Application for Specific Disclosure made pursuant to Rules 50,60 and 71 of the Royal Court Civil Rules, 2007, as against the Third Defendant.

[2021]GRC033

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Between: **AL-NASHIR POPAT** **Plaintiff**

-and-

(1) ADIL POPAT
(2) AZIM POPAT
(3) LOUVRE TRUSTEES LIMITED

Defendants

Plaintiff's specific disclosure application

Hearing dates: 28 June and 1 July 2021

Judgment handed down: 26 August 2021

Before: Richard James McMahon, Esq., Bailiff

Advocate for the Plaintiff: **Advocate A M Ozanne**
Advocate for the First Defendant: **Advocate A M Davidson**
The Second Defendant did not appear
Advocate for the Third Defendant **Advocate T J Cutts-Watson**

Cases & legislation referred to:

Royal Court Civil Rules, 2007
Norman Piette Limited v Hochtief Construction (UK) Limited (unreported, 26 January 2005)
HFT International (Guernsey) Limited v Equinox Finance Management (Guernsey) Limited (unreported, 3 May 2006)
The Civil Procedure Rules (White Book)
Berkeley Administration Inc. v McClelland [1990] FSR 381
Astra-National Productions Ltd v Neo-Art Productions Ltd [1928] WN 218
Format Communications MFG Ltd v ITT (United Kingdom) Ltd [1983] FSR 473

The Compagnie Financière et Commercial du Pacifique v The Peruvian Guano Co. (1882) 11 QBD 55
David Kahn Inc v Conway Stewart & Co Ltd [1972] FSR 169
Fuji Photo Film Co Ltd v Carr's Paper Ltd [1989] RPC 713
Molnycke AB v Proctor & Gamble Ltd (No. 3) [1990] RPC 49
Fine Care Homes Ltd v Natwest Markets plc (formerly Royal Bank of Scotland plc) [2020] EWHC 874 (Ch)

Introduction

1. These proceedings were commenced some years ago now. Following an interlocutory decision relating to the First Defendant's application to strike out the Cause or alternatively for summary judgment, which I handed down in the summer of 2019, the Plaintiff has amended his Cause to add a proprietary estoppel claim (paragraphs 61A and 61B), to which the First and Third Defendants have amended their Defences and the parties have since been undertaking disclosure. (The Second Defendant's Advocates are apparently without instructions, which is why the Second Defendant's participation in these proceedings has rather stalled.)

2. Within the context of the ongoing disclosure stage, the Plaintiff has brought an application for specific disclosure dated 19 March 2021. It is made pursuant to rules 50, 60 and 71 of the Royal Court Civil Rules, 2007 and is only against the Third Defendant. It seeks an order that searches are carried out for the documents listed in the schedule appended and that the documents found are then disclosed and made available for inspection. If any of the documents sought are no longer in the possession or control of the Third Defendant, the Plaintiff seeks an order that a representative of the Third Defendant should swear an affidavit explaining the reasons why.

3. This application is supported by the Plaintiff's Second Affidavit, which was sworn on 19 March 2021. In response, Colin Bridle, a director of the Third Defendant, has sworn an Affidavit on 10 May 2021. Although some further documents have been provided to the Plaintiff, the Third Defendant opposes the rest of the relief being sought. The final piece of evidence before the Court is an Affidavit of Katherine Jensen sworn on 21 May 2021, which exhibited a consolidated and re-ordered bundle of the Third Defendant's disclosure and supplemented the schedule that was attached to the application by adding what Mr Bridle had said in response and to provide an indication as to those elements that remain in issue between the parties.

4. I have had the benefit of the Skeleton Arguments of Advocate Alison Ozanne, on behalf of the Plaintiff, Advocate Cutts-Watson, on behalf of the Third Defendant, and Advocate Davidson has appeared on behalf of the First Defendant, but his brief Skeleton Argument and his oral submissions have mostly been confined to pointing out that no relief is sought against the First Defendant. Advocate Ozanne's reply Skeleton Argument joins issue with the Third Defendant's position. As part of her oral submissions, Advocate Ozanne also produced another version of the schedule appended to the application, on this occasion putting the 45 numbered documents still forming the basis of the application into chronological order, so far as that was possible. The other documents from the original list had been dealt with previously between the parties.

5. At the conclusion of the hearing, I reserved my decision. I gave an indication that I expected that I would make an order for some of the documents to be disclosed rather than dismissing the application in its entirety. This judgment now sets out my reasons for having reached the conclusion that I will not grant the full relief sought by the Plaintiff.

Facts

6. I do not feel the need to say much about the underlying facts in this case, in part because I summarised them when delivering judgment in 2019. Although the additional claim has been added, the underlying premise remains the same. The Plaintiff alleges that one of his brothers, the First Defendant, has played a role in what is termed "the Offshore Wealth", which means that the Plaintiff is entitled to a declaration that he has a one-third share in whatever has comprised that Offshore Wealth and its traceable proceeds, and that, if any of those assets made their way into the Third Defendant's hands, first as trustee of the Almancil Settlement, of which the Plaintiff is acknowledged to have been a beneficiary, and then into the Kalys Trust, of which it is accepted that the Plaintiff is not a beneficiary, all those now holding assets derived from the Offshore Wealth be required to account for the Plaintiff's one-third share.

