COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2016/CLE/gen/00024

BETWEEN

LAINA LIMITED

AND

MOHAMMAD LADJERVARDIAN

(Trustee of the Tara Ladjervardian 2012 Trust

and the Leila Ladjervardian 2012 Trust)

Plaintiffs

AND

ANSBACHER (BAHAMAS) LIMITED

Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Khalil Parker with Roberta Quant for the Plaintiffs

Keri Sherman for the Defendant

9 November 2020

RULING

WINDER J.

This is my brief decision on the plaintiffs' application for leave to serve the defendant and it's Managing Director with interrogatories.

1. This application was brought by Summons filed 11 March 2020. The summons seeks the following:

    "... an Order pursuant to Order 26 Rules 1 and 2 of the Rules of the Supreme Court 1978 and under the inherent jurisdiction of the Court that the Plaintiffs be granted leave to serve the following interrogatories on the Defendant and Mr. Andrew Alexiou, the Defendant's Managing Director, with respect to the Defendant's operation of the Neda Motamedy 2012 Trust Account and the Plaintiffs' Accounts subject hereof and requiring the Defendant and Mr. Andrew Alexiou to answer the said interrogatories on affidavit with fourteen (14) days or such other period as may be specified by the Court. ... "

Background

2. The plaintiffs opened several accounts with the defendant in or about early 2012. These accounts are listed as follows:

    i) Laina Limited Account
    ii) Laina Limited – H Account
    iii) Laina Limited – L Account
    iv) Laina Limited – T Account
    v) Leila Ladjervardian 2012 Trust Account
    vi) Tara Ladjervardian 2012 Trust Account
    vii) Neda Motamedy (Ladjervardian) 2012 Trust Account

3. On 23 April 2013 the second named plaintiff and his wife, Neda Motamedy (Neda), the holder of the Neda Ladhjervardian 2012 Trust Account, divorced in the state of Texas, United States. Neda subsequently took control of the Neda Motamedy (Ladjervardian) 2012 Trust Account. However, for the purposes of these proceedings she consented to have information from her account provided to the plaintiffs. In late 2014 the plaintiffs sought to close the remaining accounts with the defendant.

4. The plaintiffs' claim in this action is that the defendant did not carry out their instructions with respect to the operation and management of the accounts. This, they say, resulted in the accounts becoming disproportionately overburdened with debt, when it had always been their instructions to the defendant to divide any debt equally between the various accounts. The action is therefore for an account and for disclosure of documentation.

5. On 23 January 2020, in what they describe as an attempt to have their concerns about the defendant's operation and management of the listed accounts addressed, the plaintiffs wrote a letter to Counsel for the defendant with the proposed interrogatories contained therein. The plaintiffs say they have not been provided with the requested answers to the proposed interrogatories by the defendant, to date.

6. The plaintiffs submit that as customers of the defendant they have the right to ask questions and they require the defendant to answer the proposed interrogatories put forth.

7. The plaintiffs' Summons filed 11 March 2020 which seeks leave to serve the defendant with proposed interrogatories, is supported by the affidavit of Alexandria Fernander filed on 6 July 2020.

8. The plaintiffs assert that they should be given leave to serve the proposed interrogatories because the information being requested (i) relate to the matters in question between the parties and, (ii) are necessary either for disposing fairly of the cause or matter or for saving of costs.

9. The defendant opposes the application. Their evidence in opposition is contained in the affidavits of Ricardo Rolle (Rolle), more particularly his affidavit of the 4 November 2020, in which he sought to also rely on his affidavit of the 14 September 2016. Rolle, who was the Manager of Credit and Collections at the time that the plaintiffs accounts were opened, deposed that the second named

plaintiff is engaging in a fishing expedition through the proposed interrogatories. They say that the parties had agreed a course of action for the appointment of Ernst and Young to conduct a review of the account, yet the plaintiff did not advance the effort for the conduct of the review. Ernst and Young have since withdrawn citing a conflict.

10. Counsel for the plaintiffs rely on the case of ***Compaigne Financiere Du Pacifique v Peruvian Guano Co (1882) 11 QBD 55*** and the dicta of ***Baggallay LJ*** to support their assertion that the interrogatories should be answered as follows:

    "It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may – not must – either directly or indirectly enable the party requiring the affidavit either to advance his own case or damage the case of his adversary."

