IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS

ACTION NO. CL53/20

BETWEEN:

THE HONOURABLE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS — **PLAINTIFF**

-and-

SEAN LAWRENCE SULLIVAN — **DEFENDANT**

RULING

Before: **The Hon. Mr Justice Anthony S. Gruchot**

Appearances: **Mr Laurence Harris of Cooley (UK) LLP for the Plaintiff**

Mr Conrad Griffiths KC of Griffiths and Partners for the Defendant.

Hearing Date: **3rd August 2023**

Venue: **Court 5, Graceway Plaza, Providenciales.**

Handed Down: **24th August 2023**

Introduction

1. There are 3 summonses before the Court:
    a) the Defendant's 1st summons for specific discovery and an extension of time in which to serve evidence dated 13th July 2023 ('the 1st Summons');

b) the Defendant's 2nd summons for specific discovery and an extension of time in which to serve evidence dated 26th July 2023 ('the 2nd Summons'); and

c) the Plaintiff's summons for specific discovery dated 28th July 2023 ('the Plaintiff's Summons').

2. This matter was commenced in 2020 however, Griffiths & Partners only came on the record as acting for the Defendant on 27th March 2023. The matter was listed for a pre-trial review on that day, the trial having been listed for a five-day commencing on 8th May 2023.

3. Since Griffiths & Partners came on record there have been a number of applications *inter alia* leading to a substantial amendment to the defence, leave for which was contested and is subject to appeal. The draft amendments led to further applications before a final version was filed on 23rd May 2023, the trial date having been vacated and relisted in the week commencing 26th June 2023.

4. Further issues have arisen with respect to discovery, with both parties criticising the other in this exercise. The result of this is that these further applications were made with respect to discovery. Additionally, it has become apparent that the Defendant is subject to an Interpol 'Red Notice' issued at the request of the Argentinian authorities. As a result of this 'Red Notice' the Defendant is presently unable to leave the USA for fear of arrest.

5. In addition to criticism regarding discovery, numerous dates have been set for the exchange of witness evidence that have not been met. This has resulted in an order that unless the Defendant served as witness statements by Thursday 8th June 2023, he would be debarred from relying on such evidence.

6. On 7th June 2023 the Defendant filed a summons seeking specific discovery of certain documents and an extension of time for compliance with the unless order. That summons came before me on 8th June 2023 when I vacated the trial date and relisted it to commence on 21 September 2023, made orders for specific discovery and extended the time for the exchange of witness statements to 12th July 2023.

7. It is the Defendant's position that, following that further discovery exercise, a further list of documents having been provided on 28th June 2023 by the Plaintiff, a review of the material indicated that there must be still further material in the Plaintiff's possession or power which was relevant and had not been disclosed. On 12th July 2023, Mr Griffiths KC wrote to the Hon. Attorney General, copying in Mr Harris, requesting further discovery he asserts must exist. On the same day, he filed the 1st Summons, seeking further specific discovery and a further extension of time for the exchange of witness statements. He says this was filed as a precaution given that the Defendant was now under the unless order with respect to his evidence.

8. The matter had been listed for a pre-trial review ('PTR') on 14th July 2023, at which time it was intended that the 1st Summons would be heard. The PTR was adjourned,

the parties having agreed for there to be further discovery from both sides and the time for the exchange of statements to be extended to 26th July 2023. The PTR was re-listed to be heard on 31st July 2023.

9. On 27th July 2023 the 2nd Summons was filed setting out in table form further discovery sought from the Plaintiff and seeking a further extension for the exchange of witness statements, to 7 days after the service of the further discovery sought. That summons was supported by the 2nd affidavit of Wendana Rolle.

10. On 28th July 2023, the Plaintiff's Summons was issued supported by the 5th affidavit of Clemar Hippolyte. That summons seeks further specific discovery from the Defendant and a further unless order that evidence be exchanged by 2nd August 2023.

11. At the request of the parties the PTR adjourned to 31st July 2023 was moved to 3rd August 2023, at which time the Court was to deal with all 3 summonses.

The Present Applications

12. The cross-arguments with respect to the inadequacy of discovery continue. These applications are not straightforward as they seek various items of discovery, some of which are agreed to be produced, but which have only been requested for the 1st time in the summonses. Further the scope of what was being requested changed as the hearing progressed.

13. Both parties are seeking orders pursuant to O.24 r.7. which is entitled "**Order for discovery particular documents**". O.24 r.7 provides:

> *"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 documents 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."*

14. The applications are not framed in the form of a request for an affidavit, but for the production of documents[1] and/or requests for searches to be carried out. They are not requests for the production of a list of documents or for a further and better list of documents, under O.24. r.3.

15. I am mindful that "*[I]t is not the purpose of discovery to give the opposing party the opportunity to check whether discovery by the opposing party has been properly*

[1] A request for a copy of the documents would naturally follow an affidavit pursuant to O.24 r.10

carried out … A party seeking an order for further discovery should therefore consider carefully the which rule he should proceed or whether he should rely on both rules …[2]"

The Defendant's Summons

16. The discovery issues sought in the 1st Summons have either been dealt with or have been consolidated into the 2nd Summons. Mr Harris submits therefore that the summons should be dismissed with costs, on the basis that the discovery request was sent on 12th July 2023 and the summons issued the next day without giving time for compliance with the request. An answer to the summons was provided by the Plaintiff on 19th July 2023 and an extension of time agreed upon for the exchange of evidence to 26th July 2023 and accordingly, Mr Harris suggests the summons was improperly issued.

17. I do not accept that it was improperly issued. The Defendant was subject to an unless order to exchange witness evidence. Mr Griffiths KC submits that the application was necessary in order to protect the Defendant's position from being disbarred from relying on any evidence, the exchange of evidence not being ready due, he says to the discovery issues. Notwithstanding that an extension of time for exchange of evidence to 26th July 2023 was agreed with the Plaintiff on 13th July 2023, I do not accept that in the circumstances, there was anything improper in issuing the summons on 13th July 2023 and I note that it prompted further discovery from the Plaintiff.

18. Whilst the matters sought in that summons did not have to be pursued on 3rd August 2023 and it can now be dismissed, I do not find that the approach adopted by Mr Griffiths KC was unreasonable and little to no time was taken up by dealing with it.

19. With respect to the 2nd Summons, Mr Griffith's KC makes similar submissions with respect to the immediacy of its issuance, in that the Defendant was still subject to an unless order, the time for which was expiring. On this occasion, there was no agreement for any extension of time. Mr Harris submits that it was reasonable to refuse any further extension of time, the documents being sought by the Defendant being internal to the Plaintiff, and those acting for the Plaintiff and, as such, could have no bearing on the direct evidence to be given by the Defendant and that there is no reason to delay the exchange of witness statements any further. Mr Griffiths KC maintains his argument that the discovery exercise should be completed before he is required to serve his evidence.

20. Mr Harris does not deal further with the Defendant's 2nd Summons in his written submissions, save to say it has been fully complied with and should be dismissed, again with costs. Mr Griffiths KC accepts that the Plaintiff has provided further discovery sought by the 2nd Summons but submits that a complete answer to the requests has not been made. Given that, as will be seen below, the trial date fixed for 21 September 2023, has been derailed through no fault of either party, I do not need

[2] See note 24/3/8 – Civil Court Practice 1999 - The White Book; See also *Ventouris -v- Mountain* [1991] 1 W.L.R. 607 at pg. 622.

to consider that argument as neither party is now prejudiced by resolving the discovery issues before the exchange of evidence.

21. In his oral submissions Mr Harris conceded that now that he had read Mr Griffiths KC's skeleton argument (only received some 20 minutes before the hearing) he understood what was now being requested and further conceded, subject to the below, that the documents and/or searches would be provided insofar as they were not [considered] privileged.

22. In his skeleton argument, Mr Griffiths KC lists the discovery sought under the following headings:

    a) Communications between the Plaintiff and the Special Investigation and Prosecution Team ('SIPT') in relation to the subject land parcels[3];

    b) Government communications with its' consultant, a Mr Titley;

    c) Robert Dostie documents[4]; and

    d) Communications with Twa Marcelin Wolf[5].

23. The table set out in the 2nd summons had some 14 documents or classes of documents that were being sought under the above categories. The table cites what was being requested and the source/reference giving rise to the request. Mr Harris had responded to each item by way of an annexe to his letter of 23rd July 2023 to Mr Griffiths KC, which response was attached to his skeleton argument.

24. Additionally, in his skeleton argument but not in the 2nd Summons, Mr Griffiths KC seeks discovery of the Land Registry transfer of parcels of land described in the pleadings as the 'Vandon Parcels' which are apparently referred to in the draft Trial Bundle which has been prepared[6]. This application was not addressed by either counsel in oral submissions and I am not minded to make any specific order at this stage.

25. Mr Griffiths KC took me through the table of requested documents, explaining why he says there must be further documents and why they are relevant.

26. With respect to the Robert Dostie requests, further documents have already been disclosed and the Plaintiff says there are no other documents. The items concerning him have therefore been dealt with either by discovery having been provided or the requests fall within the category of documents, to which the response is that they cannot be found[7].

[3] Parcels 60000/307, 310, 317 and 327

[4] Mr Dostie is the representative of a developer of related land.

[5] Attorneys retained by The River TCI Ltd, the company that ultimately acquired the subject land parcels (or the shares of the companies who owned the land parcels) controlled by the Defendant.

[6] This was not before the Court.

[7] See para. 37 et seq. below.

27. The Plaintiff asserts that a number of the categories of documents are subject to litigation/advice privilege and are therefore not disclosable. Mr Griffiths' KC submits that even if those documents are privileged, the fact of their existence and their dates are relevant to the issues in the case as they are evidence that something took place and should be disclosed. Mr Harris disagrees with the proposition that if a document is privileged, the date of it is not privileged and refers to the fact that the Defendant in his discovery has claimed privilege of certain documents and has not given the dates of those documents.

28. Mr Harris questions what use will simply having the date of a document be, if the entire contents are redacted.

29. The question for me is, is there a requirement to list individual dates of documents for which privilege is claimed? There is no challenge to the legitimacy of the claimed privilege. I was not addressed by either party on any law on the point.

30. O.24 r.5 provides:

> *"A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, and must* ***enumerate the documents*** *in a convenient order and as shortly as possible but describing each of them or,* ***in the case of bundles of documents of the same nature****,* ***each bundle*** *sufficiently to enable it to be identified."* (Emphasis added)

31. What is clear from the above is that each individual document does not need to be listed separately if it is of a similar nature to other documents in the bundle.

32. Note 24/5/6 provides:

> *"****Bundles of documents****- the provisions in regard to bundles of documents now embody the strict Chancery practice, in existence for many years but not always followed in the QBD. They only apply where there is a large number of documents of the same nature. In such a case, each of the documents must be numbered, as in other cases, but the bundle may be described as a whole- e.g. "letters (or copy letters) from A to B, tied up in a bundle marked A and numbered from 1 to 50 and initialled by me"."*