7. Under the terms of a varied Consent Order, disclosure between the parties took place on 13 November 2020. Having reviewed the materials disclosed by the Third Defendant, the Plaintiff's Advocates sent a letter on 15 January 2021 enclosing a schedule of documents they suggested appeared to be missing. This is the schedule that has since been appended to the application. The Third Defendant's Advocates first requested a copy of the schedule in Microsoft Word, which was supplied, and then responded on 11 March 2021, pointing out that Guernsey was still in the grip of its second Covid-related lockdown, which was hampering its ability to respond, but also pointing out that many of the requests made had not been properly made, because there was no indication as to their relevance to the matters pleaded. This led to the application being made.

Legal principles

8. By rule 65(4) of the 2007 Rules, standard disclosure principally obliges a party to disclose documents on which it relies, documents which adversely affect its own case, or documents which adversely affect or support another party's case. Rule 66 obliges a party to make a reasonable search for the documents relating to another party's case, taking into account the number of documents involved, the nature and complexity of the proceedings, the ease and expense of retrieval of any particular document and the significance of any document likely to be located. Rule 67 limits the obligation to documents which are or have been in the party's control. Rule 70 confirms that the duty of disclosure continues until the proceedings are concluded. Rule 71 then provides the basis for the Plaintiff's application, with para. (2) explaining that:

> "*An order for specific disclosure is an order that a party must do one or more of the following things –*
>
> *(a) disclose documents or classes of documents specified in the order,*
>
> *(b) carry out a search to the extent stated in the order,*
>
> *(c) disclose any documents located as a result of that search.*"

9. Although Advocate Cutts-Watson referred to *Norman Piette Limited v Hochtief Construction (UK) Limited* (unreported, 26 January 2005), which was then endorsed in *HFT International (Guernsey) Limited v Equinox Finance Management (Guernsey) Limited* (unreported, 3 May 2006), both being cases under the predecessor to the 2007 Rules, Counsel have relied more on the fact that our rules are drawn from those found in the English Civil Procedure Rules, meaning that the principles established in respect of those English rules can be applied in relation to this application. In those circumstances, I am content to be guided by the approach taken under those English rules.

10. The commentary to rule 31.12 (from which rule 71 in the 2007 Rules is drawn) states (in para. 31.12.1):

"*The application should set out the documents or classes of documents for which disclosure or inspection is sought, or the extent of the search sought. If a class of documents is specified, the class should be carefully defined so it is limited to what is relevant and proportionate, and so the disclosing party is in no doubt as to the scope of their obligation: City of Gotha v Sotheby's [1998] 1 W.L.R. 114 at 123H, CA; Berkeley Administration v McClelland [1990] F.S.R. 381 at 382. It may also be appropriate to explain why it is reasonable and appropriate for that disclosure or search to be done. The former RSC contained a requirement that the evidence state the source and grounds for believing the document exists. While this is not an express requirement under the CPR, it will be good practice in appropriate cases.*"

11. The next portion of the commentary also makes reference to one of the cases to which Advocate Ozanne has referred on the rationale for such orders, and covers the further material to which Advocate Cutts-Watson has referred, so I will set out the start of the commentary in para. 31.12.2 in full:

> "*The court will take into account all the circumstances of the case and in particular the overriding objective in Pt 1 (see Practice Direction supplementing Pt 31, para.5.4 (para.31APD.5) and the concept of proportionality).*
>
> *The rationale for the discretion to order specific disclosure is that the overriding objective obliges the parties to give access to those documents which will assist the other's case: Commissioners of Inland Revenue v Exeter City AFC Ltd [2004] B.C.C. 519. The court has a discretion as to whether it makes the order. It may make an order at any time, regardless of whether standard disclosure has already occurred; and it may make orders for specific disclosure against a claimant before the service of the defence where it would assist the defendant to plead a full defence rather than an initial bare denial: Dayman v Canyon Holdings Ltd, 11 January 2006, unrep., Ch D, HH Judge Mackie QC.*
>
> *The court will need to satisfy itself as to the relevance of the documents sought, and that they are or have been in the party's control, or at least that there is a prima facie case that these requirements will be met. The relevance of documents is analysed by reference to the pleadings, and the factual issues in dispute on the pleadings: Harrods Ltd v Times Newspaper Ltd [2006] EWCA Civ 294; [2006] All E.R. (D) 302 (Feb) at [12]. Where a claim is likely to turn on particular documents there is a stronger case for an order to be made: Chantrey Vellacott v Convergence Group plc [2006] EWHC 490 (Ch) Rimer J (Lawtel LTL Doc. No.AC9100857 (in that particular case emails and draft documents)).*"

12. As a result, both Advocates have referred to the way such an application was dealt with in *Berkeley Administration Inc. v McClelland* [1990] FSR 381. This was an action for breach of confidence, in which the plaintiff sought specific discovery (as it was then called) of a number of categories of documents, including of some documents to which it had access only in an edited or partly redacted form. The principles, which have been repeated since, were set out by Mustill LJ (at page 382):

> "*(1) There is no jurisdiction to make an order … for the production of documents unless (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the document or documents relate to matters in issue in the action; (c) there is sufficient evidence that the document is in the possession, custody or power of the other party.*
>
> *(2) When it is established that those three prerequisites for jurisdiction do exist, the court has a discretion whether or not to order disclosure.*

(3) The order must identify with precision the document or documents or categories of document which are required to be disclosed, for otherwise the person making the list may find himself in serious trouble for swearing to a false affidavit, even though doing his best to give honest disclosure."

