

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 109 of 2022

BETWEEN:

OSCAR ALONZO COCOM

Claimant

AND

AMIN ZAMIR QUIROZ
(Executor of the Estate of RAMON MARTINEZ)

Defendant

Appearances:

Mrs Andrea Mckoy – counsel for the claimant
Mr Rene Montero – counsel for the defendant

25 April 2024

28 May 2024

**RULING
IN RESPECT OF A JUDGMENT SUMMONS**

Civil Procedure – Application for specific disclosure – Test to be applied for specific disclosure – Documents whose disclosure is sought should be identified with sufficient precision - Relevancy and necessity tests - Claim for return of money deposited into a bank account

- [1] **HONDORA, J.** this is an interlocutory ruling on an application for specific disclosure. At the centre of the dispute is the sum of BZ\$100,000 which the claimant, Mr Oscar Cocom (Mr Cocom) deposited into Mr Ramon Martinez's (Mr Martinez) Atlantic Bank account on 25 June 2020. Mr Martinez who was the claimant's stepfather died in December 2020, which explains Mr Cocom's legal suit against Mr Amin Alonzo Quiroz, the executor of Mr Martinez's estate.
- [2] Mr Cocom's case is that in June 2020, he entered into an oral loan agreement with his now deceased stepfather (Mr Martinez) for the sum of BZ\$100,000. He alleges that pursuant to that loan agreement he deposited on 25 June 2020 the sum of BZ\$100,000 into his stepfather's bank account with Atlantic

Bank. Mr Cocom also alleges that at the time of his death in December 2020, Mr Martinez had not repaid the loan amount hence the current legal proceedings against his stepfather's estate.

- [3] On the other hand, Mr Quiroz disputes that Mr Martinez's estate owes the Mr Cocom any money. He contends that the payment, which Mr Cocom made into Mr Martinez's bank account on 25 June 2020 was in fact money that Mr Cocom owed Mr Martinez. He alleges that pursuant to an oral contract in 2019, Martinez lent and advanced the sum of BZ\$100,000 to Mr Cocom and the deposit made by Mr Cocom on 25 June 2020 constituted repayment of the 2019 loan amount.
- [4] Despite the differing accounts, the parties agree that on 25 June 2020 Mr Cocom deposited BZ\$100,000 into Mr Martinez's bank account. What is in dispute is whether that deposit was a loan by Mr Cocom to Mr Martinez or whether it constituted repayment by Mr Cocom of money lent and advanced to him by Mr Martinez in 2019.
- [5] This case provides a seminal lesson on the importance of reducing contracts to writing, including contracts between relatives. That said, the factual disputes arising in this matter will be resolved at trial after considering all the evidence presented by the parties.

Application for specific disclosure

- [6] On 21 March 2024, Mr Cocom filed an application for specific disclosure. His application came after the 15 February 2024 directions hearing during which I issued orders on (a) the filing of a pre-trial memorandum; (b) hearing of objections to witness statements; (c) filing of a trial bundle; (d) the date of the Pre-trial review hearing; and (e) the date for hearing the matter on the merits.
- [7] In his application, which was supported by an affidavit, Mr Cocom sought the following orders:

“That the Defendant forthwith discloses to the Claimant the remittance information, including the source of funds declaration or documentation provided in support of the deposit by the Claimant of the sum of \$100,000 to the bank account of the Deceased, Ramon Martinez, on or around the 25th June, 2020, and the Bank Statements with respect to Atlantic Bank [*account number given*] for the year 2020.
- [8] I heard Mr Cocom's application for specific disclosure on 25 April 2024 after which I reserved judgment. These are my reasons for my ruling dismissing his application.
- [9] In arriving at my decision, I considered the parties' pleadings, including the justifications provided for and against the application for specific disclosure. I will not restate all the submissions made in the skeleton arguments nor in oral submissions by counsel. However, I thank Mrs Mckoy and Mr Montero for their insightful submissions, which I have considered in arriving at my decision.

