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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**10/06/19**

2017 No 124122

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

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COMMERCIAL LIST

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BETWEEN:

CARL FRAMPTON

Plaintiff

and

FINBAR PATRICK BARRY McGUIGAN AND SANDRA McGUIGAN
and
CYCLONE PROMOTIONS (UK) LTD (COMPANY No 10493415)

Defendants

_____

COLTON J

[1] The defendants in this action seek an order pursuant to Order 24 Rule 7 of the Rules of the Court of Judicature (Northern Ireland) 1980 compelling the plaintiff to make and serve upon the defendants an affidavit stating whether any document specified or described in a schedule or any class of document so specified or described is or has at any time been in the plaintiff's possession, custody or power and if no longer in his possession, custody or power when did he part with it and what became of it.

[2] The schedule to which the application refers includes a request for 48 classes of documents.

[3] There is no dispute as to the relevant test for discovery in this jurisdiction. The **Peruvian Guano** test is the starting point. This test requires the parties to discover any document, which it is reasonable to suppose contains information which may enable the party applying for discovery either to advance his own case or to damage that of his adversary or, if it is a document which may further lead him to a trail of inquiry which may have either of these two consequences.

[4] The test was considered recently in the case of **Flynn v Chief Constable PSNI [2016] NIQB 24** and **[2017] NICA 13**.

[5] Order 24 Rule 7 provides as follows:

> "7.–(1)Subject to rule 9, the Court may at any time, on the application of an 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 a class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then is 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 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 as described in the application and that it relates to one or more of the matters in question in the cause or matter."

Thus, an applicant seeking an order must establish:

(i) That there is sufficient evidence that the documents sought exist.

(ii) That the documents relate to matters in question.

(iii) That there is sufficient evidence the documents were in the power, custody or possession of the defendant.

[6] Order 24 Rule 7 must also be read in conjunction with Order 24 Rule 9 which provides:

> "On the hearing of an application under Rule 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 may be adjourn the application

> and shall in any case 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 of the cause or matter or for saving costs."

[7] In approaching the application the court should also have regard to the overriding objective set out in Order 1 Rule 1A of the Rules.

[8] In paragraph 25 of the judgment in **Flynn** the Court of Appeal formulated the test that emanates from Order 24 Rule 7 as comprising three limbs:

> "Firstly there is the necessity requirement which is related to relevance. The second limb relates to subject matter and comprised within that is deference to the aim of achieving justice in a particular case. The third limb relates to costs which is a factor raised in this case in terms of the burden of discovery."

[9] In coming to a determination on each of the items sought the court bears these principles in mind. Ultimately, an order for specific discovery is a discretionary one. The test of relevance is a broad one but discovery must be necessary for fairly disposing of the issues in the case. The object of any order is to ensure as far as possible that each of the parties have in advance of the trial all documents which are relevant to the issues between them.

[10] The plaintiff served his list of documents on 11 March 2019.

[11] By letters dated 21 March 2019 and 26 March 2019 the defendants' solicitors wrote to the plaintiff's solicitors arguing that the discovery was not complete and made 115 requests for further documents.

[12] An amended list of documents was served on 2 April 2019 and on 4 April 2019 the plaintiff swore a further affidavit in response to the correspondence of 21 March 2019 and 26 March 2019.

The Defendants' Request

[13] The first two requests in the Schedule are for disclosure of:

> "(1) The plaintiff's phone records from 1 April 17 to 30 September 17; and
>
> (2) The plaintiff's text messages from 1 April 17 to 30 September 17."

[14] By this request the defendants are essentially seeking any documents pointing to any communication between the plaintiff with managers or promoters other than the defendants prior to the break-up between the parties.

[15] The context for this request relates to the defendants' counterclaim based on an allegation that the plaintiff acted in breach of the contract between the parties, and in effect repudiated the contract.

[16] The narrative is set out in the counterclaim to the effect that the plaintiff allegedly deliberately failed to make the weight for the proposed Gutierrez fight on 29 July 2017 in an attempt to sabotage the fight or to have it downgraded from a WBC eliminator fight.