13. On the question of relevance, Advocate Ozanne has referred to the way what Tomlin J had stated in *Astra-National Productions Ltd v Neo-Art Productions Ltd* [1928] WN 218 was dealt with in *Format Communications MFG Ltd v ITT (United Kingdom) Ltd* [1983] FSR 473, being the need, as a *prima facie* case, to establish:

> "*… that there were in existence some documents which were relevant to the matters in issue in the action which had not been included in the other party's affidavit of documents. 'Relevant' meant something which contained information either directly or indirectly enabling the party seeking discovery either to advance his own case or to damage that of his adversary, or which might fairly lead to a train of enquiry which might have either of those consequences.*"

By reference to the well-known passage in *The Compagnie Financière et Commercial du Pacifique v The Peruvian Guano Co.* (1882) 11 QBD 55, 63, to which reference was made in the Guernsey cases which I have mentioned, what matters is the possibility of the document being of use, not that it must be shown to have that utility.

14. Advocate Cutts-Watson points to those cases in which orders have been refused because of the application stating the class of documents too widely, eg, *David Kahn Inc v Conway Stewart & Co Ltd* [1972] FSR 169, where it was further noted that the probative value of the documents sought appeared to be so slight that it would be an inconvenience on the party against whom the order was sought to require them to be looked for. Similar comments were made in *Fuji Photo Film Co Ltd v Carr's Paper Ltd* [1989] RPC 713 by Aldous J. The position was summarised by Mummery J in *Molnycke AB v Proctor & Gamble Ltd (No. 3)* [1990] RPC 49:

> "*First, the documents sought to be discovered must be relevant to an issue in the action. It follows that, where there is a claim to see a class of documents, the class must not be defined or described so widely as to include documents which are not relevant to the issue. For example, it was held in Fuji Photo Film Co. Ltd. v. Carr's Paper Ltd. [1989] R.P.C. 713, that an application for all documents relating to the invention of the plaintiff's patent was too wide. Aldous J. firmly rejected the contention that all such documents were relevant to the issue of obviousness in that action.*
>
> *Secondly, the discovery sought must, in the opinion of the court, be necessary either for fairly disposing of the cause or matter or for saving costs …*"

15. In the recent decision of *Fine Care Homes Ltd v Natwest Markets plc (formerly Royal Bank of Scotland plc)* [2020] EWHC 874 (Ch), to which Advocate Ozanne has drawn attention, the position was described in the following terms (para. 56):

> "*Disclosure – and in particular specific disclosure – is a process which, more than any other, requires the parties to liaise with a view to defining and narrowing issues. It is a process which should take place out of court with the court only being asked to intervene where no resolution of the issues has proved possible. In such circumstances, however, the outstanding issues should be clearly identified so that the court can form a reasoned view as to the appropriate order to make. It will rarely be possible (let alone desirable) for the court to use the hearing to effectively broker a negotiation between the parties as*

to the precise scope of any order for specific disclosure. On the contrary, the ground work should always be done in advance so that by the time the matter reaches court, the battle lines between the parties have been clearly drawn. Only in those circumstances, will it be possible for the court to make a sensible and effective determination of whatever disclosure issues remain."

The parties' main contentions

16. Advocate Ozanne contends that the Plaintiff has complied with this principle because she invited the Third Defendant's Advocates to provide the full list of documentation then pursued by this application and the Plaintiff was disappointed with the first substantive response received. Since then, some of the documents have been discovered and provided. The implication, therefore, is that the Third Defendant could with some diligence locate the other documents. This is particularly so because each of the documents still being sought arises out of a reference made in another document already disclosed and inspected, or there are unacceptable redactions or there is no note of a meeting known to have taken place in circumstances where a note should have been made and so be available. She suggested that the Plaintiff needed to be on an equal footing with others, noting that one of the principal persons at the Third Defendant, Derek Baudains, was shown to have a close relationship with the First Defendant. On the basis that the Plaintiff alleges that the First Defendant has been hiding information from him, the Plaintiff's concern is that the First Defendant is privy to more information from the Third Defendant than he is. In a case of considerable value, such as this one, it is proportionate to expect the parties to undertake a reasonably comprehensive search.

17. During her oral submissions, Advocate Ozanne commented several times that certain of the documents being sought by the Plaintiff were materials to which he was entitled as of right, whether because they were documents of the Almancil Settlement, of which he had been a beneficiary, or relating to a company in which it had been acknowledged that he had held shares. Those submissions resulted in the other Advocates pointing out that the application was being advanced in the context of the present action only, under the 2007 Rules, and that it was not brought by the Plaintiff under either of the trusts or companies' regimes to which reference was being made.