Principles on specific disclosure

[10] The principles on specific disclosure are well settled¹ and are set out in Part 28 of the Civil Procedure Rules (CPR). In making an order for specific disclosure:

- (a) the court must satisfy itself that the documents sought by one party are or have been in the other party's control (CPR 28.2(1)) and a document will be deemed to be in the relevant party's control if the document (i) is or was in their physical possession; (ii) the relevant party has or had a right to possession of the document; or (iii) the relevant party has or has had a right to inspect or take copies of the document (CPR 28.2(2));
- (b) the court must satisfy itself that the documents are directly relevant to the issues pleaded in the proceedings (CPR 28.5(5)) and documents will be deemed to be directly relevant if (a) the party with control of the document intends to rely on it; (b) the document tends to adversely affect the case of the party with possession; or (c) the document tends to support the case of the party seeking disclosure (CPR 28.1(4)); and
- (c) the court must satisfy itself that specific disclosure is necessary in order to dispose fairly of the claim or to save costs and in making this determination, the court must have regard to (i) the likely benefits of specific disclosure; (ii) the likely costs of specific disclosure; and (iii) the financial resources available to the party against whom the order is to be made and whether that party's financial resources are sufficient to enable that party to comply with any order made (CPR 28.6(1) & (2)).

[11] Relatedly, the party seeking specific disclosure bears the onus of demonstrating that their application satisfies the requirements set out in Part 28 of the CPR.

[12] I will now turn to, and use these principles in considering, Mr Cocom's application.

Request for remittance Information

[13] Mr Cocom seeks the disclosure of "remittance information". In para. 7 of his application, Mr Cocom stated:

"When I deposited the funds to (*sic*) to the deceased's account, I was also required to complete a source of funds declaration and state the purpose of the deposit as part of the remittance information required for the payment to be processed. The remittance information, including the source of funds declaration is relevant to this Claim, and would assist the Honourable Court in determining the nature

¹ For caselaw that restate these principles, see among others: (i) *Avalon Capital Markets Ltd v Rose* [2023] EWHC 1890, at para. 17-19. *Commissioner of Inland Revenue v Exeter City AFC Ltd* [2004] BCC 519, at para. 15; (ii) *Harrods Ltd v Times Newspaper Ltd* [2006] EWHC Civ 294, per Chadwick LJ at para. 12; (iii) ***ONZM & Others v Watson & Others*** [2016] EWHC 3346 (Ch) at para. 2); (iv) *Harris v Douglas SKBHC VAP2019/0026*, at para. 15.

and purpose of the deposit I made to the Deceased's account, which is one of the issues in dispute between the parties.”

[14] In para. 9 of his application, Mr Cocom also stated:

“Disclosure of the remittance information, including source of funds declaration, and the Deceased's Atlantic Bank Statement for the year 2020 are necessary to dispose fairly of the Claimant's case against the Defendant and are likely to assist the parties by saving costs in this process. The remittance information was prepared and or submitted to the Bank at a time when the Deceased was yet alive, and it is contemporaneous with, and directly relevant to the parties' agreement in relation to the funds.”

[15] It is my considered view that Mr Cocom has failed to discharge his onus of demonstrating that he is entitled to an order for specific disclosure for what he called “remittance information”.

[16] I am not persuaded that Mr Cocom has provided sufficient information on the “remittance information” that he seeks. It is unclear if the “remittance information” is contained in a document and if so, which or what type of document.

[17] The court may only make an order of specific disclosure with respect to documents. The documents can, of course, be electronic or hard copy. If a party to litigation is in possession of “information”, the party seeking that “information” can cross examine the relevant party during the hearing and not through an application for specific disclosure.

[18] In addition, a party seeking specific disclosure must provide sufficient detail to enable the court to identify with precision the document sought and to determine whether such document is indeed in the possession of the relevant party. Precision in pleading and in identifying the relevant document will also enable the court to determine whether such document is relevant to the issues pleaded, and whether it is necessary that a specific disclosure order be made in relation to the same.