33. Note 24/5/4 provides:

> *"****Enumerate the documents in a convenient order****- The provisions for enumeration and description under this rule are fundamental to the proper execution of discovery which is itself an essential part of the process whereby the merits of the respective parties' contentions are to be evaluated and if necessary determined. The rule provides what is to be done. No specific order of the Court is required. It is part of the process of ensuring that all relevant documentation is disclosed. Documents must be sufficiently identified to enable the other party to ascertain and ask for those he wishes to inspect specifying them appropriately to enable the Court, if application is made, to*

see whether the rule or any order for discovery has been complied with and if necessary to make, e.g. an order for production for inspection which is clear and can be enforced. Accordingly (except where the documents are too numerous, and include large numbers of documents of the same nature) the list should usually consist of items in order of date, with the number of the item, the description (e.g. letter from plaintiff to defendant) and the date …"

34. Note 24/5/5 provides:

> *"**Describing each of them**- See the previous note. But there is a certain difference between documents for which privilege from production is claimed and other documents. As is said above, the description is not for the purpose of enabling the other party to learn the contents of the document or to test the truth of the plea privilege. Nor is it for the purpose of causing the party giving discovery to furnish evidence against himself (Gardner v. Irvin (1878 4 Ex.D 49 at 53 CA). It is not required that the dates of documents should be specified nor the names of the makers (ibid). "Correspondence between the (defendant) and his solicitors for the purposes of obtaining legal advice" is sufficient (ibid).*
>
> *Where privilege is claimed for professional communications of a confidential character obtained for the purpose of getting legal advice, the claim for privilege is to be treated as itself a sufficient description of the communications, irrespective of the scale of discovery or the complexity of the issues involved, and consequently the party seeking disclosure is not entitled to satisfy himself by means of fuller description of the communications for which privilege is claimed that it is not claimed for document outside its proper scope …"* (Emphasis added)

35. In light of the above, I conclude that there is no requirement to list the individual dates of, and the parties, to privileged documents and therefore I make no order in respect of that class of documents sought by the summons.

36. Dealing next with the issue of the discovery where a search has been carried out and it is said that nothing can be found.

> *"There is no jurisdiction for the Court to make an order for discovery under O.24 r.7 unless a) there is sufficient evidence 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 the document is in the possession, custody or power of the other party"[8].*

37. Mr Griffiths KC does not seek specific discovery of any specific documents where his enquiries have been answered by the Plaintiff to the extent that a search has been carried out and no documents have been found, but he extends his enquiry to say that time records should be searched to determine, for example, even if a note of a

[8] See Note 24/7/2

telephone call cannot be found, at least a time entry would show that that a call took place between certain individuals and the length of the call.

38. Mr Harris gave the Court a full explanation as to the transition of conduct of this matter from EAPD, solicitors initially instructed by the Government of the Turks and Caicos Islands ('TCIG') and Cooleys (UK) LLP ('Cooleys'), solicitors who now have conduct and I do not need to go into that in detail, save to say this was not a change of name or merger but a migration of personnel to a new entity. Mr Harris submits that the migration did not allow for historic time records to be transferred, they being a central firm system to which access was lost, but that the electronic client files were transferred. This is, in part, the reason that searches have been able to be carried out, but in respect of time records all that is available is PDF copies of bills.

39. Mr Griffiths KC suggests that it would not be disproportionate to at least search through the client bills that have been submitted to identify the relevant time entries. He suggests that it would only be a search over a period of 2 years or so to locate the time entries he seeks. He goes on to suggest that the time records are relevant documents for the purposes of discovery.

40. Mr Harris submits that to search through the time records would be onerous and disproportionate as numerous people have been involved in the matter and that numerous general files and specific files have been opened for TCIG. He also says that as all that they have are PDF copies of submitted bills, an electronic search cannot be done. He further submits that anything of any detail in the time record is going to be redacted for privilege so all that will be revealed is that a meeting or telephone call took place on a particular day for a particular period of time.

41. The initial question that arises for me is whether the time recording records of a firm of solicitors engaged by the parties is a document or class of documents that a party should disclose. I do not consider that an attorney's time records generally fall under a category of documents for disclosure, unless, for example, they are the subject matter of the litigation.