18. On behalf of the Third Defendant, Advocate Cutts-Watson highlighted that what still fell to be determined is the original application, because there had been no amendment sought to be made to it. In those circumstances, the Court was invited to look at the manner in which that application had been brought and, in particular, to note that there had not been any specific cross-referencing to the elements of the Plaintiff's Re-Amended Cause, as the authorities and guidance from the English Civil Procedure Rules indicated there needed to be. In broad terms, apart from the additional documents already provided to the Plaintiff, the application was resisted because the searches that would follow are inappropriate and disproportionate, there has been an insufficient effort to link the documents to the relief actually being sought and the disclosure sought is far too wide and amounts to a fishing expedition.

19. Advocate Cutts-Watson also drew attention to what has already been set out in Mr Bridle's Affidavit, explaining why he knows that certain of the materials being sought will not be capable of being found. This explanation should suffice for the purposes of para. 2 of the application.

Discussion

20. Whilst I accept that what is before me is the application as originally made, meaning that there is a list of unnumbered items being sought, eg, the first item refers to an interest free loan of $1 million from Almancil to Waterport Limited, referring to page 903 of the disclosure already given by the Third Defendant, where what is sought is "*any documents evidencing and relating to this loan*", I am satisfied that the easiest approach will be for me to refer to each item by the number given to it in the revised table exhibited to Ms Jensen's Affidavit. These are the same numbers as used in the chronological list of documents from which Advocate Ozanne then made her submissions, and to which Advocate Cutts-Watson responded, using that same list. There are 45 entries on this chronological list. Accordingly, when I refer in this judgment to a document by number, it will be a number between 1 and 45 as found on the list as exhibited and re-ordered in this chronological document, some of which are no longer in dispute as the Third Defendant has already provided them.

21. I propose to deal with each document, or groups of documents, from the chronological list. As will become apparent, I am satisfied that most of the material being sought by way of specific disclosure cannot be granted, primarily because the Plaintiff has failed to explain the relevance of something or because the application fails to identify with the required particularity exactly what is being sought. In respect of the former reason, just because a document disclosed refers to something else does not necessarily mean that that other document meets the requirements for disclosure. In each case, the Plaintiff needed to establish a link to the pleaded case he is advancing , which he has not managed to do in the context of this application. That does not mean that an appropriately targeted application could not succeed in the future. In relation to certain elements of the application, some of which have already been accepted by the Plaintiff as having to be dealt with under para. 2 of the application whereas others have not been, I am satisfied that there is no basis on which to grant that para. 2 relief to the Plaintiff because Mr Bridle's Affidavit already contains adequate responses.

22. The earliest of the dated documents from which further material is being sought by the Plaintiff is item 10. This relates to a note of a meeting held on 22 July 1992 that the First Defendant exhibited to an Affidavit used to support the application to strike out, which was dismissed. This note refers to bank accounts being opened with Leopold Joseph & Sons (Guernsey) Limited. The application seeks related bank statements and any other related documents produced by the First Defendant following this meeting.

23. On this occasion, I will set out in full what Mr Bridle has put in his Affidavit:

> "*To the extent that these are considered relevant (which I do not necessarily accept) I anticipate that if in existence and discoverable, such documents would have been discovered in Louvre's standard disclosure exercise carried out last year.*
>
> *Nevertheless, I have carried out a search for documents provided by Adil Popat after this meeting and have not discovered any further documentation pursuant to this request.*
>
> *The search focused only on the hard copy documentation held by Louvre, including hard copy files and folders held in relation to Millgate, Penrose and the Almancil Settlement – owing to the date of the referenced document (1992) I consider that electronic searches are unlikely to yield results.*
>
> *The search did not result in the requested bank statements. If statements were in Louvre's control, they appear to have been lost as they were not contained in the hard-copy folders reviewed. I have carried out enquiries and am not aware that the bank statements would have been retained elsewhere.*

As the Plaintiff has simply sought "any other related documents produced by Adil following this meeting" and not specified what those documents are or might be, I am unable to say in relation to those documents if such documentation existed, or was within Louvre's control."

24. I take the view that this response provides a full answer in relation to this item in the application. It is apparent to me that the Third Defendant has caused appropriate further searches to be undertaken between receipt of the application and the date of the hearing. Nothing further is to be gained from ordering the Third Defendant to depose once again to the same outcome. I am, therefore, satisfied that the Plaintiff has not shown that there should be an order for the Third Defendant to search what it has available once again. The date of the material being sought is long enough ago that even if those documents had existed they might no longer be retained. Finally, there is no utility in making an alternative order under para. 2 of the application and the Plaintiff will have to decide how it wishes to address this issue, if at all, at trial making use of the answer given by Mr Bridle. The application in respect of item 10 is, therefore, rejected.

25. I can deal with the next batch of items through similar reasoning and without needing to set out further detail. Accordingly, I reject the application in respect of items 11, 12, 13 and 9, all of which relate to the mid-1990s.

26. Item 14 relates to a file note of a meeting Mr Baudains held with the First Defendant on 16 May 1996. The Plaintiff seeks "*any historic documents received from Leopold Joseph (or its successor) at take on*" and also documents that had been underlined, which relate to powers of attorney in respect of Millgate Limited and Penrose Properties Limited and a full breakdown of income received and administration fees paid up until then. The Plaintiff further seeks documents produced by the First Defendant to the Third Defendant showing that he was the sole owner of Millgate Limited, rather than it being jointly owned with his brothers. Finally, the Plaintiff seeks the mandate for the accounts opened for Millgate Limited and Penrose Properties Limited with RBSI "*and related documentation in relation to these accounts*".

