

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM NO. BVIHC (COM) 167 of 2019

**IN THE MATTER OF SUNDALE INTERNATIONAL LTD
AND IN THE MATTER OF BEST LAND INVESTMENTS LTD
AND IN THE MATTER OF THE BVI BUSINESS COMPANIES ACT 2004 (AS
AMENDED)
AND IN THE MATTER OF PARTS 9 AND 42 OF THE CIVIL PROCEDURE RULES 2000
(AS AMENDED)**

BETWEEN:

HU LAN

Claimant

ad

**[1] SUNDALE INTERNATIONAL
[2] BEST LAND INVESTMENTS LTD
[3] HARNEYS CORPORATE SERVICES LTD
[4] DAVID GOLDEN**

Defendants

Determined on paper:

Mr. John McCarroll SC made the application on paper for the fourth defendant
The claimant and the other defendants made no submissions

2020: June 11

JUDGMENT

[1] **JACK, J [Ag.]:** This is an application dated 5th June 2020 by the fourth defendant (“Mr Golden”) seeking an order that the claimant do file and serve her response to Mr. Golden’s request for further information dated 24th April 2020 within three clear days of the making of the order. It comes before me on paper.

[2] CPR 34.2 provides:

“(1) If a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.

(3) When considering whether to make an order, the court must have regard to – (a) the likely benefit which will result if the information is given; (b) the likely cost of giving it; and (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.”

[3] The requests on their face are not unreasonable. However, that is not the test. The bundle served is grossly deficient. It does not include any of the pleadings in this matter. There is apparently some application by the claimant to strike out Mr. Golden’s defence. That is not put in the bundle, although the need for answers to the request for further information is said to be of critical importance in resisting the strike out application. It is not for me to trawl through what are now 19 webpages of documents (20 documents per webpage) filed in this matter on the E-Litigation Portal.

[4] In **Renova Industries Ltd and others v Emmerson International Corp and others**¹ I laid emphasis on the test of necessity. In the current case, apart from the assertion that it is necessary that answers be given, there is no evidence of necessity. I can take the first batch of requests as typical:

“Under Paragraph 13 of the Points of Claim

Of “The following documents dated 10 January 2013 were executed to record the arrangement described above... (iii) an irrevocable declaration of trust with David as trustee or nominee in favour of Hu Lan as beneficial owner thereof (‘declaration of trust’)

Request

¹ Claim No BVIHC (COM) 2013 0160 (delivered 18th June 2019 orally with written hand-down on 12th July 2019).

1. Please disclose the identity of any person who drafted the purported Declaration of Trust.
2. Please specify the date on which the Fourth defendant is alleged to have signed the purported Declaration of Trust.
3. Please disclose the identity [of] any person who is alleged to have been present when the Fourth Defendant signed the purported Declaration of Trust any.
4. Please disclose the identity of any person who translated the contents of the purported Declaration of Trust to the Fourth Defendant.”

[5] I have not been shown the Points of Claim or the Points of Defence. All I am told in the affidavit in support of the application that the need for the information is particularly pressing “in the light of Mr. Golden’s challenge to the authenticity of documents relied on by the claimant.” In general, if a party says that a document is forged, that is a matter where at trial handwriting evidence will be adduced, or the opposing parties will adduce witness evidence of the circumstances in which the document came to be signed. As I said in **Renova** at para [16], a request for further information can be merely “an expensive way of obtaining material for cross-examination”. On a strike out the Court will not generally go behind a party’s assertion that the signature on a document is not his. (It may be different if the document in question is notarised, but there is no suggestion that that is the case here.)

[6] On the evidence available at present, the request for further information is not necessary. I therefore dismiss the application with costs.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar