

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2024/CLE/gen/00974

IN THE MATTER OF Article 27 and 28(1) of the Constitution of the Commonwealth of The Bahamas, Chapter 96 of the Statute Law of The Bahamas 2000

AND IN THE MATTER OF the provisions of the Acquisition of Land Act 1913, Chapter 252 of the Statute Law of The Bahamas 2000

AND IN THE MATTER OF the original and inherent jurisdictional powers of the Court to hear and determine matters related to fundamental constitutional rights of the individual.

B E T W E E N

NASSAU EXOTIC GARDENS LIMITED

Claimant

AND

**THE PRIME MINISTER (1)
OF THE COMMONWEALTH OF THE BAHAMAS**

*(As the Promoter & Minister Responsible for Acquisition and Disposition of Lands in the
Commonwealth of The Bahamas)*

AND

**ATTORNEY GENERAL (2)
OF THE COMMONWEALTH OF THE BAHAMAS**

Defendants

Before: Assistant Registrar Akeira Martin

Appearances: Mr. Keod Smith of Commercial Law Advocates for the Claimant
Dr. David Whymns of the Office of the Attorney General for the Defendants

Heard: 18th June 2025 and 13th August 2025

Ruling Date: 27th August 2025

RULING

Specific Disclosure – Originating Application – Jurisdiction of a Registrar to hear Specific Disclosure Application – Order for Directions – Case Management Conference

Introduction

- [1] This ruling is in relation to the Claimant's Notice of Application filed 3rd December 2024 seeking an order for the Defendants to produce certain documents by way of the specific disclosure provisions set out in Part 28 Rule 28.5 of the Civil Procedure Rules, 2022 (**the "CPR"**).
- [2] The said Notice of Application is supported by the Claimant's Affidavit of Rodney Rolle also filed 3rd December 2024 and its submissions dated 11th August 2025 (**collectively referred to as the "Specific Disclosure Application"**).
- [3] The Defendant objects to the Specific Disclosure Application by way of its Affidavit in Response filed 13th June 2025.

Brief Background

- [4] The genesis of the matter is set out in the Claimant's Originating Application filed 30th October 2024 (**the "Originating Application"**) whereby the Claimant seeks certain statutory and constitutional declarations and orders relative to the Defendants' compulsory acquisition of the Claimant's two (2) tracts of land nestled between the residential areas of The Grove and Perpall's Tract in the Western District of the Island of New Providence sometime in 1999.

The Specific Disclosure Application

- [5] The Specific Disclosure Application is made in accordance with **Rule 28.5 of the CPR** and the Court's overriding objective as set out in **Rule 1.1(1) of the CPR** which state,

"28.5 Specific disclosure.

(1) 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 or categories of documents specified in the order;**

- (b) disclose documents relevant within the principles relating to discovery of documents, or, alternatively, directly relevant, to a specified issue or issues in the proceedings; or
- (c) carry out a search to the extent stated in the order for —
 - (i) documents relevant, in the sense indicated in paragraph (b), or directly relevant to the proceedings or to a specified issue or issues; or
 - (ii) documents of a particular description or class or in a particular category or identified in any other manner, and disclose any documents within the scope of the order located as a result of that search.
- (2) An order for specific disclosure may be made on or without an application.
- (3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.
- (4) An application for specific disclosure may identify documents —
 - (a) by describing the class to which they belong; or
 - (b) in any other manner.
- (5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

1.1 The Overriding Objective.

- (1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.
- (2) Dealing justly with a case includes, so far as is practicable:
 - (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the case in ways which are proportionate to —
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly;
 - (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and
 - (f) enforcing compliance with rules, practice directions and orders.”

[6] The Specific Disclosure Application is twofold. The Claimant submits that either the Defendants have in their possession the documents requested or that they are in a position to obtain the documents requested from the relevant Government agencies, documents which they have requested and been unable to obtain.

- [7] The Defendants' objection to the Specific Disclosure Application is threefold. The Defendants submit that some of the documents being requested are protected by legal professional privilege, that the other documents should be in the possession of the Claimant who commenced the action and that the documents are those which are readily available to the public upon request to the relevant Government agencies.