[17] The defendants point to efforts after the cancellation of the fight to communicate with the plaintiff with a view to rearranging the bout.

[18] On 21 August 2017 the plaintiff issued a public statement which stated:

> "I can confirm that I have parted company with Barry McGuigan and Cyclone Promotions."

[19] On 22 August 2017 Mr Frank Warren (Queensbury Promotions) stated:

> "I would certainly love to do something with Carl … It would be great if he could fight on (November 18) bill."

[20] On the same date Matthew Macklin of MTK Global stated:

> "We are definitely interested in working with him … We'd love to be involved in his career".

[21] The defendants go on to allege that MTK Global were appointed as the plaintiff's advisors on or before 19 December 2017 and that Frank Warren (Queensbury Promotions) were appointed as his promoter on or before 21 September 2017.

[22] It is the defendants' "suspicion" or "reasonable belief" that the plaintiff decided to breach his contracts at some point after his loss in the fight against Santa Cruz which took place on 28 January 2017 and the announcement on 21 August 2017.

[23] The request was initially framed in the letter of 21 March 2019 as a request for communications between "Carl Frampton and/or his representatives with Frank Warren/Queensbury Promotions and/or their representatives from 2016 onwards" and communications "between Carl Frampton and/or his representatives with MTK and/or their representatives from 2016 onwards."

[24] The correspondence did not set out the basis upon which it was alleged such documentation was relevant.

[25] In the affidavit sworn in response by the plaintiff, the plaintiff avers that:

> "I did not meet or communicate with Frank Warren/Queensbury Promotions until after I had terminated the agreements with the McGuigans/Cyclone connection by correspondence from my solicitor in August 2017.
>
> In any event I am not in possession, custody or control of a document or class of documents as specified in this category in the period 2016-2017 and no such document or categories of documentation in the period 2016-2017 have at any time been in my possession, custody or control.
>
> I have provided my solicitor with sight of my limited texts/SMS communications with Frank Warren from 2008 onwards and am advised and believe that these are not relevant to the dispute before the court."

[26] In response to the request for documentation concerning MTK Global he avers:

> "I did not meet or communicate with MTK Global until after I had terminated the agreements with the McGuigans/Cyclone Connection by correspondence from my solicitor in August 2017.
>
> I have provided documentation within my possession, custody and control into MTK Global.
>
> Otherwise I am not in possession, custody or control of a document or class of documents as specified in this category and no such document or categories of documentation have at any time been in my possession, custody or control."

[27] Later in the affidavit, in response to a request for discovery of communications between Matthew Macklin and the plaintiff, the plaintiff refers back to the averment which I have just quoted and adds:

> "There is no attempt to state the relevance of this category of documents. I have provided my solicitor with access to my email account. There are no direct emails or text communications as between Matthew Macklin and I. There is an email from my solicitor to myself and Matthew Macklin dated 19 December 2016 which will be disclosed."

[28] In the affidavit supporting the application the defendants' solicitor sets out the context of the counterclaim to argue for the relevance of the material sought and expands the claim to communications with Jamie Conlon and Mr Johnney Lee Roye, who currently is registered as the plaintiff's manager with the BBB of C.

[29] In relation to the Conlon request the plaintiff has averred in his affidavit:

> "There is no attempt to state the relevance of this category of documents. None of my communications with Jamie Conlon which have been reviewed after the receipt of the request by my solicitor are relevant to the proceedings."

[30] In respect to the Roye request he avers:

> "The relevance of this category of documents is not stated. The BBB of C Boxer/Manager contract with Mr Roye will be discovered."

[31] Having considered the correspondence and the affidavit it seems to the court that the plaintiff has dealt with the request in respect of Warren/Queensbury Promotions; and Matthew Macklin/MTK Global.

[32] As to contact with Macklin the defendants point to the fact that the plaintiff merely avers that he had no direct communication. In relation to Conlon they point out that the affidavit does not say who actually reviewed the communications with Jamie Conlon. Finally, in relation to Roye it is pointed out that the relevance is challenged but there is no averment as to whether or not there was any contact.

