

Neutral Citation No: [2019] NIQB 57

Ref: COL10984

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 31/5/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

COMMERICAL LIST

2017 No. 124122

BETWEEN:

CARL FRAMPTON

Plaintiff;

-and-

FINBAR PATRICK BARRY McGUIGAN

AND

SANDRA McGUIGAN

AND CYCLONE PROMOTIONS (UK) LIMITED (COMPANY NO. 10493415)

Defendants.

COLTON J

[1] The plaintiff has issued a summons seeking inspection of original documents, orders seeking a writ of subpoena duces tecum in accordance with the jurisdiction established by **Khanna v Lovell White Durrant** [1995] 1 WLR 121, for an order pursuant to Order 66 Rule 5 of the Rules of the Court of Judicature (Northern Ireland) 1980, for specific discovery pursuant to Order 24 Rule 7 of the Rules and for leave to serve interrogatories.

[2] I have already made an order in relation to inspection of original documents, the Khanna subpoenas and the Order 66 Rule 5 application.

[3] In relation to the application for specific discovery the plaintiff has set out six classes of documents in Schedule 2 attached to the summons.

[4] The defendants have agreed to swear an affidavit addressing the request for the documents set out in paragraphs 2, 3, 4, 5 and 6 of the schedule and I therefore make an order in relation to these documents.

[5] In relation to the class of document set out in number 1 this is a reference to a total of 85 categories of document described as “*additional information required*” in a report from ASM, forensic accountants dated 30 April 2019.

[6] The defendants have agreed to swear an affidavit in relation to the following items identified in the ASM report namely 1, 2, 3, 4, 5, 6a for the 2018 financial year, 7 insofar as it relates to Cyclone Promotions (UK) Limited, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 57, 59, 60, 61, 63, 64, 65, 67, 68, 70, 71, 72, 73, 74, 76, 77, 79, 80, 82 insofar as the statements contain entries relevant to these actions, 83 insofar as the statement contains entries relating to monies arising from ticket sales, 84 and 85.

[7] I turn now to the documents which remain in dispute.

Documents under paragraph 6

[8] The genesis of this request is an e-mail from the second defendant dated 23 June 2016 to Jeff Lerner, a former accountant employed by the defendants in the following terms:

“Dear Jeff

We have now completed our year end on Cyclone Promotions with Steve Clifford of Clifford and Co. Moving forward we would like to instruct Steve Clifford to act as our accountant across our businesses. Please will you provide Steve with the accounting records for:

*Square Ring Limited
SR Properties Limited
Collingwood Limited
Barry McGuigan Boxing Academy Limited
Cyclone Promotions Limited
Barry McGuigan Foundation Limited*

....”

[9] It is clear from a remittance advice for the first company named Square Ring Limited, that there is a remittance in relation to a contractual fee for **Frampton v Parodi** dated 19 October 2013 for a total of £58,800. A further document has been

disclosed which relates to ticket sales for “Cyclone Promotions – Frampton Comes Alive” on 21 October 2013.

[10] In support of the request for the additional information the accountant’s report states:

“We note the above companies are referred to by Sandra McGuigan in e-mail correspondence and we understand they may have been used to record income from various Frampton fights (e.g. remittance advice for the Parodi fight was issued by Square Ring Limited).”

[11] This request has to be seen in the context of the dispute between the parties and in particular in circumstances where the plaintiff is seeking an account or enquiry of monies. I consider that the proper way to deal with this request (and indeed other requests in similar categories) is for the defendants to swear an affidavit confirming firstly whether the relevant documents exist, confirming that any such documents that do exist have been inspected and confirming that all documents relevant to the dispute between the parties in this case have in fact been disclosed. For the avoidance of doubt relevance is determined by whether or not any of the records relate to monies attributable to the management or promotion of the plaintiff and his boxing bouts to include both income, expenditure and commission. Before the affidavit is served the defendants’ lawyers should consider the material and the contents of the affidavit as sworn are accurate.

[12] The obligation on the defendants in this case is to account for all monies in relation to their management and promotion of the plaintiff. An essential element in such an obligation is to identify and provide any documentary record in relation to such monies. This can best be achieved by swearing an affidavit in relation to the matters which have been agreed and asserting the basis upon which the defendants are declining to provide the material sought. I consider this applies to the request at number 6.