[19] Relatedly, a party against whom a specific disclosure is intended to be made must be made sufficiently aware of the precise document with respect to which they are required to effect disclosure. This is important because without such information, it would be difficult if not costly to comply with the specific disclosure order made by the court. Failure to comply at all or in a timely manner with a specific disclosure order may result in sanctions. In the circumstances, it would be unfair on a party to be required to effect disclosure of a document whose nature is uncertain and with respect to which they may not in reality have in their possession.

[20] In my view, Mr Cocom has failed to make out a viable case for a specific disclosure order for what he called “remittance information”.

[21] Further, a close analysis of Mr Cocom's application shows that Mr Cocom did not provide any information explaining the relevancy of the “remittance information” to the issues arising for resolution

in the matter. The principle that he who asserts must prove is well-established and it applies with equal force in applications for specific disclosure. It is not sufficient to state that “The remittance information, including the source of funds declaration is relevant to this Claim, and would assist the Honourable Court in determining the nature and purpose of the deposit I made to the Deceased’s account, which is one of the issues in dispute between the parties.”

- [22] A party seeking specific disclosure must provide sufficient detail, which demonstrates why the document whose disclosure is sought is relevant to the issues pleaded in the matter. This requirement applies with equal weight to standard disclosure as it does to specific disclosure (see CPR 28.1(5) and is not satisfied through the singular statement that the document whose disclosure is sought is relevant.
- [23] Relevancy is a question of fact. A party must demonstrate that a document is “directly relevant” by providing information that demonstrates that (a) the party with control of the document intends to rely on the relevant document; or (b) the relevant document adversely affects the case of the party in possession thereof; or (c) the relevant document tends to support the case of the party seeking disclosure (see CPR 28.1(4)).
- [24] Although CPR 28.5(2) and (3) does not require an application for specific disclosure to be on affidavit, the requirement to demonstrate relevancy explains why it is critical for such applications to be sufficiently motivated and this is typically achieved through an application on affidavit. This is critically important in complex cases or cases where relevancy of the document whose disclosure is requested is not readily apparent.
- [25] In addition, a party should demonstrate that specific disclosure is necessary considering the overriding objective of the fair, proportionate and just resolution of the issues in dispute (see CPR 28.6(1)). Provision of sufficient detail will enable the court to discharge its duty of assessing (a) the likely benefits of specific disclosure; (b) the likely costs of specific disclosure; and (c) the financial resources of the party against whom the order may be made are likely to be sufficient to enable that party to comply with any such order (see CPR 28.6(2)).
- [26] In this regard, Mr Cocom has not identified the relevant document in which the “remittance information”, which he seeks is contained. Relatedly, the “remittance information”, which Mr Cocom seeks is information that he provided or must have provided to Atlantic Bank on 25 June 2020. However, he has not explained why if he is unable to produce the information himself since he is the one that provided the relevant information to Atlantic Bank. Further, to the extent that the “remittance information” pertains to details of the person to whom he was sending money (i.e., Mr Martinez) and the details of Mr Martinez’s bank account and the date on which he wanted the transaction effected, it is unclear how that information is relevant to the pleaded issues and why it would be necessary for an order of specific disclosure to be made.
- [27] It’s also the case that the “remittance information” restated above is not in dispute and has no bearing on whether the amount Mr Cocom deposited into Mr Martinez’s account was a loan advance.

