the Executive Council and acts said to be contrary to or in breach of the Constitution and by-laws of LIALPA; the failure to hold elections in accordance with the Constitution; allegations that the Council was or is *ultra vires* the Constitution; the alleged failure to prepare and present to the members of LIALPA audited financial reports in breach of the by-laws and section H6 (9) of the **Antigua and Barbuda Labour Code**; alleged failures to explain the expenditure by LIALPA of the sum of EC\$1.34 million during the period 2011 to 2017; the failure of the first respondent to respond to requests from the third claimant Mr. Eric Ward (as the claim was originally constituted) and from the appellants for financial information, including a breakdown of the expenditure of LIALPA for the years 2012 to the then current date in 2017; alleged irregularities of the then current Executive Council; and for disclosure of financial statements of LIALPA. At paragraph 28, the appellants encapsulate all the allegations in this way: '[i]n the premises, the Defendants have failed in their duties under the Constitution and By Laws of LIALPA as trustees thereof or otherwise and are, further, in breach of the provisions of the Antigua and Barbuda Labour Code'.

[28] The appellants also plead that 'the current *de facto* Executive Council is *ultra vires* the Constitution and By Laws and the Defendants have failed to comply with the set rules governing LIALPA'. They require that the respondents by order of the court to 'cause elections to be held in accordance with the governing rules of LIALPA, or, alternatively, an Order requiring that LIALPA be dissolved in accordance with the Constitution and By Laws or otherwise'.

[29] At paragraph 31, it is averred that the respondents 'are accountable to LIALPA for the use of any and all monies held in trust by them and are required to account to the [appellants] for the use of the same'. And at paragraph 33: '[i]n the event that, after due inquiry, the Defendants are found to have improperly used monies belonging to LIALPA, the Defendants are liable and accountable for the same and there must be restitution of those funds to LIALPA together with interest thereon'.

[30] From the appellants' pleaded case, it is pellucid that each and every allegation, be it of fact or of alleged wrongdoing, breach of trust, breach of the Constitution and By Laws of LIALPA and of the **Antigua and Barbuda Labour Code**, made against the first and or the second respondents, relate, and relate only, to the period from 7th September 2016 when they were, as pleaded by the appellants, lawfully elected to the Executive Council of LIALPA; and only in relation to their office as, respectively, President and Treasurer, *de facto* or *de jure*, of the Executive Council of LIALPA. No allegation of any sort whatsoever have been made in the amended statement of claim or otherwise, against either respondent, relating to any period prior to 7th September 2016, or otherwise than in the office as President and Treasurer of LIALPA. Indeed, the allegations relative to possible financial irregularities or expenditures of the funds of LIALPA all relate to and concern only the period from 7th September 2016 when, presumptively, the respondents were signatories on the bank accounts of LIALPA and, it is alleged, had a duty to prepare and put before the members of LIALPA audited accounts for each year during their tenure. There is no assertion that either respondent was a signatory on any bank account of LIALPA (whether held in banks in Antigua and Barbuda or Barbados or elsewhere) prior to them assuming office as President and Treasurer respectively of LIALPA on 7th September 2016.

[31] Against this pleaded case by the appellants, I am constrained to agree with the learned judge that any order for disclosure of information relative to financial matters of LIALPA, be it loans, bad debt, miscellaneous matters, services including legal and professional services, travel, meals and accommodation, individual telephone bills of phones assigned to each Executive Council member, and details in relation to issued cheques by LIALPA, including in particular who were the payees on each such cheque, prior to 7th September 2016 when the respondents were elected to their respective offices on the Executive Council of LIALPA, are not matters which are necessary in order to fairly dispose of the claim in the instant matter. Moreover, in my view, the learned judge was correct in limiting the scope of the documents to be disclosed under paragraph 1 of the

February 2021 Order to the period when each of the respondents held such offices.

- [32] The learned judge, at paragraph 2 of the February 2021 Order, also limited the scope of the disclosure documents to the audited reports for the period September 2016 to 2019 in respect of the first respondent, Mr. Burke, and September 2016 to the present (the time of making the order) with respect to the second respondent Mr. Labadie. As mentioned above, paragraph 2 has not been appealed and is therefore not before this Court for consideration.

Disposition

- [33] In the premises, this appeal ought to be dismissed. The respondents, having been successful in the appeal are entitled, on the general rule at CPR 64.6(1), to an order for payment of their costs. Accordingly, I would make the following orders:

- (1) The appeal (against paragraph 1 of the February 2021 Order) is dismissed, and the order made by the learned judge in the court below affirmed; and
- (2) The appellants shall pay the respondents costs of the appeal in the sum of \$2,500.00, such costs to be paid within 21 days from the date of delivery of this judgment.

I concur.
Gertel Thom
Justice of Appeal

I concur.
Margaret Price-Findlay
Justice of Appeal

By the Court

Chief Registrar