27. However one looks at the wording of this request in the application, it is, in my view, too broadly worded. For that reason, it fails. Some of the information being sought is more akin to a request for further information, which is how the response to what the Third Defendant has said largely reads. Some of the issues being raised are capable of being explored with the witnesses at trial. For example, if there is already a document suggesting that the ownership of Millgate Limited is different from how it is put in a different document, then those questions can be asked of the relevant witnesses. The historical nature of what is being sought is also relevant because Mr Bridle has again explained that if something has not already been unearthed, it is unlikely that searching the same materials again will be any more effective.

28. Item 15 refers to another meeting note made by Mr Baudains, this time dated 17 September 1996. The Plaintiff's request for financial statements has been addressed. There is also reference to the Plaintiff wanting sight of an education plan apparently handed to Mr Baudains by the First Defendant at the meeting "*and related documentation*". I have not been able to understand the relevance of this education plan to the subject-matter of the current action. Advocate Ozanne suggested that the Third Defendant was attempting to draw an artificial line between what can properly be provided at a top level and some of the underlying detail, which the Plaintiff says is a necessary component of the case he is seeking to establish. I am not persuaded that that distinction assists here. On the basis that I have not been shown any link to the underlying facts pleaded by the parties, it seems to me that this is an example of where the Plaintiff has analysed what has been provided and sought something referred to therein, simply because it has been so referenced. Whilst I am satisfied that the note refers to a document that must have existed at the time, I am not satisfied

that there is relevance to the issues that will be before the Court at trial and so this item in the application is rejected on that basis.

29. Item 16 queries the accounts for the year ended 31 December 1996. The request is for any loan documents as between Penrose Properties Limited and the trustee or documents explaining the treatment of the fees as a loan. I am not persuaded that this is a valid request. The Plaintiff already has the accounts in question, which show that it was treated in this way. There may be questions as to the propriety of doing this, but those are questions that can, if so desired, be asked at trial. In my view, there is no justification for requiring the Third Defendant to conduct any more searches for the material the Plaintiff seeks when the outcome is clear on the face of the documents already disclosed.

30. In respect of items 17 and 19, I am satisfied that Mr Bridle's Affidavit already explains enough about why the documents cannot be found. For similar reasons to those already given, there is no need for the Third Defendant to re-state this in a further Affidavit.

31. In respect of item 18, which relates to a meeting note from 3 December 1997, although some explanation has been given, I am not satisfied that it is as full as it ought to be. This part of the application relates to the detail sheets, fee sheets and accounts, the final versions of which were to be faxed to the First Defendant in Lisbon. Mr Bridle states that a further review has not managed to identify the documents in question. I find this surprising and am not entirely persuaded that Mr Bridle has responded as completely as he needs to in order to fulfil what can be ordered under para. 2. He also suggests that this is the sort of documentation that the Plaintiff might be entitled to if his action succeeds. Again, I am not satisfied that that is a full answer. It is apparent that the First Defendant expressed concern about needing documents to be sent and to be forewarned they were coming. In those circumstances, I imagine that there should be more indicators as to what was shown at this meeting and then which documents were faxed in final form. Accordingly, I think that the material relating to item 18 should be looked for more carefully or the explanation to be provided as to why these materials cannot be found needs to be more complete. This is the first item from the chronological list where I am satisfied it is appropriate to grant the order sought by the Plaintiff.

32. Item 20 is no longer pursued as already provided. This is an instance of a document remaining in the list when perhaps it should already have been removed. The same applies to item 23.

33. In respect of items 21 and 22, I am satisfied that both have already been satisfactorily answered by Mr Bridle in his Affidavit. Indeed, the latest list accepts that item 21 is now for the Affidavit, but I do not consider that the Third Defendant needs to do anything further because of what is already in Mr Bridle's Affidavit. The same comment applies to item 24.

34. In relation to item 25, I understand that the Plaintiff has already been provided with a copy of the document without the bottom line cut off. The rest of the application relating to this item, which is a trust review procedure dated 31 December 2002, seeks "*any other material relevant to what are and are not trust assets*". Again, I accept the submissions of Advocate Cutts-Watson that this is couched too broadly to be capable of being granted by way of specific disclosure. Advocate Ozanne may well be correct when she comments that the Third Defendant, as trustee, should be in a position to identify the assets that are held on the terms of the Almancil Settlement at any time from the trust records. However, that is less about disclosure and more about whether there could be a valid request for something along those lines as further information. The financial statements relating to the Settlement are now in the Plaintiff's hands, from which he may be better equipped to make a targeted request for a summary of the position at any particular dates. However, because this aspect of the application is too broad, it will not be granted.