Law and Analysis

- [8] Before delving into the substantive Specific Disclosure Application it is prudent, in the instant case, to consider the legal basis thereof.
- [9] The Claimant's action was commenced by the originating application procedure which, according to **Rule 8.15 of the CPR**, should be used by a litigant when the Court's decision is sought on a question which is unlikely to involve a substantial dispute of fact: or a statute, rule or practice direction requires or permits the use of this procedure for commencing proceedings of a specified type¹.
- [10] Because a claim brought by way of an originating application is deemed to be undisputed, it was intended by the CPR for a claim under this procedure to be disposed of faster than a claim which was brought by way of a Standard Claim Form or a Contentious Fixed Date Claim Form.
- [11] **Part 8, Rule 8.19 of the CPR** sets out the general procedure which should be followed when a claim is commenced by way of originating application, as it states,

"8.19 The general procedure in a claim using an originating application form.

(1) The Court may at any stage, either on application or on its own initiative, order a claim commenced by originating application form to continue as if the proceedings had been commenced using a standard claim form and where the Court takes this course it will give such directions as it considers appropriate.

(2) The Court may give directions either on its own initiative or on the application of a party immediately after the originating application form is issued and such directions may include fixing a hearing date where the Court will give directions for the disposal of the claim as soon as practicable after the defendant has acknowledged service.

(3) A rule or practice direction may, in relation to a specified type of proceedings —

(a) require or permit the use of an originating application form; and

¹ Rule 8.15 of the CPR

(b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.”

[12] **Part 8, Rule 8.24 of the CPR** states that a party utilizing the originating application procedure should file any evidence it intends to rely on when filing the claim form or defence. **Rule 8.24 of the CPR** states,

“8.24 Filing and serving written evidence.

(1) The claimant must file any written evidence on which he intends to rely when he files his claim form.

(2) The claimant's evidence must be served on the defendant with the claim form.

(3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgement of service unless otherwise ordered by the Court on an application without notice.

(4) If a defendant files written evidence he must forthwith serve a copy of his evidence on the other parties.

(5) Any evidence filed at the time of filing his acknowledgement of service must be served when the acknowledgement of service is served on the claimant and any other party.

(6) The claimant may, within fourteen days of service of the defendant's evidence on him, file further written evidence in reply.

(7) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.

(8) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.”

[13] The Defendants have, at this stage, not challenged the commencement of the claim by way of originating application and in conformity with the CPR, the Defendants filed their Acknowledgement of Service on the 13th November 2024 (the “Acknowledgement of Service”).

[14] Exhibited to the Claimant's Originating Application is the Claimant's Bundle of Exhibits which the Claimant submits is in conformity with **Part 8 of the CPR** with the exception of the documents being sought by specific disclosure as they submit, that they are not in Claimant's possession and have not been as easily attainable as the Claimant had hoped it would be. Hence, the reason for its application.

[15] Unlike the Claimant, the Defendants have not exhibited any documents to their Acknowledgement of Service and they maintain the position that it is the Claimant's responsibility to provide the documents which it intends to rely on. They have also not filed any affidavits exhibiting any documents if they intended to rely on any.

[16] The next step procedurally was for the Court on its own initiative to make an order for directions on what would be the proper disposal of the matter or for the Claimant or the Defendants to make an application for such an order for directions to be made. No such application was made by the Claimant or the Defendants.

[17] I am unaware of any rule of practice direction which misapplies or modifies any of the rules set out in Part 8 with respect to the originating application procedure.

[18] The Claimant instead, filed the Specific Disclosure Application after requesting the documents from the Defendants and the Specific Disclosure Application was assigned to a Registrar, who has the jurisdiction to hear a disclosure application, but, unlike a Judge, has no jurisdiction to give directions to fully dispose of the matter which should be the next step that the parties should have taken.

[19] Interestingly, the very provision on which the Claimant relies, **Rule 28.5 (3) of the CPR** mandates that an application for specific disclosure must be made at a case management conference unless special circumstances exist. It states,

“(3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.

[20] Therefore, while a Registrar has the jurisdiction to give directions in relation to an application set before him/her, a case management conference is designated for a Judge who is vested with a significantly wider power with respect to case management, with the exception of one or two case management provisions which were allotted to a Registrar which are not applicable in the instant case.

[21] In the circumstances, the Specific Disclosure Application is premature and outside of a Registrar's jurisdiction to consider. As such, it is futile for me to look at and consider whether the Claimant has met the criteria for specific disclosure as provided under **Rule 28.6 of the CPR**.

[22] Accordingly, the Specific Disclosure Application is dismissed.

[23] In the interest of justice and to further the overriding objective to dispose of an application under the originating application procedure as soon as practicable, the matter will be referred to a Judge, on my own initiative, rather than leaving it to the parties to make an application for an order for directions.

[24] Costs are awarded to the Defendant to be taxed if not agreed.

Dated this 27th day of August, 2025

Akeira D. Martin

Akeira D. Martin
Assistant Registrar