The request under paragraph 7

[13] The defendants have agreed to reply to paragraph 7 “*insofar as it relates to Cyclone Promotions (UK) Limited*”. The plaintiff in addition to this request has also sought full financial accounts of “*any other company where income from Carl Frampton fights and other promotional activities was reported*”. I consider that the reply offered by the defendants at this stage is adequate but I make it clear that either by way of discovery, particulars or interrogatories there remains an obligation on the defendants to disclose all records from whatever companies are relevant where income from the plaintiff’s fights and all associated promotional activities was reported.

Requests under paragraphs 53, 55, 56, 58, 62, 66 and 69

[14] The report from ASM does not set out the specific basis upon which each class of document is requested. It is clear that the accountants retained by the plaintiff have gone through the relevant bank accounts already disclosed and have sought to identify items which may be relevant apparently on the basis of amount and timing. It is clear that in doing so the accountants have exercised a degree of judgment in selecting and identifying the particular items from the accounts. It is also clear that in responding to the request for disclosure the defendants' advisors have agreed to provide much of the material sought, albeit that it is not necessarily accepted that the documents are relevant. In order to achieve justice between the parties in this case and having regard to the pleadings and the context in which this material has been sought, I consider that a similar approach should be adopted to these items as to that which I adopt at paragraph 6. At first instance the matter should be dealt with by way of affidavit from the defendants setting out the basis upon which it is alleged that the material is not relevant in the manner in which I have described in the response at paragraph 6 above.

In relation to the request at paragraph 75

[15] In this request the plaintiff seeks statements from 1 July 2017 to date of the account "*Cyclone Promotions Coutts US Dollar Account Client Account ended 0431*".

[16] The defendants object to providing this documentation on the grounds that the documents sought post-date determination of the relationship between the parties and is not relevant. The fact that the request post-dates determination of the relationship is not an answer to the request as it may well be that monies continued to be received or discharged post-determination of the relationship which are relative to the currency of the relationship. The matter should be dealt with by an averment from the defendants asserting lack of any relevant material post 1 July 2017 in accordance with the ruling in relation to paragraph 6.

[17] I make a similar order in relation to paragraphs 78 and 81.

The requests at paragraphs 82 and 83

[18] The defendants are willing to provide the statements in relation to 82 "*insofar as they contain entries relevant to these actions*" and in relation to 83 "*insofar as the statements contain entries relating to the monies arising from ticket sales*". I consider that the response to paragraph 82 is adequate. However, in relation to 83 a similar obligation arises namely to provide such statements insofar as they "*contain entries relevant to these actions*". Again relevance is defined as set out in my ruling in relation to paragraph 6a above.

Requests for interrogatories

[19] The plaintiff seeks leave to serve six interrogatories on the defendants. The defendants have agreed to reply to the interrogatories numbers 2, 3 and 5 and I therefore make the appropriate order granting the plaintiff contemplating leave to serve the relevant interrogatories.

[20] In relation to interrogatory 1 this is simply framed as *“see request for information within ASM report which are repeated”*.

[21] I have already referred to the request for information in the comprehensive application for specific disclosure.

[22] In my view the manner in which the requests are formulated does not meet the procedural requirements for interrogatories.

[23] In any event it seems to me that these interrogatories at this stage are premature given the orders that have been made for disclosure.

[24] I repeat that the objective of the interlocutory matters in this case so far as they relate to the plaintiff relate to identifying and accounting for all monies which relate to the management/promotion of the plaintiff. It may be in due course interrogatories would be permitted to achieve this objective but the request as currently formulated is both premature and inappropriate.

[25] In relation to the interrogatories at paragraph 4 the plaintiff seeks to examine the defendants on whether or not they “mixed” personal and corporate monies, mixed monies generally with the plaintiff’s bouts with monies relating to other Cyclone boxers and “mixed” monies as between companies within the Cyclone connection as specified in the statement of claim.

[26] I repeat what I have said above. The objective is to identify and account for all monies that relate to the management and promotion of the plaintiff’s boxing affairs. This is the purpose of the request from ASM Accountants which forms the bulk of the specific discovery application. I consider that the question of the “mixing” of monies should be dealt with in the context of the discovery exercise. As is the case with the request at 1 above it may be that in due course leave for interrogatories will be granted but not at this stage.

[27] The orders for affidavits that I have made in this ruling should be sworn and served by close of business on Wednesday, 12 June.