35. Item 26 is a note of a telephone conversation held on 31 January 2003, in which the author enquired whether the First Defendant had reviewed some accounts in respect of two entities known as Glasbroke and Imperial, and was told they had been received and he would let them have his comments once he had looked at them. Further reference is made to an enquiry of the First Defendant about another entity, First Capital. In this regard, I find that I do not see how this level of detail about these entities at that time relates to what is set out in the parties' pleaded cases. Whilst the Plaintiff might like to know about each and every element of what was being done by the Third Defendant, I think it is important to remember that what the Plaintiff alleges is that the First Defendant somehow had overall control of the Offshore Wealth he claims to be partly entitled to and this level of detail appears to be more about what might or might not fall within that category of assets in the event that his action succeeds. In the absence of any link identified to what has been pleaded, noting further the indicative list of assets given in para. 27 of the Re-Amended Cause, I am not persuaded that the relevance of this particular item has been established by the Plaintiff. For that reason, I am not minded to grant it.

36. Item 27 is noted as being for explanation in the Affidavit but, on the same basis as before, I am satisfied that Mr Bridle has already said enough in his Affidavit. This is another example of where questions might be put at trial without needing to see a whole raft of documents.

37. In respect of item 28, a contact report dated 1 September 2003, and the materials referred to therein, in part I am satisfied that Mr Bridle has already explained enough about shareholdings in his Affidavit. The material sought in relation to the Hotel Lisboa seems to me to be the type of financial information that would need to be given if the Plaintiff succeeds, but it is unclear to me what the relevance of it would be at this time. There is no dispute that the Hotel Lisboa is one of those assets that has been held within the structure about which the Plaintiff complains. There is no need for the Third Defendant to take further steps in relation to this level of detail. The second aspect raised is about the entities Glasbroke and Imperial, but in the context of another trust, the Normandy Trust, and a Mr Premji. The Plaintiff has not satisfactorily explained what the relevance of these matters can be to the claim he is making. As such, I am not satisfied that there is a sound basis for requiring the Third Defendant to look for further material or to offer any explanation about it. This appears to fall outside of the confines of the Plaintiff's action, although it may relate to some other business that the First Defendant had with the Third Defendant.

38. By reference to a letter dated 14 June 2004, which is item 43, the Plaintiff seeks "*any bank statements for the accounts mentioned*". This letter sought to close 10 accounts with RBSI and for the balances to be transferred to an account of Penrose Properties Limited. I am not satisfied that such a broadly-worded application can properly be made. There are five settlements listed, one of which is the Almancil Settlement. Even if a generous approach could be taken to the terms of the application being narrowed to just that one Settlement, I would still find it is put more broadly than is appropriate for specific disclosure. Further, this appears to be seeking a level of detail where there is some overlap with what the Third Defendant may need to provide by way of account in the event that the Plaintiff succeeds. I do not consider that I can grant the application in respect of item 43.

39. Items 29 to 32 are all no longer pursued by the Plaintiff because they have all been provided.

40. The document to which item 33 refers is the minutes dated 14 May 2007 of Waterport Limited. This was a meeting on the day this company was incorporated. The business conducted was largely what might be expected at such a first meeting. The Plaintiff seeks disclosure of the company documentation. The Third Defendant questions the relevance of this. Whilst I understand that the Third Defendant is entitled to raise such a basis in respect of this element of the application, because I am satisfied that the Plaintiff should be permitted to use Waterport Limited as a particular example

of what he is alleging the First Defendant has been able to achieve through the relationship he had with persons such as Mr Baudains at the Third Defendant and, when I reach item 1, I will be making an order in respect of a loan made by the Almancil Settlement to Waterport Limited, which was subsequently written off, I am satisfied that the documentation sought falls within the suite of materials relating to Waterport Limited which should be disclosed by the Third Defendant. Accordingly, I will make the order sought in respect of item 33.

41. Item 34 relates to an e-mail sent on 21 May 2007 explaining what was being settled into the Kalys Trust, where the Plaintiff seeks an order for the provision of "*all due diligence documentation … and supporting documentation*" as well as "*any documentation in relation to the above properties and assets*". The Third Defendant objects to this being ordered because it is too broad. I agree and I am not persuaded by Advocate Ozanne's rejoinder that the Third Defendant, as a licensed fiduciary should be easily able to produce such material, is a valid basis on which to grant this aspect of the application. That contention may be true, but this application is being made in the context of this action and is not a request being made by a beneficiary to his trustee. On that basis, I reject this element of the application.

42. In respect of items 35 to 37, I am satisfied that Mr Bridle has already provided a sufficient explanation about the searches made for the various documents sought by the Plaintiff. Indeed, Advocate Ozanne has acknowledged that item 37 falls to be dealt with under para. 2 of the application. As a result, there is nothing further required and these are areas that can, if the Plaintiff so wishes, be explored in oral evidence.

43. Item 38 is an e-mail explaining to the First Defendant that a dividend has been paid to the Kalys Trust, and setting out the bank account balances. The Plaintiff asks for "*any documents evidencing the shareholder dividend, bank statements in relation to all accounts in particular Kalys*". The Third Defendant opposes this element of the application by pointing out that this relates more to the relief sought by the Plaintiff than material in respect of the subject-matter of the action. I agree and, therefore, will reject this element on that basis, but it could also be rejected for the general reason of being couched too broadly.