42. Mr Griffiths KC submits that the time records are relevant as, taking one example, Mr Griffiths KC has requested a copy of an attendance/file note of a telephone call from Mr Maton (a partner solicitor on the Plaintiff's team) to Mr Wolf, of Twa Marcelin Wolf on or about the 10th March 2011. The source of that request arises from an email of 10th March 2011 from Mr Wolf to the Defendant, which followed the call from Mr Maton. The response to the request is that a search has been carried out and no such note can be found.

43. Mr Griffiths KC submits the time record would show that there was such a call from Mr Maton and that would go to support the Defendant's position that he offered Mr Wolf as a source of any information the Plaintiff wanted that could have been provided. He submits further that if that offer was taken up then it is relevant. I do

not agree that a time record, without more, would go that far. The Defendant can give evidence that he offered Mr Wolf as a source of information.

44. That said, Mr Harris raised no objection to production on the principle such documents are not subject to discovery but, that to search the same would be disproportionate.

45. Mr Griffiths KC invites me to require them to look for the time entry and that the Plaintiff could undertake to make a search and the summons be adjourned for them to do so. He further submits that if the Plaintiff then comes back and says that nothing can be found then he will accept that. Mr Griffiths KC accepts that if the Plaintiff had agreed to an extension of time for the filing of evidence, he would not have had to issue the summons and this matter would have been dealt with by letter correspondence.

46. I refer back to the criteria for the jurisdiction to make an order under O.24 r.7 set out in paragraph 36 above. I am not of the view that the request for the Plaintiff to carry out a search to see if there are disclosable documents is a proper request for discovery pursuant to O.24 r.7. That said, in reply, Mr Griffiths KC referred back to the above example and submitted that what was being looked for was a time entry on or about March 2011, arguably in my view a specific time entry, and not that he was asking for a search over the whole of 2 years. He asks the Court to give an indication to the Plaintiff that this was something that should be done.

47. Mr Harris did submit, that certainly with respect to the example set out above it was a relatively specific exercise and conceded that if Mr Griffiths wants to write with the specific dates or a very short range of dates of meetings that he wants to establish took place, where no file notes have been found then, the Plaintiff will look, but submitted that this was being put in a different way to how the request had been framed in the table. At item 12 of the table, Mr Griffiths KC seeks "*The EAPD time records relating to the NWP parcels*[9] *(redacted if necessary) showing the number of hours spent on an investigation the NWP parcels*."

48. Mr Griffiths KC maintains his request for a search of the time records to highlight the number of hours that were spent by TCIG investigating and considering the issue, because he says, that if TCIG, through its' lawyers spent a significant amount of time looking at the matter in 2010 and 2011, it would be an indicator that a decision was made then not to pursue the matter and it is not equitable for them to now to come back take nearly ten years later and initiate proceedings, particularly having regard to the companies and Mr Sullivan having incurred liabilities seeking to pursue the very same project.

49. Whilst I can see some merit in Mr Griffiths' KC's argument, which might make the time recording records discoverable in this action, the affidavit in support of the

[9] 'NWP' is an abbreviation for North West Point. The 'NWP' Parcels are those subject to the substantive claim i.e. parcels 60000/307, 310, 317 and 327.

application makes no reference to time records and whilst Mr Griffiths KC submits that they must exist, I give further reference to Note 24/3/8 in which states[10] "*If or to the extent he [the applicant for specific disclosure] resorts, or can only resort, to r.7 he must comply with the requirements of para. 3 of that rule*[11] *or his application must fail*."

50. I am of the view that the answer Mr Griffiths KC is looking for can be obtained by alternative means rather than through discovery and I therefore decline to order a search of [the Plaintiff's solicitors] time records. In light of the concession made by Mr Harris in respect of any specific requests, I am not of the view that any order for specific discovery in respect of time records is required.

