THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

SAINT LUCIA

Claim Number: SLUHCV2022/0526

BETWEEN:

CAGE ST. LUCIA LTD.

Claimant/ Applicant/
Defendant by Counterclaim

-and-

1. THE NATIONAL LOTTERIES AUTHORITY

First Defendant/ Respondent/
Ancillary Defendant

2. CANADIAN BANK NOTE COMPANY LIMITED

Second Defendant/ Respondent
Ancillary Claimant

3. CBN ST. LUCIA INC.

Third Defendant/ Respondent
Ancillary Claimant

Before:

His Lordship, the Honourable Justice Ermin Moise

Appearances:

Mr. Dexter Theodore KC, with him Ms. Akeelia S. Richards for the Claimant/ Applicant
Ms. Renee T. St. Rose KC, with her Ms. Shari-Ann Walker and Ms. Marie-Ange Symmonds for the Second and Third Defendants/ Respondents

----

2026: April 15 - Hearing
July 24 - Decision

JUDGMENT

MOISE, J.:

[1] This is an application of the claimant/applicant, CAGE St. Lucia Ltd (CAGE), for an order for specific disclosure. The application is filed pursuant to Rules 28.5 and 28.6 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** (the CPR) and seeks orders that:

(a) The second and third defendants shall, within fourteen (14) days of this Order, carry out a search for and thereafter file and serve a supplemental list of documents verified by a statement of truth, stating whether any document falling within the class specified below are, or have at any time been, within their control, and if not now within their control, what has become of them:

i. All financial records, including but not limited to audited and unaudited financial statements, management accounts, profit and loss statements, balance sheets, revenue reports and any other financial documentation relating to the second and third defendants' sports betting and video lottery operations (the requested documents).

(b) There shall be inspection of the requested documents thereby disclosed within seven (7) days of the date of filing of the supplemental list of documents.

(c) Unless the requested documents are disclosed, the second and third defendants' amended defence and counterclaim filed on 31st December 2024, shall be struck out without further order.

[2] Having considered the submissions in support of and in opposition to the application, I have determined that the application should be dismissed with costs to the second and third defendants/respondents, the Canadian Bank Note Company Limited and CBN St. Lucia Inc. (CBN and CBNS respectively). These are the reasons for my decision.

The Facts

[3] CAGE filed its Amended Claim Form and Amended Statement of Claim on 2nd December 2024, in which it seeks damages and injunctive relief against CBN and CBNS. In summary, CAGE claims that the first defendant, the National Lotteries Authority (NLA), is liable for breach of contract and that

CBN/CBNS have induced the NLA to breach an existing contract with CAGE for its right to exclusively operate video lottery terminals (VLTs) and virtual sports betting in Saint Lucia.

[4] The chronology of events leading up to this dispute commenced with a contract dated 12th August 2004 between the NLA on the one hand and, CBN and CBNS on the other (the CBN Agreement). In the CBN Agreement, CBNS, with the assistance of CBN, was granted the exclusive right to organise, manage and operate all lottery games in Saint Lucia for an initial period of 20 years. The CBN Agreement was then subject to subsequent amending agreements.

[5] It is asserted that on 12th August 2010 the NLA entered into another agreement, this time with CAGE (the CAGE Agreement). This agreement was also subject to subsequent amending agreements. As per the CAGE Agreement and the subsequent amendments, exclusive rights were granted to CAGE to operate VLTs and other associated online games. As pleaded at paragraph 5 of the Amended Statement of Claim, the CAGE Agreement granted exclusive authority to design, install, implement, administer, deploy and operate on the NLA's behalf, online VLTs in Saint Lucia to CAGE.

[6] It is pleaded by CAGE that amendments were made to the CBN Agreement in March 2010 acknowledging the arrangements made with CAGE for online VLTs and other related activities. I note that CBN and CBNS, have plead that this amendment was made on 25th March 2011. In July 2021, the scope of CAGE's permitted operations expanded as per an amendment to the CAGE Agreement. CAGE asserts, in its Amended Statement of Claim, that CBN and CBNS were aware of these amendments to the CAGE Agreement.