44. Item 1 is a minute of the Third Defendant as trustee of the Almancil Settlement dated 4 January 2010, which records that a loan of $1 million was made to Waterport Limited on, so it appears, 9 October 2007, and that the trustee was resolving to waive this loan. As I have already indicated, I am satisfied that this is a targeted request for further disclosure in an area where the Third Defendant should comply because it affords a reasonably discrete area for the Plaintiff to pursue a legitimate challenge to the alleged level of control being exerted by the First Defendant. I am not persuaded by the Third Defendant's argument that this will involve an unreasonable search. I take the view that it is focused on a particular company within the Almancil structure and that it should be comparatively easy to find the material in question. This is not an example of something that can be explained away as something that would only fall to be provided by way of the relief being sought. The Third Defendant ought, in my view, be required to try to locate the documentation relating to the original making of this loan. It is referenced in the financial statements of the Settlement that have been provided since the application was first made. If the Third Defendant cannot locate the material that relates to this loan, then it will, I suspect, become a particular example of where the Plaintiff will focus attention and so it is, I think, an example of where something fuller by way of explanation can be expected from the Third Defendant under para. 2 of the application. In short, I am satisfied that the documentation available relating to this issue should be disclosed if it can be located. In this way, the issue will be capable of being dealt with from the most complete contemporaneous written material available, rather than just memories. I do not find that this is putting too much of a burden on the Third Defendant.

45. Item 39 arises because the document disclosed contains redactions. The Plaintiff seeks the document in unredacted form. The Third Defendant asserts that the redactions relate to confidential trust and corporate information which is not relevant to the issues pleaded and would, if the Plaintiff were successful, be covered by the relief sought.

46. I have noted that there was an application along these lines within the ***Berkeley Administration*** case, in which Mustill LJ stated (at page 383):

> "*Plainly the atmosphere in the case is such that the plaintiffs have grave scepticism about anything said on behalf of the defendants, but it is not a purpose of discovery to give the opposing party the opportunity to check up on whether the discovery has been properly carried out. If they do not believe the deponent they should call him to appear and be cross-examined on his oath. Alternatively, if they wish to do so, they may seek the opportunity at the trial to explore the matter further. But for my part I think it is quite plain that in the exercise of our discretion we should not order these documents to be disclosed. This seems to be a matter which is much better left for the trial judge to deal with if and when it is pursued.*"

47. The redactions in this fairly lengthy document recording a meeting between Mr Baudains and the First Defendant on 2 June 2013 appear to relate to the details of the assets held under the Kalys Trust. Although there are references to companies such as Penrose Properties Limited, which the Plaintiff has indicated is one of those that is central to his allegations, it is clear that the financial statements in question are for the year ended 31 December 2012. In circumstances where the Plaintiff is asserting that he is entitled to trace into wherever the assets that he says correspond to the Offshore Wealth, I agree with the Third Defendant that this level of detail is not relevant to the action itself, but relates more to any relief that might then be ordered. The document in its redacted form shows the suite of assets being covered. The Plaintiff is not a beneficiary of the Kalys Trust and his case turns more on what happened to the various assets at the time they were first created rather than where they have ended up and what they may now represent. Accordingly, I find myself in the same position as the judges in the ***Berkeley Administration*** case of not being persuaded that it is appropriate to order disclosure of this document in its unredacted form.

48. There is one small qualification that I can make to the rejection of this part of the application. I have noted that one of the companies where the details have been redacted is Waterport Limited. If the orders I am making in relation to that company produce some further documents showing more about the loan that was written off and the other assets and purpose of this company, if requested to do so by the Plaintiff, then the Third Plaintiff might consider it would assist if the pages that have been redacted in respect of Waterport Limited in item 39 were to be provided voluntarily to the Plaintiff (and the other parties), rather than needing to respond to an application from the Plaintiff for just those pages to be disclosed unredacted.

49. Item 40 is an e-mail internal to the Third Defendant which refers to a number of other documents, the first of which is a structure chart. Mr Bridle has explained that it has not been possible to identify which chart this was. I take the view that this is an issue that the Plaintiff can, if he wishes, explore further at trial, but this explanation will have to suffice for now. The other documents relate to investment opportunities that the First Defendant might wish to follow and mortgage documents, where I agree with the Third Defendant that the relevance of these materials has not been shown. What has happened to the assets that are now in the Kalys Trust may be relevant if the Plaintiff succeeds, but is not an issue that arises from the pleading relating to the Offshore Wealth. Accordingly, I also reject this element of the application.

50. Item 7 is a structure chart on which there is a reference under Rochdale Management Limited, forming part of the Kalys Trust, relating to an investment into Imarasat Limited, with the note "*still awaiting SHA*". The Plaintiff seeks disclosure of that shareholders' agreement. The Third Defendant questions the relevance of it, particularly as it relates to assets acknowledged to be within the Kalys Trust by that time. Advocate Ozanne again suggested that the Third Defendant was attempting to draw an artificial line on what happened once assets were switched into the Kalys Trust. However, in relation to how the matter is pleaded, if the assets that formed the Offshore Wealth have ended up in the Kalys Trust, that is all that the Plaintiff needs to show and the onus would then be on the First and Third Defendants to account for what happened thereafter. As a result, I am not persuaded that a shareholders' agreement relating to an investment being made by an entity within the Kalys Trust satisfies the relevance test and this element of the application will also be rejected.