[33] In resisting the application Mr Millar on behalf of the plaintiff argues that the request is founded on "suspicions" and "beliefs". They are not grounded upon any fact or pleading and rely on a strained reading of the defendants' pleaded case and the plaintiff's affidavit.

[34] In short he suggests that it is not reasonable to suppose that the plaintiff's phone records or email records contain relevant information. He suggests that the request is a classic example of impermissible "fishing".

[35] Furthermore, he submits that the plaintiff has actually dealt with the request and has expressly averred that he did not meet or communicate with Frank Warren/Queensbury Promotions and/or MTK Global until after he had terminated the agreements with the defendants.

[36] He goes on to point out that for the avoidance of doubt the plaintiff does not/has not paid either MTK or Johnney Roye in respect of any services provided.

[37] In light of these averments the defendants are compelled to suggest that there may well be communications between the plaintiff with alternative managers and promoters or their agents prior to the termination of the agreement between the parties in August 2017.

[38] Mr Millar says that even if there was such communication there would be absolutely nothing wrong with this if the plaintiff had reservations about the conduct of his affairs. He suggested that the plaintiff would be perfectly entitled to make inquiries about alternative arrangements in those circumstances. I agree that this is so, but it does not amount to a rebuttal of an argument that the communications meet the test for relevance.

[39] I have some reservations about the manner in which this particular request has been formulated. However, I consider that any documents in the possession, custody or power of the plaintiff which relate to communication between him and alternative managers, promoters or their agents between the period 1 April 2017 to 30 September 2017 are potentially relevant within the **Peruvian Guano** test. Such documentation may enable the defendants to advance their case in respect of the repudiation. I would therefore direct that the plaintiff should serve an affidavit stating whether there are any records either phone records, text messages or email communications relating to communication between him and alternative managers/promoters or their agents between the period 1 April 2017 to 30 September 2017 under Order 24 Rule 7 of the Rules. If the plaintiff's advisors wish to assert objections to disclosure of such documentation, if it does exist, then that can be done in the affidavit.

[40] The vast bulk of the remaining requests for discovery concern documentation that relates to the relationship between the plaintiff and subsequent managers and documentation relating to subsequent bouts in which the plaintiff participated.

[41] Before examining some of the specific requests the application must be considered in the context of the plaintiff's voluntary affidavit sworn in response to the correspondence from the defendants of 21 March and 26 March 2019.

[42] It is clear from that affidavit that, although disputing relevance, the plaintiff has in fact provided much of the material sought. In relation to any outstanding material essentially the dispute relates to relevance.

[43] The defendants say that in general terms the material sought is relevant for two reasons. Firstly they argue that it is relevant to the plaintiff's assertion that as at paragraph 38(ii) of the Statement of Claim the first and second defendants have been guilty of:

> "Failing to arrange the plaintiff's professional affairs and engagements so as to secure all due and proper profit and reward on terms which are fair and reasonable and as advantageous to the boxer as are reasonably obtainable including advising the plaintiff to enter into the IPA on terms which are unfair, unreasonable and less advantageous than the terms that the plaintiff could reasonably have been expected to obtain if the first defendant was not subject to a manifest conflict of interest."

[44] In these circumstances the defendants argue that the nature and extent of the plaintiff's earnings post the breakup of the relationship under the new management arrangements are relevant to the issue of whether or not the arrangements made by the defendants were in fact reasonable. Did these arrangements differ significantly from those negotiated by the defendants? How well did he do under the new arrangements? In short the defendants say that these issues are relevant to the claim being made by the plaintiff. What better way to test the assertion made by the plaintiff than to examine the detail of the arrangements under the new management and for the fights organised by them?

