

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW SIDE  
2016/CLE/gen/00473**

**BETWEEN**

**PAUL F. MAJOR**

**PLAINTIFF**

**AND**

**FIRST CARIBBEAN INTERNATIONAL BANK  
(BAHAMAS) LIMITED**

**RESPONDENT**

**Before: The Honourable Mr. Justice Keith H. Thompson**

**Appearances: Ms. Crystal Rolle along with Ms. Cyd Ferguson  
Mr. Ferron Bethell along with Ms. Viola Major**

**Hearing Dates: 10<sup>th</sup> October, 2018  
07<sup>th</sup> November, 2018  
11<sup>th</sup> April, 2019  
02<sup>nd</sup> May, 2019**

**D E C I S I O N**

1. This is an application by way of summons filed on 02<sup>nd</sup> April, 2019, supported by the affidavit of Cyd S. Ferguson also filed on 02<sup>nd</sup> April, 2019.
2. The summons seeks certain orders pursuant to Order 24 rules 7, 9 and 11 of the Rules of the Supreme Court 1978. Order 31 (A) Rule 18 (2), (5) of the Rules of the Supreme Court (Amendment) Rules 2004 and under the Court's Inherent Jurisdiction namely:-

- 1. An order that the Defendant, its servants and/or agents within three (3) days of the date of the Court's Order file a sworn affidavit stating whether the Defendant its servants and/or agents have in their possession, custody or power a full and complete copy of the "*Paul Major Interview. Memorandum.*" Mentioned and referred to at item No. 3 of the Defendant's Supplemental List of Documents filed herein on the 13<sup>th</sup> day of March A.D., 2019, which actually shows the discussions relating to the other clients as pleaded in paragraphs 19 ad 26 of its Defence filed on the 7<sup>th</sup> day of December, A.D., 2018 ("the full and complete Interview Memorandum") and the Plaintiff's responses thereto and if not in their possession, custody or power when they parted with it and what has become of it.**
  
- 2. An Order that the Defendant produce the full and complete Interview Memorandum for the Plaintiff's inspection and afford the Plaintiff the opportunity to take copies thereof.**
  
- 3. An Order that the Defendant pay to the Plaintiff the costs of and occasioned by this application in any event."**

#### **ARGUMENTS ON BEHALF OF THE PLAINTIFF:**

- 3. The Plaintiff says that by paragraphs 46 - 53 of his Amended Statement of Claim, there is reference to what is termed "The Interrogation Meeting"; which took place on 28<sup>th</sup> May, 2015.**
  
- 4. In the Defendant's Defence there is a denial of the majority of the paragraphs, relating to the 28<sup>th</sup> May, 2015 meeting.**

5. The further argument of the Plaintiff is that paragraph 19 of the Defence is pleaded in two parts. Firstly, that the interview was an already scheduled interview with the Plaintiff and secondly, that the purpose of the interview was to review several accounts for which the Plaintiff acted as Relationship Manager.
6. As it relates to the meeting of 25<sup>th</sup> May, 2015, the Defendant pleads that the Plaintiff was questioned as to whether he was the employee named in the information regarding Blazer. Thereafter, he was asked questions about three (3) other accounts.
7. Counsel for the Plaintiff in putting her argument for further discovery made reference to several e-mails exhibited to the Affidavit of Cyd Ferguson, which included among other things a list of seven (7) accounts which, according to the e-mail dated May 28<sup>th</sup>, 2015 from Melissa Francis were to be discussed.
8. A Supplemental lists of documents was filed and at item number 3 of the Supplemental List of Documents, a document referred to as "Paul Major Interview Memorandum" was disclosed. This document was given to the Plaintiff for the purpose of inspection. The document itself contains a note stating that the Plaintiff was questioned about other accounts before being questioned about the Blazer account.
9. At paragraph 22 of the Cyd Ferguson Affidavit, it states;

**"The "Paul Major Interview Memorandum" does not indicate what if any questions were put to the Plaintiff relative to the alleged Six (6) customer accounts nor what, if any responses were given by the Plaintiff in relation thereto."**

10. The thrust of the Plaintiff's application is in our view to obtain information, in particular questions and answers put to the Plaintiff relative to accounts "OTHER THAN" the Blazer account.