- [28] To be clear, Mr Cocom has not explained how and why the “remittance information” is or would be relevant to his plea that he loaned Mr Martinez BZ\$100,000 and that at the time of his death, Mr Martinez had not repaid him. Mr Quiroz does not dispute that on 25 June 2020 Mr Cocom deposited BZ\$100,000 into Mr Martinez’s account. In the circumstances, Mr Cocom has not demonstrated that the “remittance information” he seeks is relevant to the resolution of whether his deposit of BZ\$100,000 into Mr Martinez’s bank account was a loan to Mr Martinez and not – as pleaded by Mr Quiroz - repayment of a 2019 loan advanced to him by Mr Martinez.
- [29] Mr Cocom has also failed to explain on the papers how the defendant could possibly be in possession of the “information” whose specific disclosure he seeks when the specifics of that information are or must be known to him and not the defendant.
- [30] Mr Cocom may, of course, be seeking disclosure of the documents, which financial institutions typically require those seeking to make a transfer of money to complete. As noted above, the problem is that Mr Cocom has not specified the document he seeks and the relevance of those document(s) to the issues falling for resolution.
- [31] In his application, Mr Cocom did not explain why he had not approached Atlantic Bank for copies of the relevant documents and/or made a court application compelling the same institution to release the documents whose disclosure he is seeking. His lawyer’s submissions on Mr Cocom’s efforts to secure the “remittance information” from Atlantic Bank is not evidence and is not a legitimate basis to order disclosure of documents whose nature is not clearly spelt out.
- [32] In making this ruling, I have also taken into consideration the burden and cost likely to arise from the court making an order for specific disclosure for document(s) the precise nature of which the court and defendant are unclear. In addition, the claimant has not given information that will allow the defendant to undertake a reasonable enquiry and identify the document(s) that would fall under the specific disclosure order.
- [33] In the circumstances, Mr Cocom has failed to discharge his onus of demonstrating that the “remittance information” whose specific disclosure he seeks is relevant and necessary for the fair and just resolution of the issues falling for resolution in this matter.

Request for source of funds declaration or documentation provided

- [34] As appears above (see para. 13 and 14), Mr Cocom also seeks disclosure of what he called the “source of funds declaration or documentation provided”.
- [35] As stated above, requests for specific disclosure must be precise. On the papers, it was unclear what Mr Cocom means by a source of funds declaration. In addition, his application does not identify the “documentation”, which he claims to have provided to Atlantic Bank.

- [36] During submissions by his lawyer, it transpired that Mr Cocom was seeking the source of funds declaration form that he said he provided to Atlantic Bank when he deposited the BZ\$100,000 into Mr Martinez's bank account held at the same financial institution. However, his legal representative was unable to be more precise on his request for specific disclosure of "documentation provided".
- [37] In addition to being imprecise, this disclosure request does not satisfy the rules on relevance and necessity.
- [38] Mr Cocom was the source of the funds deposited into Mr Martinez's Atlantic Bank account on 25 June 2020. It is reasonable to assume that this is what a "source of funds declaration" form would disclose. In his application, Mr Cocom did not aver that the "source of declaration" form will disclose that the funds he was depositing into Mr Martinez's account came from Mr Martinez. If he did, this would support Mr Quiroz's averment that the deposit made by Mr Cocom was repayment of the loan advanced to Mr Cocom by Mr Martinez. However, Mr Quiroz's case is that Mr Martinez gave BZ\$100,000 to Mr Cocom in 2019 and he has not indicated that he intends to rely on the "source of funds" declaration.
- [39] In addition, in his application, Mr Cocom did not explain why he was unable to provide a copy of the source of funds declaration form that he completed on 25 June 2020. Mr Cocom did not state that Atlantic Bank refused to give him a copy of the source of funds declaration form that he completed. Further, he did not state why he was unable to get a copy from Atlantic Bank for his own personal records. In addition, Mr Cocom did not produce a pro-forma copy of a source of funds declaration form to establish that the information required for that form is relevant to the issues arising for determination in this matter.
- [40] Notably, in the alternative, Mr Cocom seeks specific disclosure of "documentation provided", i.e., to say, documentation which he provided to Atlantic Bank. However, he did not identify the documents, which he alleges he provided to Atlantic Bank and if he did, their relevance to the issues as pleaded in his claim, which arise for resolution in this matter. In addition, he does not explain why he was unable to produce those documents since he is the one that provided them to Atlantic Bank and why it was necessary for the court to make such an order against Mr Quiroz.
- [41] It is certainly not for the court to require Mr Quiroz to build a case for Mr Cocom.
- [42] When asked, Ms Mckoy, the claimant's legal counsel, rightly conceded the point that the issue of the source of the BZ\$100,000 was not in dispute between the parties.
- [43] In the circumstances, there is no gainsaying that the "source of funds declaration or documentation provided", which Mr Cocom completed are not relevant to the issue in dispute nor is they necessary for the fair and just resolution of the issues arising in this matter. Consequently, Mr Cocom's request for specific disclosure for the "source of funds declaration or documentation provided" is also dismissed.