11. The plaintiffs further rely on the case of ***Marriott v Chamberlain (1886) 17 QBD 154***, and they emphasise the following:

    "163 But with these limited exceptions it seems to me that pretty nearly anything that is material may now be asked. The right to interrogate is not confined to the facts directly in issue, but extends to any facts the existence or nonexistence of which is relevant to the existence or non-existence of the facts directly in issue.

    …

    164 Anything, therefore, which tends to prove or disprove either of those propositions is material to…[the defendant's] case."

12. The plaintiffs submit that the proposed interrogatories, if answered, would accelerate matters between the parties by addressing fundamental questions between them. Further they say that necessary information will be garnered through the answers, which would ultimately reduce costs in this action.

13. The defendant asserts that the request for the proposed interrogatories is improper at this juncture of the proceedings, considering that this action was commenced to have an accounting conducted of the listed accounts. The defendant contends that the plaintiffs' application should be dismissed.

14. In relation to interrogatories, the English Court of Appeal had earlier stated, in the case of ***Attorney General v Gaskill (1882), 20 Ch. D 519***, per ***Cotton LJ***, at p.528:

> The Judicature Act enables every one as of right to interrogate his opponent, putting by Order XXXI., rule 2, certain checks on the exhibiting useless interrogatories. It enables a person who is called upon to answer interrogatories to defend himself from answering in a way in which he could not have done in former days, but the right to discovery remains the same, that is to say, a party has a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. It was said in argument that it is not discovery where the Plaintiff himself already knows the fact, but that is a mere play on the word "discovery." Discovery is not limited to giving the Plaintiff a knowledge of that which he does not already know, but includes the getting an admission of anything which he has to prove on any issue which is raised between him and the Defendant. To say that the pleadings have raised the issues, and that therefore the interrogatories should not be allowed is an entire fallacy. The object of the pleadings is to ascertain what the issues are, the object of interrogatories is not to learn what the issues are, but to see whether the party who interrogates cannot obtain an admission from his opponent which will make the burden of proof easier than it otherwise would have been. As regards the interrogatories relative to the right of way they clearly are proper interrogatories. The object is to get from the Defendant in this case an admission of that which no doubt he denied by his defence, but not on oath, viz. a fact supposed to be within his knowledge that there is a right of way, and an admission of it by him must obviously save an enormous amount of expense at the trial.

15. I accept that the object of interrogating is twofold, (i) to obtain admissions to facilitate the proof of the applicant's case and (ii) to ascertain, so far as one may, the case of the defendant to the application. Whether or not to grant or refuse leave to interrogate is within the discretionary powers of the Court as per ***Codd v Delap [1906] WN 57***, as well as whether particular interrogatories should be disallowed as per ***Knapp v Harvey [1911] 2 KB 728***.

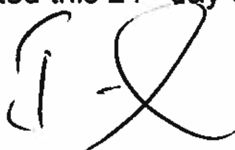
16. Having reviewed the proposed interrogatories and considered the plaintiffs' request to interrogate, I find that the proposed questions satisfy the test for granting leave to serve the defendant, that is, the interrogatories do relate to matters in question between the parties. It seem undeniable that the answers to the questions posed will save costs if they lead to narrowing the issues the parties would be required to prove at trial. Further, at this stage of the proceedings when the agreed review is in abeyance and having not begun, there would be costs savings to both parties to have the interrogatories answered.

17. I am satisfied that as the defendant is a body corporate, it is fitting that Andrew Alexiou, Managing Director of the defendant, or some other designated person, would be appropriate to be served with the proposed interrogatories. (See: ***Berkeley v Standard Discount Co. (1879) 13 Ch. D 97 C.A.***)

18. I therefore grant the plaintiffs leave to serve the defendant with the proposed interrogatories, the answers to which, the defendant, should serve on the plaintiffs within thirty (30) days following their receipt thereof.

19. Costs of this application will be the plaintiffs' costs in the cause, such costs to be taxed if not agreed.

Dated this 24th day of March A.D., 2021



Ian R. Winder

Justice