51. In much the same way Mr Harris has made concessions with respect to TCIG's consultant, Mr Titley. He agrees that the Plaintiff will email him at his last known email address and ask if he has any notes. This is notwithstanding, he takes the issue that as a consultant, he was not an employee of TCIG and as such, TCIG does not have possession, custody or power of any of his documents and the fact that he ended his engagement some 9 or 10 years ago.

The Plaintiff's Discovery Request

52. The Plaintiff summons was issued without any prior request to the Defendant. It seeks the following:

    a) a search of specific email addresses seansullivan@me.com and seansull4@hotmail.com.

    b) evidence of any financial transactions/expenditure by the Defendant in respect of various assertions pleaded in some 14 paragraphs of the amended Defence.

    c) All correspondence, emails and documents (including but not limited to evidence of payments) relating to the borrowing of funds by the Defendant (or entities with which he was involved) from, and the repayment of funds to:

        i. Belize Bank;

        ii. Charles Vavrus; and

        iii. Marble Hill Ltd.

    d) Documentation and correspondence relating to Argentinian proceedings, leading up to the issue of an Interpol 'Red Notice' in the name of the Defendant

    e) Documents and communications relating to and with a receiver appointed by Belize Bank under its security over the land parcels.

    f) an affidavit of how the Defendant's email accounts had been searched, by whom they were searched and what date ranges were applied to the searches,

[10] See paragraph 15 above.
[11] The requirement to detail the request for specific discovery in the supporting affidavit.

together with the same information in respect of the searches sought at paragraph 52 a) above.

53. It does appear that these summonses, certainly the 2nd summons and the Plaintiff's summons, have been issued prematurely and with a degree of urgency to get them before the Court on the already fixed (albeit previously adjourned) PTR date and due to the pressure on the Defendant of the unless order, all coupled with a desire to maintain the September trial date. Had more time been available to the parties to communicate then there could and as it transpires would have been a considerable narrowing of the issues.

54. In that vein, in respect of the Plaintiff's summons, Mr Griffiths KC indicated that he had not yet had the opportunity to address the requests for documentation in relation to the various financial transactions that have been pleaded in the Amended Defence (item 52.b) above) but he would do so and that if there were discoverable documents, they would be provided. Mr Griffiths KC submits that he was not opposing that request, but that he just hadn't had time to look at it.

55. I would again refer to the fact that the application has been made pursuant to O.24 r.7, an order for discovery of particular documents. It does seem appropriate that there should be discovery of these documents as they are relevant to matters that are pleaded and they can be categorised as a group of documents relating to each specific pleaded point. I will therefore make an order in the terms sought in paragraph 2.2 of the Plaintiff's summons, insofar the same is necessary given Mr Griffiths KC's submission that he intends to deal with the request in any event.

56. Mr Harris submits in his skeleton argument, that "*We have not attempted to identify every gap, or document referred to which must exist. Instead, in a sensible and proportionate way, we have, in our summons, supported by Ms Hippolyte's fifth affidavit, identified the five main areas where it is obvious that a proper search has not been made*." That does not in my view fit well with an application under O.24 r.7. It is not, as Mr Griffiths KC submits, targeted to say what the Plaintiff is looking for.

57. With respect to the search of the 2 email accounts identified in the Plaintiff's summons and detailed in paragraph 52.a) above, the best I can take this is as a request for the Defendant to produce a further and better list of documents in respect of the 2 email accounts. That is an application pursuant to O.24 r.3 which has not been made, however, Mr Griffiths KC concedes that whilst he is not saying that there are other emails from the 2 email accounts, a further search will be carried out.

58. Similarly, the Plaintiff seeks an affidavit from the Defendant detailing how the Defendant's email accounts have been searched, by whom they were searched and the date range applied to the search. The Plaintiff also seeks to extend that affidavit to include the same details to the searches sought at paragraph 52.a). above, assuming that an order is made. There is in my view no power under O.24 r.7 for me to order such an affidavit. I repeat Note 24/3/8 set out in paragraph 15 above and I

do not agree with Mr Harris that this is a standard remedy sought in an application under O.24 r.7.