11. At paragraph 30 of the Cyd Ferguson affidavit it reads;

**"I verily believe that the full and complete copy of the "Paul Major Interview Memorandum" is relevant to the issues and matters in question in this action specifically the purpose of the meeting of 28<sup>th</sup> May, 2015 and what transpired at the meeting."**

12. In other words the issue as the Plaintiff sees it is one whereby the information sought, they say is relevant.

DEFENDANT'S SKELETON ARGUMENTS [in opposition to application for inspection and production].

13. The Defendant's position is that this is an action seeking damages for Unfair Dismissal, Wrongful Dismissal, Breach of Contract and Defamation.

14. The Plaintiff in its Amended Statement of Claim, in paragraphs 46-53 avers to "The Interrogation Meeting" in connection with the "Blazer Related Questions" and the Blazer account. It is further put by the Defendant that at para 55 of the Amended Statement of Claim it speaks to "The Termination Meeting and the Termination Letter." The Plaintiff continues in paragraph 55 to explain that the letter simply states that the Plaintiff's "CONDUCT" relating to Blazer violated section 4 of the FCIB'S applicable US Persons Policy and that the Plaintiff was dismissed forthwith for gross misconduct.

15. On the 13<sup>th</sup> March, 2019, the Defendant, in a filed Supplemental List of Documents disclosed a "MEMORANDUM" of an interview of the Plaintiff which was conducted

by external counsel on 28<sup>th</sup> May, 2015. ("The Interview Memorandum"). At the request of Plaintiff's counsel, the Defendant provided the Plaintiff with a copy of the Interview Memorandum relating to customer 140746, Charles Blazer.

16. What counsel for the Plaintiff is asking the court for however, is a "COMPLETE INTERVIEW MEMORANDUM", which includes information relating to other customers accounts.
17. The Defendant is of the firm view that the six (6) other customer accounts about which the Plaintiff was also questioned have nothing to do with the Blazer account for which the Defendant alleges that the Plaintiff, in dealing with the Blazer account breached or violated section 4 of the FCIB'S applicable US Persons Policy and for which the Plaintiff was terminated. The Plaintiff was terminated for gross misconduct pursuant to section 4.2.3 of the Bank's Code of Discipline.
18. The Plaintiff's summons was issued pursuant to Order 24 Rules 7, 9 and 11 and Order 31 (A), 18 (2), (s) of the RSC Seeking an Order inter alia, that the Defendant produce a "Full and Complete Interview Memorandum" for the Plaintiff's inspection and for a copy thereof.
19. Order 24 Rule 7 states;
  7. (1) **"Subject to rule 8, the Court may at any time, on the application of any party to a case or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.**

**(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.**

**(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession custody or power the document, or class of document specified or described in the application and that it relates to one or more of the matters in question in the cost or matter.”**

20. Counsel for the Defendant points out that Order 24 Rule 7 is subject to Order 24 Rule 8 which states;

**8. On the hearing of an application for an order under rule 3 or 7 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss, or, as the case maybe, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.”**

21. Order 31 A, 18 (2), (s) states;

**18. (1) “The Court’s powers in this rule are in addition to any powers given to the Court by any other rule, practice direction or enactment.**

**(2) Except where these Rules provide otherwise, the Court may –**

(a) .....

(b)

(c)

(d)

**(5) take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case.**

**THE LAW:**

22. We agree with counsel for the Defendant that Order 24 Rule 7 is subject to the provisions of Order 24 Rule 8. Rule 8 vests in the court the discretion to decide, once satisfied whether it is not necessary, or not necessary at this stage of the action to dismiss or adjourn the application and refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing "FAIRLY"(our emphasis) of the matter or for saving costs.

23. The excerpt from the authoritative text entitled; "DISCOVERY" by Paul Mathews and Hodge Malek supports the above position. However, it goes further. It says;

**"In relation to production and inspection, the general rule involves the same test, but (in the high court) it reverses the burden of proof, i.e. that no order for production, or for the supply of a copy, of any document is to be made unless the Court is satisfied that the order is necessary either for disposing fairly of the cause or matter or for saving costs. The burden is on the inspecting party to show why he should have inspection or supply, not on the producing party to show why he should not. "**

24. This brings us therefore to the affidavit of Cyd Ferguson and it is our considered opinion that the affidavit does not meet the standard sufficiently enough to persuade the court to accede to the Plaintiff's application.
25. In the case of **DOLLING – BAKER V MERRETT [1990] 1 WLR 1205**, at pages 1207-1209.