Request for bank statements for 2020

[44] Mr Cocom also sought the disclosure of Mr Martinez's bank statements for 2022 for the account he held at Atlantic Bank. In para. 8 of his application, Mr Cocom explained that:

"The Defendant has also disclosed bank statements of the Deceased for the year 2019, but not for the year 2020, which is the year I loaned the deceased the funds and he did not repay me. The 2020 Statement would assist in confirming whether the Deceased did repay me."

[45] And in para. 9 of his application, Mr Cocom also states:

"Disclosure of...the Deceased's Atlantic Bank Account Statement for the 2020 are necessary to fairly dispose of the Claimant's case against the Defendant and are likely to assist the parties by saving costs in this process."

[46] This request for Mr Martinez's 2020 bank statements for his Atlantic Bank account also fails the relevance and necessity tests. In addition, it has all the hallmarks of a fishing expedition and for purposes that are not readily obvious.

[47] Mr Cocom justifies his specific disclosure request of Mr Martinez's 2020 bank statements for his Atlantic Bank account on the basis that the information contained therein "would assist in confirming whether the Deceased did repay me." However, a perusal of the pleadings show that that is not the defendant's case. In other words, in his defence, Mr Quiroz is not arguing that in 2020 Mr Cocom lent Mr Martinez BZ\$100,000 and that Mr Martinez repaid that sum in 2020.

[48] Mr Quiroz's case is that Mr Cocom did not lend Mr Martinez the sum claimed by Mr Cocom. He argues that Mr Martinez lent Mr Cocom BZ\$100,000 in 2019 and that Mr Cocom repaid that sum on 25 June 2020 and that that explains the deposit, which Mr Cocom made into Mr Martinez's Atlantic Bank account. Proof of the oral loan agreement as pleaded by Mr Cocom will be established by other evidence and not the contents of Mr Martinez's bank statements for 2020.

[49] In essence, it is fair to surmise that there is no real dispute between the parties that between 25 June 2020 and the death of Mr Martinez in December 2020 the latter did not pay Mr Cocom BZ\$100,000. In view of these stubborn facts, Ms Mckoy rightly abandoned the request for the specific disclosure of Mr Martinez's 2020 bank account record held by Atlantic Bank. In the circumstances, I also dismiss this request for specific disclosure.

Costs

[50] I invited the parties to address me on the issue of costs as part of their submissions on Mr Cocom's application for specific disclosure. Very reasonably counsel agreed that whichever party prevailed should be awarded costs in the sum of BZ\$1,500.

[51] In the circumstances, I am dismissing the application for specific disclosure and awarding costs in the sum of BZ\$1,500 to Mr Quiroz, the defendant.

ORDER

[52] **IT IS HEREBY ORDERED THAT**

- (1) The claimant's application for specific disclosure of "remittance information", which he provided to Atlantic Bank when he deposited the sum of BZ\$100,000 into Mr Martinez's Atlantic Bank account is dismissed.
- (2) The claimant's application for specific disclosure of the "source of funds declaration or documentation provided", which he provided to Atlantic Bank when he deposited the amount of BZ\$100,000 into Mr Martinez's Atlantic Bank account is dismissed.
- (3) The claimant's application for specific disclosure of "bank statements" belonging to Mr Martinez relating to his account held at Atlantic Bank for the year 2020 is dismissed.
- (4) The defendant is awarded costs in the sum of BZ\$1,500.

**Tawanda Hondora
Judge
High Court
Civil Division**