59. Save therefore as to further searches which are agreed, the applications made at paragraphs 2.1 and 3 of the Plaintiff's summons are accordingly dismissed.

60. With respect to documents relating to the Argentinian proceedings, these arise out of a document disclosed by Mr Griffiths KC in relation to the Interpol 'Red Notice' issued against the Defendant. He submits that this was disclosed (perhaps wrongly) in relation to the narrow issue of the Defendant's request for confirmation from the Plaintiff that, if he were to travel to the Turks and Caicos Islands for the purposes of attending the trial of this matter, he would be allowed to do so without fear of arrest. There is no reference in either of the parties' pleaded cases to the Argentinian proceedings whatsoever or to the 'Red Notice'. To that end, he suggests that the Argentinian proceedings are irrelevant, particularly in circumstances where the Defendant has never appeared personally in front of an examining judge or magistrate in Argentina and where there has been no prior request for such discovery, notwithstanding that Plaintiff must have known about the Argentinian proceedings given a proceeds of crime restraint which has been placed on the relevant titles of land.

61. Mr Griffiths KC submits that if discovery has to be given, it will considerably broaden the scope of discovery, lengthen the Defendant's witness evidence and possibly need translations of documents and expert foreign evidence.

62. Mr Harris submits that he is absolutely clear that he is not going to be asking the Court to form a view about whether the Argentinian allegations are correct or well-founded but submits that the Argentinian proceedings are relevant to the Defendant's pleaded claim in a very specific way. He says that as there is an express plea that the Defendant is a man of good character and importantly pleads in his equitable estoppel case, based on reliance and detriment through to November 2019, but that he re-submitted his application for Crown Land in February 2019. The relevance Mr Harris asks me to draw from this is that in 2019 the Defendant became aware of the 'Red Notice' and that towards the end of 2019, he was taking active steps in relation to it.

63. Mr Harris submits the relevance is the question that will arise in the context of the equitable defence, that being what was the Defendant's state of mind of knowledge of the 'Red Notice' during 2019 and to what extent should this matter have been disclosed to TCIG in the context of the application in February 2019. He submits that in order for TCIG to grant the development approval that was sought, TCIG had to be persuaded that the Defendant was a person of good character. The inference/relevance I am asked to make is that if the Defendant was subject to a 'Red Notice' when he made his application, then he should have disclosed that fact and also that he was subject to concerns in Argentina, as part of his application. If he had done so, then the TCIG would have been right to reject his application.

64. Relevance for the purposes of discovery arises or is determined by the pleadings. I am not of the opinion that the matters raised in Argentina are matters that are in issue in the matter at bar for the following reasons:

    a) Mr Harris suggests that the matters raised in Argentina relate to an allegation that the loan (refinancing) from Marble Hill Ltd ('the Marble Hill Loan') (which is relied on by the Defendant as part of his detriment claim) was not genuine or it was a fraudulent loan. That is not my understanding.

    b) What is alleged about the Marble Hill loan by the Argentinians, insofar as I can make out at this stage and as submitted by Mr Griffiths KC, is that the monies provided by Marble Hill Ltd are alleged to be funds from a tainted source, the 'Red Notice' arising from an anti-money laundering investigation and tracing of funds. No determination has been made in relation to the matters alleged in those proceedings.

    c) There is no pleaded case that the Defendant knew or ought to have known that the funds were tainted or, relying on Mr Harris's submissions, that the loan was not genuine.

    d) What appears to have happened is that the original lender Belize Bank Ltd. ('Belize Bank') appointed a receiver under the terms of its charge. There were then alternative financing arrangements put in place to discharge that borrowing by new lending from Marble Hill Ltd.

    e) There is no reference in either the Statement of Claim or the Amended Reply to these arrangements or any allegation that the arrangements were not *bona fide*.