[45] In determining this issue it is imperative that the plaintiff commits to the complaints he makes about the arrangements made by the defendants. This issue has arisen in relation to the adequacy of the replies to particulars in this case considered in my ruling delivered on 30 May 2019 (COL10969). That ruling was made on the basis that the plaintiff's claim is confined to the specific allegations set out in the Statement of Claim and in the ASM Report. In particular in the ruling I say:

> "However, if it is to be alleged that in fact the defendants should and could have negotiated better or more profitable arrangements than those actually secured then in my view the plaintiff should specifically make this case and particularise it fully. The defendants for example could not be expected to deal with a claim at trial for the first time that a particular arrangement could have been improved upon in the course of the management and promotion of the plaintiff's career. Thus, the plaintiff should confirm that the claim is confined to the allegations set out in the Statement of Claim and the contents of the ASM Report. The plaintiff would not be

> entitled to introduce evidence that a different promoter/manager would have negotiated more favourable terms or raised more monies or anything of that nature, without this being expressly pleaded or for example dealt with in an expert report served on the defendants."

As I pointed out in that ruling this has an impact on what is discoverable by the plaintiff in the action.

[46] In the related action between the plaintiff and Cyclone Promotions (Writ No: 124118) it is to be noted that I have refused a request by the plaintiff for disclosure of documentation relating to that company's management of other boxers promoted/managed by it (COL10986). The plaintiff advanced similar arguments in that application to the effect that disclosure of that documentation was relevant to the allegations being made about the manner in which the defendants conducted the management and promotion of their client. It was argued this could reveal similar practices and could lead to the identification of other accounts in which monies were lodged relating to the promotion of both the plaintiff and other fighters.

[47] I rejected this application on the grounds that the court needs to focus on the actual dispute and arrangements between the parties in the action. To engage on a detailed examination, in that application, of the defendant's management of other boxers did not in my view meet the test for disclosure. Ultimately, I took the view that to embark on an examination of the contracts of other boxers managed by the defendant or companies associated with the defendant would be entirely disproportionate and oppressive.

[48] Subject to the caveat to which I refer I take a similar view to this application. Absent allegations about the relevant merits of the deals negotiated by the defendants I do not consider that details of the subsequent arrangements entered into by the plaintiff with other managers is relevant to the claim at paragraph 38 of the Statement of Claim.

[49] The defendants argue that the material is also relevant in the context of the counterclaim made on their behalf. In the counterclaim the defendants allege that the plaintiff wrongly repudiated the contract between them and as a result the defendants have lost the opportunity to earn commission had the contract continued.

[50] It is argued by the plaintiff that the commission actually earned by those involved in the plaintiff's career post the termination of the relationship is irrelevant to the quantification of the counterclaim.

[51] Under the plaintiff's new management the plaintiff has participated in four fights and it has been publicly reported that he and Queensbury Promotions have

signed a multi-fight promotional pact with Top Rank. Further publicity refers to agreements to promote the plaintiff via ESPN and BT Sport. The defendants say that all documentation in relation to these fights and various promotional arrangements are relevant in terms of assessing the counterclaim.

[52] The starting point is a consideration of the term in the contract under which the defendants allege the relationship could have continued.

[53] The defendants say that they could have earned commission for the remainder of the 2 year period of the contract up to 14 May 2018 or for a possible extended period ending on 21 October 2019.

[54] The extended period is entirely reliant upon the assertion that the defendant would have extended the contract in the event that the plaintiff won a title "during the last 2 years of the initial period." Furthermore, the plaintiff was entitled to object to any extension of the contract.

[55] The plaintiff did not in fact win a title in the period. Against this background it is very difficult to see how the defendant would be entitled to documents and details concerning monies earned by the plaintiff after 14 May 2018, or how they would assist the court in assessing the value of the defendant's counterclaim.

[56] As to potential earnings up to the period 14 May 2018 the defendants can only advance this case arguing what they anticipate they could have achieved in this period had they continued to be responsible for the management and promotion of his career. This has to be seen in the context of a plaintiff who clearly was unhappy with the relationship.

[57] What the plaintiff has in fact earned under a different manager with a different trainer is not in my view evidence of what he would have earned had he remained under contract with the defendants. There are simply far too many variations in the two scenarios to justify using that material as a basis for evaluating the defendants' counterclaim in the event that he establishes the relevant breaches.

[58] What the defendants claim is a loss of chance to earn commission had the contract continued. By definition this exercise will have to be conducted at a high level of abstraction.