[7] As I understand it, the substance of the dispute (as pleaded by CAGE) arises when in November 2022, the NLA authorised CBN and CBNS to import and operate VLTs and games in Saint Lucia. CAGE pleads that this is in direct competition with its operations and contrary to the exclusivity clauses in its own contract with the NLA. CAGE also asserts that it was not consulted neither did it waive its exclusive right to operate such facilities under the CAGE Agreement and its subsequent amendments. In addition to this, CAGE asserts that in March 2024, the NLA authorised CBN and CBNS to operate sports betting in Saint Lucia. This, it is claimed, is in further breach of the exclusivity rights as defined in the CAGE Agreement and its subsequent amendments.

[8] It is against this backdrop CAGE came to ground its claim against CBN and CBNS on their alleged inducement, procurement or facilitation of the NLA's breaches of the CAGE Agreement and its subsequent amendments. It is also worth noting that the defendants have denied the breaches as outlined in the Amended Statement of Claim.

[9] CBN and CBNS have also filed a counterclaim against the NLA. They plead that the NLA acted in breach of the CBN Agreement by entering into amendments to the CAGE Agreement in 2019 and 2021. It is pleaded that these subsequent amendments have breached the NLA's obligation to CBN/CBNS to not license or permit any person other than CBN/CBNS to operate lottery games in St. Lucia. CBN/CBNS have also filed a counterclaim against CAGE, for inducing the NLA to breach its exclusive contract to operate all lottery games in Saint Lucia. CBN/CBNS plead that the CAGE Agreement and its subsequent amendments purport to expand CAGE's offerings in the St. Lucia lottery market, despite CAGE's knowledge of the CBN Agreement. CBN/CBNS also claim damages as a result of this alleged breach on the part of the NLA and the alleged inducement on CAGE's part.

[10] For the purposes of this application, it is also important to note that by order dated 19th August 2025 (the bifurcation order) the issues of liability and quantum were bifurcated. By virtue of this order, the quantification of damages is to be determined by way of a separate trial after the Court's determination on liability. This order was made on account of a joint application by the parties to the Court. The grounds in support of that application were that:

(a) No damages were particularised and no disclosure has been made to support any pleadings in relation to damages;

(b) Damages are continuing and the parties should not have to adduce evidence of the damages until it stops by way of determination of liability; and

(c) The costs to be incurred in obtaining information to substantiate damages, and various forensic accountants as damage experts would be better expended all together in a damages trial after the conclusion of any trial on liability (my emphasis).

The Application for Specific Disclosure

[11] As outlined in paragraph 1 of this decision, the issues arising for consideration relate to CAGE's application for specific disclosure pursuant to Rules 28.5 and 28.6 of the CPR. In its affidavit in support of the application sworn to by Mr. Horace Darrell, CAGE asserts that it requires access to the requested documents in order to understand the operation and scope of CBN's/CBNS's sports betting and video lottery businesses and to assist the court in its determination of not only issues of liability but the quantum of damages, should the Court find in its favour. It is also asserted that the requested documents provide essential background which will either support or adversely affect CBN's/CBNS's case with respect to its defence and counterclaim against CAGE for inducement to breach the CAGE contract.

[12] It is asserted by CAGE that, notwithstanding the Court's order dated 19th August 2025, which bifurcated the proceedings into separate trials for liability and the quantum of damages, the requested documents remain directly relevant to the issue of liability. The affidavit goes on to state that the financial records of CBN/CBNS are integral to establishing the requisite intent in procuring or inducing a breach of the CAGE agreement and whether CBN was motivated by the prospect of or actuality of securing an economic advantage. The affiant asserts that a perusal of the requested documents disclosed by CBN/CBNS are inadequate as they do not include the date on which CBN/CBNS commenced operations and no information regarding its profit and loss accounts were disclosed. These, it is stated, are important because a key element in establishing the tort of inducement is proof of the actual loss/damage suffered.

[13] The application was opposed by way of Notice of Opposition filed on 13th January 2026. It would suffice to say that CBN and CBNS are opposed to the application on the grounds that the matter has been bifurcated and that the requested documents are not relevant to the issue of liability. To pursue the collation of profit and loss accounts, as well as other financial records, at this stage, would be tedious and expensive and does not further the overriding objective; especially in light of what was agreed to when the claim was bifurcated.

The Test for Specific Disclosure

[14] Rules 28.5 and 28.6 of the CPR govern applications for specific disclosure. An order for specific disclosure may require disclosure "only of documents which are directly relevant to one or more matters in issue in the proceedings"[1]. In accordance with Rule 28.1(4), "a document is directly relevant if (a) the party with control of the document intends to rely on it; (b) it tends to adversely affect that party's case; (c) or it tends to support another party's case; but the rule known as "the rule in Peruvian Guano" does not apply".