65. Mr Harris noted my concerns when he was explaining his link between the Argentinian proceedings and their relevance to the equitable defence. Having carefully considered both my handwritten notes and the transcript, I am not persuaded that the argument put forward demonstrates the relevance of the documents in the Argentinian proceedings and paragraph 2.4 of the Plaintiff's summons is dismissed.

66. With respect to the request for the receiver's files, Mr Griffiths KC submits that they are not relevant to the pleaded issues on the basis that put simply:

    a) There was a default in repayment of the lending from Belize Bank used to acquire the relevant land parcels and/or shares;

    b) Belize Bank appointed a receiver under its powers under its charge(s);

    c) The borrowing was refinanced thus ending the appointment; and

    d) In any event, the receiver was appointed over the land holding companies, who are not party to these proceedings, and as such the Defendant does not have (nor has had) possession, custody or power of the receiver's files.

He further submits that whilst a receiver is technically an agent of the company over which he is appointed, he is appointed under a charge to represent the interests of the lender.

67. Mr Harris relies on the affidavit of Ms Hippolyte in which she sets out her reasons why the Plaintiff says the receiver's documents are relevant. The main thrust of the argument is:

    a) That in the 4 years that the receiver was in control of the land parcels, the Defendant continued to pursue the development of the land parcels to his detriment; and

    b) If he did so in circumstances where the receiver was unwilling to permit development or would only permit development by imposing conditions the Defendant could not meet; then

    c) The estoppel defence based on the reliance on representations made by TCIG must fail as his efforts were in any event, wasted.

68. The issue I have is that none of this is pleaded and to repeat, the relevance of discovery is described by the pleadings. No issue in relation to the receiver is pleaded by either party. There is no positive averment that the receiver had no objections to any development, in the same way as there is no positive averment that he would not permit development or would only do so on certain terms.

69. I am not persuaded that the receiver's files, even if they were in the possession, custody or power of the Defendant, which I am told they are not, are relevant documents. Accordingly, paragraph 2.5 of the Plaintiff's summons is dismissed.

70. This then leaves paragraph 2.3 of the Plaintiff's summons as set out at paragraph 52.c) above.

71. In his oral submissions Mr Griffiths KC took the following points:

    a) There is no suggestion that there are any specific documents in relation to Belize Bank which have not been disclosed;

    b) As to the repayment, the funds would have come from the Marble Hill Loan and he questions the relevance as it is a matter of record that the Belize Bank loan was discharged at the time of the Marble Hill Loan;

    c) He accepts that the borrowing from Mr Vavrus comes under the request in 2.2 of the Plaintiff's summons (and so is dealt with above), but there has been no repayment of those funds.

72. Mr Griffiths KC questions the relevance of the request but he has agreed to carry out a further search but was not saying that there were further documents. Mr Harris did not pursue the request further than that.

Exchange of Evidence

73. The Plaintiff also seeks a further unless order fixing the date by which evidence is to be exchanged.

74. I will hear from counsel on a proposed new timetable.

Trial Date

75. Mr Griffiths KC submits that notwithstanding these incident applications, he believes he is in a position to maintain the existing trial dates set for 21st September 2023. Unfortunately, the Court is now not available on the 21st and 22nd of September 2023 and Mr Harris is unable to extend his availability beyond the 27th September 2023 leaving just 3 days for the trial if it is not going to go part heard, which neither party or the Court considers desirable.

76. Accordingly, the trial dates have to be vacated and the matter re-listed. The relisting is not a result of the conduct of either party. In order to accommodate the parties and the Court calendar the matter is relisted for trial on 15th January 2024 with a time estimate of 5 days.

Disposition

77. I will hear counsel as to:

    a) the timetabling for the production of the additional discovery;

    b) the exchange of witness evidence and any other steps required before trial;

    c) the form of order; and

    d) the costs of the applications.

23rd August 2023

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court