[59] I do not consider that knowing in great detail what deals were done when the plaintiff was represented by a different manager/promoter/trainer with entirely different resources, skills, capabilities, experience and connections will be relevant to the value of the counterclaim. It is not in my view necessary for advancing the "loss of chance" case to any extent. I take the view that the documents are not relevant to the counterclaim and not necessary for the defendant to advance their pleaded case therein. To embark on a minute examination of the post-break earnings would in my view be disproportionate and oppressive.

[60] In general terms it is noted that in fact the plaintiff has provided a significant amount of detail concerning his subsequent agreements and arrangements and in the voluntary affidavit he has averred that:

> "The list of documents provides all documents retained by me relating to the finances of bouts post-termination of the contract with the defendants. I have requested my solicitor clarify with my accountant whether `remittance advices' had been provided and, if so, will discover the same."

[61] In addition the plaintiff has provided discovery of monies earned by him and the company Rip Rock from bouts post-split with defendant in the form of his accounts, bank statements and tax returns.

[62] I consider that the plaintiff has made significant and substantial disclosure of post-breakup documentation in his voluntary affidavit.

[63] In the application for specific discovery the defendants have sought disclosure of tax returns of the plaintiff's parents. These requests are made on the basis that in an affidavit served in the jurisdiction dispute the plaintiff's father has averred that "for Carl's bouts myself and my wife Florence would have been allocated a significant number of tickets to sell on behalf of `Cyclone Promotions'". On that basis it is suggested that they would have received remuneration for doing so and that in such circumstances the defendants are entitled to disclosure of the plaintiff's parents' tax returns in respect of any commissions earned from ticket sales on the plaintiff's fights.

[64] Whilst I am not necessarily persuaded that the grounds for this disclosure are made out it is clear that this is in fact a request for personal/confidential financial documentation from a third party and as such not discoverable under Order 24 Rule 7.

[65] In the course of the application the defendants have sought "a complete copy of all email correspondence referenced in the list of documents".

[66] The focus of this complaint seems to be that in some of the email correspondence which has been disclosed there are references to "texts hidden".

[67] It was explained in the course of the hearing that the plaintiff has simply provided the printout of the emails/text messages sought in the way in which they have appeared on his phone. In subsequent correspondence it is pointed out by the plaintiff's solicitor that:

> "The plaintiff, a boxer with a solitary web based email account, has provided over a thousand pages of emails dealing with his relationship with the defendants and providing any relevant correspondence with/regarding them. He has provided an affidavit setting out the methodology and rationale in this significant task. He has further provided more emails which were specifically requested in relation to the items in the list of documents."

[68] In my view the plaintiff has dealt adequately with this request.

[79] As per his affidavit if there is a specific query he has agreed to respond to this and in those circumstances I do not consider that any further order under Order 24 Rule 7 is necessary.

[70] In relation to the request for the tax returns of Christine Frampton, the plaintiff's wife, prior to 2015/2016 and 2016 onwards there is nothing on the grounding affidavit or on the pleadings to ground the application for disclosure of this documentation.

[71] I understand that because of pressure of time applications have been brought in this case without an opportunity to fully assess responses made by various parties.

[72] Apart from the matters to which I have referred to above I consider that the voluntary affidavit sworn by the plaintiff deals with the issues raised in the Order 24 Rule 7 application brought by the defendants. In the event that this material when analysed by the plaintiff's lawyers or expert witnesses raises an issue about further disclosure then this can be brought to the court's attention. Ideally given the vast amount of disclosure in this case these matters should be dealt with in exchanges between the expert witnesses.

[73] At the hearing the defendants amended their summons to seek a further six categories of documents. Five of these relate to financial information relating to the company Rip Rock Ltd from incorporation to date (items 49-53). The final category relates to tax returns and computations referred to in emails from Mr Martin Speed of Conroy & Lermer Chartered Accountants to Mr Frampton dated 16 September 2016 including original and amended versions of his 2015 tax computation and return.

[74] I will deal with these requests at the review on 12 June.

[75] The plaintiff should comply with the order at paragraph [39] above by close of business on Monday 17 June.