[15] In determining an application for specific disclosure, the court must consider whether disclosure of the specific document is necessary in order to dispose fairly of the claim or to save costs[2]. The court must have regard to: (a) the likely benefits of specific disclosure; (b) the likely cost of specific disclosure; and (c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order[3]. If, having regard to Rule 28.6.(2), the court would otherwise refuse to make an order for specific disclosure, it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event[4].

[16] Insofar as the criteria referred to above is concerned, I make 3 observations as this stage. Firstly, the submission of counsel for CAGE focuses on the relevance of the disclosure to the issue of liability. That, in some way, addresses the likely benefits of disclosure which I will address later on. Secondly, in the bifurcation order, which was based on a joint application of the parties, it was accepted that the costs to be incurred in obtaining information to substantiate damages, and various forensic accountants would be better expended all together in a damages trial after the conclusion of any trial on liability. Whilst I appreciate the nature of the argument of CAGE, which is that damage is an element of liability in proof of the tort, there is some force here in the argument of CBN/CBNS that to pursue the type of accounting which is now sought by way of the application for specific disclosure runs contrary to what the parties had agreed was a costly exercise. Thirdly, there was not

[1] Rule 28.5(5)
[2] Rule 28.6(1)
[3] Rule 28.6(2)
[4] Rule 28.6.(3)

much presented by either party regarding CBN's/CBNS's financial resources and whether they are likely to be sufficient to enable them to comply with any such order.

[17] In returning to the provisions of the CPR, I note that Rule 28.2 limits the duty of disclosure to documents which are or have been in the party's control, that is: (a) it is or was in the physical possession of the party; (b) the party has or has had a right to inspect or take copies of it; or (c) the party has or has had a right to possession of it. There is no dispute raised in the case before me regarding this aspect of the rules.

[18] In the case of **JQ Charles Ltd v Desmond Du Boulay**[5] the court summarised the test for specific disclosure as comprising a consideration of whether the documents are directly relevant, necessary for fair disposal of the issues in the case and proportionate in all the circumstances. In the case of **Dr. the Honourable Timothy Harris v Dr. the Honourable Denzil Douglas**[6], the Court of Appeal gave further consideration to the test for specific disclosure where Baptiste JA stated that:

> "[15] … The critical question is whether the documents are directly relevant to those issues, and if they are, the court is enjoined to consider whether the order is necessary to dispose of the case fairly. It is necessary to pay regard to the overriding objective of the CPR which is to enable the court to deal with cases justly; this also engages the issue of proportionality.
>
> [16] … The court has a discretion as to whether to make an order for specific disclosure and will need to be satisfied that the documents are directly relevant within the parameters of the rule. However, the test for relevance is not a matter for the exercise of discretion. What documents parties are entitled to is a matter of law, not discretion."

[19] The starting point is in determining the relevance of the requested documents. If the requested documents are deemed to be relevant, the Court must go on to consider the extent to which these documents are necessary to fairly dispose of the claim. Consideration must also be given to the issues of reasonableness and proportionality as well as the overriding objective of the CPR. Baptiste JA also went on to address the Peruvian Guano rule which outlined a broad test of relevance for

[5] [2019] ECSC J1107-1
[6] SKBHCVAP2019/0026

disclosure purposes. He states that the CPR has "***changed the definition of 'relevance' in respect of documents for disclosure purposes (my emphasis)***"[7]. The rule is intended to bring to bear a more issue-oriented test of relevance and avoid the 'train of inquiry' cases that have served to expand discovery.

[20] It is not denied in any way that CBN/CBNS have as at least some form of financial accounting in their physical possession. The requirements as outlined in Rule 28.2 of the CPR are therefore not in issue. The court must therefore determine:

(a) Whether the financial statements are directly relevant to one or more matters in issue in the proceedings;
(b) Whether the financial records tend to adversely affect CBN's and CBNS' case; and/or
(c) Whether the financial records tend to support CAGE's case.

[20] In making this determination, it is important to give consideration to the issues outlined in Rule 28.6 as well as the overriding objective of the CPR, which is to deal with cases justly and expeditiously.