51. Item 5 is another structure chart, which has been annotated. The Plaintiff seeks "*any investment documentation or documents relating to these assets especially their administration*", by reference to three named entities. I agree with the Third Defendant that this part of the application is too broad and I am not entirely clear on the relevance either. The structure chart arguably speaks for itself and so these are also areas that can be explored further by the Plaintiff, if so desired, at trial.

52. The structure chart at item 8, where the disclosure sought relates to an investment by a subsidiary of Penrose Properties Limited, also lacks relevance. It strikes me that this is seeking a level of detail that goes beyond the Plaintiff's pleaded case and I do not understand how ordering disclosure of "*any related investment/company/other documentation*" would assist. Again, this element of the application will be rejected.

53. Both items 41 and 42 are no longer pursued, although the latter is also covered in Mr Bridle's Affidavit adequately.

54. As regards items 44 and 45, both are now listed by the Plaintiff as being matters for the affidavit under para. 2 of the application, but I am satisfied that there is no need to make any such order because what is already in Mr Bridle's Affidavit suffices.

55. Item 2 is an undated note containing some action points for the First Defendant. The list of actions repeats what is contained in item 27, where the Plaintiff accepts that further searching has taken place and this is for comment in an affidavit. Once again, I am satisfied that the explanation contained in Mr Bridle's Affidavit suffices. In any event, the tenor of this element of the application is also arguably too broad.

56. In respect of items 3 and 4, I also agree with the Third Defendant that what the Plaintiff seeks is put too broadly to be allowable. In relation to Millgate Limited, the Plaintiff seeks "*all documentation in your possession in relation to the above companies, including anything that evidences the alleged way they were held*". In relation to Penrose Properties Limited, the Plaintiff seeks "*any relevant documentation in your possession relating to these assets including showing how these properties were held and any instructions received from Adil or on his behalf with regards to their administration*". Whilst I accept that the Plaintiff has a case he wishes to develop relating to these two companies and the assets falling under each, I accept the Third Defendant's concerns that the breadth of these requests for specific disclosure go wider than is permitted. That does not mean that a more targeted application will inevitably suffer the same fate as the present application. I am satisfied that there is scope to seek further information and/or to renew the application for certain documents that can be more clearly shown to satisfy the test for specific disclosure, but the current elements of the application cannot be granted for the reasons I have given.

57. The final item on the chronological list, item 6, relates to the First Defendant providing details of two proposed purchases of companies, and seeks whatever he produced after the meeting of which this was the agenda. Whilst the wording of the application is arguably broad, if it is treated as relating to the documents produced in relation to the two named entities, Slipknot Investments Limited and Orcom Trading Limited, noting the reference to "*Sea Grace (Co regd. In Gibraltar)*", which is part of the proceedings between these and related parties that was separated into the proceedings that needed to be progressed in Gibraltar and in respect of which reference has been made to a judgment given fairly recently, I am satisfied that this amounts to a targeted request for something that might be located through a reasonable search. The Third Defendant opposed this element by reference to relevance. However, both companies are shown in other material as being investments made into their shares under Millgate Limited, and I am satisfied that the Plaintiff's pleaded case relates to his level of interest in Millgate Limited as part of the Offshore Wealth in which he claims an interest It is mentioned at para. 27.7. Accordingly, I am persuaded that this request of the Plaintiff is one that meets the test for specific disclosure and so I am minded to make the order sought.

Conclusion

58. Having considered each of the 45 entries on the list and the basis on which the Plaintiff has made this specific disclosure application, I have concluded that the Plaintiff succeeds on only four of the items. They are numbered 1, 6, 18 and 33. I am not persuaded that any other searching needs to be undertaken and will not require the Third Defendant to explain further about what has been done because there is an adequate explanation contained in Mr Bridle's Affidavit.

59. The order I will make, therefore, is that the Third Defendant must search for and disclose the documents, or otherwise explain the extent of the search and the reasons for not locating the documents in question in respect of:

    1. The document evidencing and relating to the loan made from the Almancil Settlement to Waterport Limited in 2007, which was written off in 2010.

    6. The documents provided to the Third Defendant by the First Defendant following a meeting relating to the proposed purchases of Slipknot Investments Limited and Orcom Trading Limited.

    18. The documents faxed to the First Defendant in Lisbon following the meeting on 3 December 1997, eg, copies of accounts and amended fee sheets and detail sheets of all companies and trusts.

    33. The corporate documents relating to Waterport Limited.

    The application dated 19 March 2021 sought an order that this happen by 4 pm on 9 April 2021. This effectively sought an order for compliance within a period of three weeks. I am satisfied, particularly where this judgment has been provided to the parties in draft form, that allowing a period of three weeks from it being handed down is appropriate. Accordingly, the Third Defendant must comply with these orders by 4 pm on 16 September 2021.

60. In respect of all the other elements of the application, particularly those that remained in issue between the parties, they are dismissed.

61. As regards the costs of the application, I suggest that they be reserved for now, but any party is free to seek an order by giving the other parties due notice and arranging for the matter to be listed.