**“On 9 January 1990 the plaintiff issued a summons seeking specific discovery under Ord. 24, r. 7 of a number of classes of documents, and inspection of such documents under Ord. 24, r. 11(2). One of the classes of documents sought by the summons (class 6) was:**

**“All pleadings, documents, witness statements, experts reports and any other relevant documents produced and/or disclosed in the arbitrations between Merrett and Verrall and between the Wrightson Syndicate and Outhwaite.”**

**It should be noted that the description “Merrett” at the outset of the schedule which was annexed to the summons reads:**

**“Merrett” refers to the first defendant himself, J.C. Emney, Syndicates 417 and 421, any present or former syndicate within the Merrett group or managed by any company within the Merrett group, and all companies within the Merrett group.”**

**The application, therefore, was of a somewhat unusual width, to say the least.**

**There is a similarity between the reinsurance, the subject of the Turner arbitration, and the reinsurance, the subject of the present action. I need say no more than this, that the risks included risks concerning**



latent diseases, the principal one of which was asbestosis. It had transpired that the long-term effects of the disease were causing concern in the market. I will revert to that hereafter. In addition to the two reinsurances already mentioned, further reinsurances were written. The placing brokers in the other cases were not the second defendants, and it is unnecessary to refer further to those other reinsurances.

Before going further, it is now necessary to refer to the rules in Order 24, pursuant to two of which the summons for discovery was launched. Rule 1 provides the general obligation to give mutual discovery of documents. Rule 2 provides for automatic discovery in certain cases. Rule 3 is the first of the rules which provide for an order being made. It provides:

“(1) Subject to the provisions of this rule and of rules 4 and 8, the court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.”

It is to be noted that that is subject to rule 8. There is then provision for the determination of issues before discovery, and the form of the list of documents. One then comes to rule 7, under which the first part of the summons was launched. That provides:

**“(1) Subject to rule 8, the court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power ... (2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavits under rule 2 or rule 3. (3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.”**

**Rule 8, to which both rules 3 and 7 are subject, provides:**

**“On the hearing of an application for an order under rule 3, 7 or 7A the court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.”**

**It is to be noted that rule 8 imposes a bar only if the court is of the opinion that the discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.**

**So far the rules are dealing with discovery in the sense of listing by affidavit, or by lists unverified or verified by affidavit, or by lists unverified or verified by affidavit. They are not dealing with production or inspection. The rules which deal with production and inspection begin at rule 9. I need not read that rule, nor indeed rule 10. I come straight to rule 11, under which the second part of the summons was launched. Rule 11 (1), which was not the rule relied upon in the summons, relates to cases where there has already been a list of documents under the previous rules. Rule 11 (2) provides:**

**“Without prejudice to paragraph (1) but subject to rule 13 (1) the court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter. (3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.”**


**Rule 12 provides:**

**“At any stage of the proceedings in any cause or matter the court may, subject to rule 13(1) order any party to produce to the court any document in his possession, custody or power relating to any matter in question in the cause or matter and the court may deal with the document when produced in such manner as it thinks fit.”**

his documents. That disclosed that he has them or has power over them. But he can object to produce them on the ground of privilege or, indeed, on any other ground. At that stage not very much has occurred except that the applying party will be enabled to know what documents the objecting party has, and it is right that the burden should be upon the objector in such a case. When, however, one gets to the stage of production and the document is to be produced to the court or the other side, the position is different, and it should be, and the rules appear to me to state with complete clarity that it is for the party seeking production to satisfy the court that such production is necessary for the purposes specified in rule 13 (1), namely, for disposing fairly of the cause or matter or for saving costs."

26. In our view, the termination letter was very specific in that it states that the Plaintiff was terminated for his handling of the Blazer account for which he was questioned. Therefore, at this stage we do not see nor are we persuaded that what is prayed for in the instant application is necessary at this stage for the proper continuation of the instant action.
27. In light of the above and in all the circumstances therefore we refuse the application of the Plaintiff. Costs of and occasioned by this application to be the Defendants in any event.

Dated this 20<sup>th</sup> day of May A.D., 2019.

  
Keith H. Thompson  
Justice