Relevance

[21] At the hearing of the application, counsel for CAGE referred to **section 44** of the **Evidence Act**[8] which states that "[r]elevant evidence is evidence that, if it were accepted, could rationally affect, whether directly or indirectly, the assessment of the probability of the existence of a fact in issue in proceedings". Whilst counsel for CAGE accepts that the CPR has moved away from the Peruvian Guano rule, in that disclosure is no longer at large, he submits that **section 44** sets a low threshold for what is relevant. CAGE therefore submits that the test is a two-stage one which includes 1) relevance under the Evidence Act and 2) the test as set out by the CPR.

[22] However, to my mind, there is not much to be said about this issue. The CPR embraces the need for evidence to be directly relevant to a fact in issue in order for an applicant to meet the

[7] At [13]
[8] CAP 4.15

criteria for an order for specific disclosure. **Section 44** of the **Evidence Act** neither adds to nor detracts from the rules of the CPR but simply reinforces the notion that for evidence to be admissible (see **section 45** of the **Evidence Act**) it must be evidence which either directly or indirectly affect the assessment of the probability of a fact in issue in the proceedings. These are two separate concepts. Evidence can be directly relevant to a fact in issue for the purpose of disclosure even if it rationally affects the probability of the existence of a fact only indirectly at trial. One criterion addresses the issue of specific disclosure, the other addresses admissibility. In any event, an assessment of CAGE's submissions will show that what is argued, in substance, is that the accounts which they seek are directly relevant to the issue of liability.

[23] In order to place the issue of relevance into context, it is important to give some consideration to the legal test for what constitutes inducement or procurement into a breach of contract. In that regard, there is no inherent dispute between the parties regarding what they consider to be the applicable legal test. In the case of **Global Resources Group v Mackay**[9], Lord Hodge, described the tort of inducement in the following manner:

> "A commits the delict or tort of inducing a breach of contract where B and C are contracting parties and A, knowing of the terms of their contract and without lawful justification induces B to break that contract."[10]

[24] That case also established 5 factors to consider in determining whether the tort has been established. These are:

(a) there must be a breach of contract by B;

(b) A must induce B to break his contract with C by persuading, encouraging or assisting him to do so;

(c) A must know of the contract and know his conduct will have that effect;

[9] [2008] CSOH 148, 2009 SLT 104
[10] At [11].

(d) A must intend to procure the breach of contract either as an end in itself or as the means by which he achieves some further end; and

(e) if A has a lawful justification for inducing B to break his contract with C, that may provide a defence against liability.

[25] Counsel for CAGE also referred to the case of **OBG Ltd v Allan**[11] where the following was noted:

> **"**The next question is what counts as an intention to procure a breach of contract. It is necessary for this purpose to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach. Mr. Gye would very likely have preferred to be able to obtain Miss Wagner's services without her having to break her contract. But that did not matter. Again, people seldom knowingly cause loss by unlawful means out of simple disinterested malice. It is usually to achieve the further end of securing an economic advantage to themselves. As I said earlier, the Dunlop employees who took off the tyres in GWK Ltd v Dunlop Rubber Co Ltd (1926) 42 TLR 376 intended to advance the interests of the Dunlop company.
>
> On the other hand, if the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence, then in my opinion it cannot for this purpose be said to have been intended. That, I think, is what judges and writers mean when they say that the claimant must have been 'targeted' or 'aimed at'."[12]

[26] CAGE submits that where a party stands to gain commercially from conduct alleged to infringe exclusivity rights, financial documentation demonstrating the profitability and strategic significance of that conduct is directly relevant to the mental element of intention. It is submitted that the requested documents go to CBN's/CBNS's intention to secure an economic advantage

[11] [2007] 4 All ER 545
[12] At pp. 567-568 of OBG v Allan.

through the alleged breach and, since proving intention in inducing breach of contract cases is ordinarily inferred from objective circumstance and surrounding economic realities, this is sufficient to prove that the documents are relevant to the proceedings.

[27] It is further submitted that the requested documents would show CBN's/CBNS's financial position both before and after the inducement, to determine what end CBN/CBNS intended to achieve, and therefore whether it possessed the intention for the alleged tort. It is argued that the scale and profitability of the operations would evidence intentional conduct rather than incidental or inadvertent activity. As I understand it, CAGE is submitting that the requested documents are relevant because if CBN/CBNS sought to gain an economic advantage from the breach, intention is therefore proven by the actual accomplishment of that economic advantage.

[28] Secondly, CAGE submits that the requested documents may adversely affect the defence of justification pleaded by CBN/CBNS. During the hearing, counsel for CAGE submitted that because CBN's/CBNS's counterclaim is for financial loss, it could not then resist disclosure that proves or disproves those allegations.

[29] It is also submitted that proof of damage is an essential element to the tort of inducement. Reference was made to the case of **Exchange Telegraph Co, Ltd v Gregory & Co**[13] where the following was noted:

> "As regards the third, unless damage has been actually sustained, there is no right of action at all. That is the only thing which brings the plaintiffs into any relation with the defendant. There is no contract between them. My view of the contract with the subscribers is, that it was a term of the contract that the subscribers should use their instruments solely for the purpose of personal information. The defendant, well knowing that term, for the purpose of injuring the plaintiffs and benefiting himself, induced a subscriber to supply the information in question to him. In the statement of claim there is no allegation of damage, but that (becomes immaterial because the defendant set up in his defence that there was no

[13] [1895-99] All ER Rep 1116 at 1119-1120.

damage, and upon that the plaintiffs joined issue, so that the question of damage has been put in issue."

[30] Counsel for CAGE therefore submits that any damage suffered by CAGE is as a result of the diversion of gaming operations and the attendant revenue stream which would have accrued had it not been for NLA's breach, which was induced by CBN and CBNS. It is submitted further that CBN's/CBNS's financial records relating to its operation of video lottery games and sports betting are directly probative of the damage element of the tort. It is therefore argued that profits generated from CBN's/CBNS's operations "*constitute prima facie evidence of business diverted from the Claimant and of the economic value of the exclusivity infringed*".

[31] In response to the application, CBN/CNBS argue that, given the nature of the bifurcation order, the disclosure of all financial records relating to their sports betting and video lottery operations are not directly relevant to the trial on liability. It is argued that the request for specific disclosure is extremely wide, and unspecific. CBN/CBNS submit further that their financial records are not relevant to any intention attributed to them at the time of the alleged breach. The financial records relating to sports betting and lottery operations are not linked to any alleged intention to procure a breach of contract. This is especially so as these financials cover a period which is subsequent to any alleged breach.

[32] Counsel for CBN/CBNS go on to submit that the fact of financial loss can be proven by witness statement evidence, "*or alternatively can be agreed between the parties as it would only be reasonable to accept in circumstances such as these, that whichever party is found to have induced a breach of contract, would ultimately have caused economic loss to the other party whose exclusive contractual rights were interfered with*". CBN/CBNS also argued that notwithstanding its counterclaim, it has not requested any financial records from CAGE as this is not necessary to address the issues of liability.

[33] CBN/CBNS also argue that the requested documents are not necessary to fairly dispose of the issue of liability and an order for their disclosure would therefore be disproportionate in the circumstances. It is submitted that this is likely to lead to extensive and lengthy witness

statements on facts which the parties had already agreed would be dealt with at a quantum of damages hearing. This is also likely to incur significant costs as CBN/CBNS would need to employ the services of accounting professionals to provide the type and scope of information requested by CAGE.

The Court's Analysis

[34] Having considered the submissions of the parties, I make a few observations at this stage. Firstly, I refer to CAGE's submission that where a party stands to gain commercially from conduct alleged to infringe exclusivity rights, financial documentation demonstrating the profitability and strategic significance of that conduct is directly relevant to the mental element of intention. As I have noted earlier, in support of that proposition, CAGE relied on the paragraph sited above at paragraph 25 from **OBG Ltd v Allan.**

[35] However, contrary to CAGE's submission, it is not the Court's view that the documentation requested by CAGE is necessary to resolve the issue of liability, neither is it inherently relevant to the element of intention. To my mind, if it is proven at trial that the NLA did breach the contract with CAGE and that this was on account of CBN's/ CBNS's inducement if they knowingly caused the breach, they can only escape liability if there is some lawful justification for their actions and/or **the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence.** That is, CBN/CBNS intended to procure the breach.

[36] Counsel for CAGE placed specific emphasis on the case of **OBG Ltd v Allan** where the court went on to note that "*people seldom knowingly cause loss by unlawful means out of simple disinterested malice. It is usually to achieve the further end of securing an economic advantage to themselves*". Bearing in mind the extent to which that judgment sought to draw a distinction between the tort of inducement and that of causing loss by unlawful means, I note that CAGE has based its argument partially on the relevance of the financial documents to prove the extent to which CBN/CBNS has in fact gained economically from the alleged breach of contract between itself and the NLA, and that this is important to prove intention. However, in my view, even if CAGE is correct in its reliance on this passage, this is an issue which may be inferred from the conduct of the parties.

[37] Assuming, without full determination at this interlocutory stage, that it is necessary for CAGE to prove CBN's/CBNS's intention to gain economically from the alleged breach in order to establish liability, there is no dispute here that the parties are all business entities engaged in contractual negotiations for a share of various sections of a specific commercial market, or the exclusive right to operate in that market. CAGE alleges that CBN/CBNS acquired a direct benefit from those negotiations by being granted rights to participate in a market which is regulated by the NLA. It does not matter whether CBN/CBNS actually made a profit or loss from its operations to prove the requisite intent. The mere fact that it was given a right to operate in a market which CAGE submits ought to have been its exclusive domain would be sufficient to infer CBN's/CBNS's intention to gain some economic advantage if the court determines that the NLA was in fact in breach of the contract and that it was induced into this breach by their actions. If CAGE is of the view that it is necessary to prove that CBN/CBNS stood to gain economically by inducing this breach of contract, then the financials are not necessary to establish this.

[38] I also do not agree with the submission that the financial records requested are relevant to prove intention on the basis that they would show CBN's/CBNS's financial position before and after the inducement. Again, that is not an issue which is relevant in proving intent, neither is it necessary to do so in order to satisfy CBN's/CBNS's liability if the Court rules in CAGE's favour on the other limbs of the test. As I have stated, even if one is to assume that CAGE is correct on what constitutes intention as a matter of law, it is clear that CBN is a commercial entity and that it, along with CBNS, (according to CAGE) was negotiating for a slice, or exclusive rights of the certain sections of the gambling/betting market in Saint Lucia. The allegation here is that CBN/CBNS would have done so with the knowledge that they were intentionally inducing a breach of the contract between CAGE and the NLA. Whether CBN/CBNS had actually commenced operations, the scope of that operation and its profit in the market is not inherently material to the fact that, provided CAGE proves its case, there would have been an interference with CAGE's exclusive right to operation in that market. The end result which CBN/CBNS sought to achieve in such circumstances would be quite clear without the need for a forensic assessment of their financial records.

[39] On the issue of damage, I note that CBN/CBNS have conceded that damage is a required element in proof of this tort. They have submitted that *"CBN/CBNS accepts that in a claim for inducement of breach of contract, the Claimant must establish that damage was suffered as a result of the alleged breach, as damage is an essential element of the cause of action. However, it is open to the parties to agree, for the purposes of the trial on liability, that damage was in fact suffered if a breach is established*". Counsel for CBN/CBNS go on to submit that *"sustained compensable economic harm" is not the test required to be established, the Claimant simply must prove loss and damage per OGB v Allan.*

[40] In my view, there is nothing novel about the idea that loss/damage is an ingredient in tort claim. In saying that damage is a necessary element of the tort, all that is established is that, in most circumstances, even though there has been a breach of some duty or obligation, no claim arises if the claimant has suffered no actual loss or damage as a result, or that the damage is too remote from the actual breach. I say in most circumstances because in the application before me, the parties have focused primarily on the question of actual financial loss on CAGE's part and potential financial or economic gains on CBN/CBNS. However, bearing in mind that CAGE also claims injunctive relief, it is my view, that its loss of exclusivity in the market is enough to ground its claim on liability, if the court rules in its favour. Even if CBN/CBNS had not gone on to commence operations and make a profit, that would not detract from the loss of exclusivity sufficient to ground a claim against them if the tort is proven.

[41] In **Exchange Telegraph Co, Ltd v Gregory & Co** the court there noted that damage "is the only thing which brings the plaintiffs into any relation with the defendant. There is no contract between them."[14] Whilst I appreciate the point which CAGE sought to raise by the use of this case, one cannot escape the fact that inducement is a tort and what initially raises some measure of obligation on the tortfeasor is his knowledge of the contract to begin with. Secondly, if he intentionally induces a breach of contract as a means in itself or as a means to achieve a further end, then this brings him into proximity with the claimant, sufficient to ground a claim against him. That much can be garnered after **OBG v Allan,** where the court at length considered the distinction between the torts of inducing breach of contract and causing loss by unlawful means.

[14] At 1120.

These are issues which can best be explored fully at trial. However, on the question of whether the financial records are necessary to do so at the liability stage, I am not so persuaded.

[42] Therefore, where CAGE submits that the financial records requested *"constitute prima facie evidence of business diverted from the Claimant and of the economic value of the exclusivity infringed"* I am not of the view that this is directly relevant to the issue of liability as opposed to quantum. What is essential here is the allegation that CBN/CBNS was able to enter a part of this commercial market which CAGE claims to have had a contractual right to operate exclusively. It is my view that the mere loss of its exclusive right, along with CBN's/CBNS's ability to operate in the market on account of its own contract with the NLA would be sufficient to prove the fact of loss/damage which CAGE now claims is essential in proving liability. No doubt, the full extent of that submission will be addressed at trial, and the court is not now minded, neither does it intend to limit CAGE's ability to explore that argument more fully at trial. However, disclosure of CBN/CBNS' financial records is not necessary or relevant to that issue. In light of this, I agree with the submissions of counsel for CBN/CBNS where it is submitted that *"it would only be reasonable to accept in circumstances such as these, that whichever party is found to have induced a breach of contract, would ultimately have caused economic loss to the other party whose exclusive contractual rights were interfered with".*

[43] Insofar as it relates to the fact that CBN/CBNS has itself claimed loss/damage, the Court's view on this issue is the same. If CBN/CBNS is capable of proving that it too had exclusive rights under its agreement with the NLA which were interfered with on account of CAGE's inducement, then the loss of that exclusivity is enough to ground a claim for damages resulting from theinducement. The parties have agreed that the expense of preparing accounting information is disproportionate to the issue of liability, and I see no need to interfere with this. It is my view, therefore, that the requested documents are not necessary to fairly dispose of the issue of liability.

[44] In addition to the observations I have made, it is also my view that there is not much benefit to an order for specific disclosure of the requested documents at this stage in the process. For the reasons I have already explained, CBN's/CBNS's profits or loss or the scope of its operations

are not necessary to prove that CAGE has lost the exclusivity which it claims. The extent of that loss, if any, is a matter which is more suited for a trial on the issue of quantum.

[45] Secondly, the court must consider the likely cost of specific disclosure. Whilst no actual cost has been put before the court in this application, the parties themselves, in a joint application for a bifurcation order, noted that no disclosure has been made to support any pleadings in relation to the damages suffered by CAGE. It was also agreed that damages are continuing and that the parties should not have to adduce evidence of the damages until it stops by way of determination of liability; and **[t]he costs to be incurred in obtaining information to substantiate damages, and various forensic accountants as damage experts would be better expended all together in a damages trial after the conclusion of any trial on liability (my emphasis).**

[46] In my view, notwithstanding the specific submissions made on behalf of CAGE regarding the relevance of the accounts to the issue of damage as an ingredient of the tort, there is enough for the court to determine that the cost of obtaining the documents requested by CAGE is altogether disproportionate to the relevance of the documents at the liability stage of the process. Whilst the court does not have sufficient information to be satisfied that the financial resources of CBN/CBNS are likely to be sufficient to enable it to comply with any such order, there is no doubt in my mind that the broad scope of the documents which CAGE seeks would make it altogether disproportionate to make such an order at this stage; especially in light of what was agreed in the bifurcation order.

Conclusion

[47] In conclusion therefore, I am not satisfied that the requested documents are directly relevant to the issue of liability as submitted in its application for specific disclosure. I am also not persuaded that it is fair and proportionate for the court to order disclosure of the requested documents at this stage in the process. I have taken into account CAGE's submission that the court may limit the scope of the specific disclosure which it claims without denying the application altogether. However, I am not satisfied that this is necessary in order to fairly dispose of the issues raised as to liability.

[48] In the circumstances the court makes the following orders:

(a) The application for specific disclosure is dismissed with costs awarded to CBN and CBNS;

(b) CBN and CBNS are entitled to make an application for an assessment of the costs if the parties are unable to agree on costs after the expiration of 21 days from the date of delivery of this judgment.

Ermin Moise
High Court Judge

By The Court

Deputy Registrar