



[2025] JMCC COMM. 24

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2023CD00577

BETWEEN	JACDEN GROUP OF COMPANIES LIMITED	CLAIMANT
AND	SOUTH EAST REGIONAL HEALTH AUTHORITY	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN CHAMBERS

Mr. Walter H. Scott, KC, Ms Anna Gracie, Mr Weiden Daley and Ms Shaydia Sirjue instructed by Hart Muirhead Fatta for the Claimant

Mr. Stephen McCreath instructed by the Director of State Proceedings for the Defendants

**Civil Procedure- Request for Information – Application for specific disclosure –
Litigation Privilege – what constitutes directly relevant information –The Data
Protection Act**

Heard: 22nd May and 26th June, 2025

STEPHANE JACKSON-HAISLEY, J

INTRODUCTION

[1] The Claimant, JACDEN Group of Companies Limited ('JACDEN'), has filed a suit against the Defendants to recover overdue sums from the 1st Defendant, South East Regional Health Authority ('SERHA'), for janitorial and porter services that the Claimant provided to the 1st Defendant.

- [2] The Claimant has requested information and documents from the Defendants that it says will aid in proving its case against the Defendants. This judgment concerns an application made by the Claimant for the Defendants to provide them with information that was requested in the Claimant's Request for Information filed November 11, 2024.

BACKGROUND

- [3] On November 27, 2023 JACDEN filed a claim against SERHA and the Attorney General of Jamaica, for, inter alia, damages in the sum of \$2,266,626,188.64 and damages for breach of contract.
- [4] The working relationship between JACDEN and SERHA commenced in December 2012, when the Claimant company was temporarily engaged to provide cleaning and porter services to hospitals under the supervision of SERHA, namely; the Kingston Public Hospital ('KPH'), the Victoria Jubilee Hospital ('VJH') and the Bustamante Hospital for Children ('BHC'). Thereafter, several contracts were entered into between the parties for the provision of the aforementioned services to the KPH, VJH and BHC.

Request for Information and Notice of Application for Court Orders

- [5] The Claimant filed its Request for Information on November 11, 2024 and therein required the 1st and 2nd Defendants to supply further information in respect of the Defence that was filed on October 18, 2024.
- [6] In the absence of a response from the Defendants, on January 6, 2025 a Notice of Application for Court Orders was filed by the Claimant, requesting that the Defendants provide JACDEN with information that was first requested in the Request for Information filed November 11, 2024. The following orders were sought:

1. *The 1st and 2nd Defendants, shall, within seven (7) calendar days from the determination of this application, supply to the Claimant with further*

information in respect of the Defence of the 1st and 2nd Defendants, filed 18th October 2024 (the "Defence"), as detailed below:

As to Defence, including but not limited to paragraphs 4, 13, 15, 16, 17, 19, 20, 30, 33, 37, and 40 thereof:

- (1) state the date and amount of each and every invoice (whether paid or not, in whole or in part) that the Claimant ("Jacden") has submitted to South East Regional Health Authority ("SERHA") and/or The Attorney-General (the "AG") in respect of the cleaning and porter services supplied by Jacden under the contracts the subject matter of these proceedings;*
- (2) state the date of payment, the amount paid, and the date of Jacden's corresponding invoice in respect of each and every payment that SERHA has made to the Claimant in respect of the cleaning and porter services supplied by the Claimant under the contracts the matter of these proceedings;*
- (3) supply, for the period 1st December 2012 to 31st October 2024, a copy of:*
 - a. all notices of meetings and all minutes of meetings of the board of directors of SERHA at which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered;*
 - b. all minutes of meetings of each subcommittee of the board of directors of SERHA at which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered;*
 - c. all internal reports of SERHA in which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered;*
 - d. all correspondence internal to SERHA, received by SERHA, or issued out of SERHA (including but not limited to memoranda, emails, notations, handwritten or other notes)*

concerning each and all invoices issued by Jacden whether approved or not in whole or in part for payment, whether paid or not in whole or in part) and each and all instructions and directives given to SERHA or within SERHA in respect thereof;

- e. notices of meetings and minutes of SERHA's internal meetings and internal correspondence including but not limited to memoranda, emails, notations, handwritten or other notes), regarding the minimum wage increases and the increases in the rates payable to or sought by Jacden;*
- f. notices of meetings and minutes of SERHA's internal meetings and internal correspondence (including but not limited to memoranda, emails, notations, handwritten or other notes), regarding:*
 - i. the negotiations of payment schedules under which the Defendants or either of them would pay to Jacden the sums invoiced by Jacden which are the subject matter of these proceedings;*
 - ii. reconciliation of the amounts Jacden has claimed, and which the Defendants have disputed, in these proceedings; and*
- g. minutes of each and all meetings between SERHA and Jacden regarding the amounts the Defendants dispute in these proceedings,*

on the Claimant's undertaking to pay the reasonable cost of copying the said documents, which is hereby given.

2. Unless the 1st and 2nd Defendants fully comply with the orders made on the application set forth in paragraph 1 hereof, then all the statements of case herein of the 1st and 2nd Defendants herein shall be automatically struck out without further order forthwith upon the expiry of the period for compliance set forth in those orders.

....

The grounds on which the Applicant seeks the above orders are as follows:

- (a) *Pursuant to CPR 34.1, on 11th November the Attorneys-at-Law for the Claimant filed and served on the 1st and 2nd Defendants ("Defendants") a Claimant's Request for Information, requesting the Defendants to supply by 6th December 2024 documents and further information requested in respect of the Defence, failing which an application would be made for an order compelling the Defendants to provide the information so requested.*
- (b) *The said period was a reasonable time within which to supply the further information and documents so requested. To date no response has been served by the Defendants, they having failed to supply the said requested information and documents.*
- (c) *All the information and documents sought are directly relevant to matters in issue in these proceedings within the meaning of CPR 28.1(4).*
- (d) *The Defendants have failed in these proceedings to comply with rules, delaying the progress and disposal of these proceedings.*
- (e) *The orders sought are required to give effect to the overriding objective to deal with cases justly, including saving expenses, and allotting an appropriate share of the Court's resources while taking into account the need to allot resources to other cases, and are necessary for the just, fair, efficient, and effective disposal of the cause or matter and to save costs.*

[7] As was submitted by the Claimant, the information being sought can be categorised into two classes, 1. Accounting Information; and 2. Meeting and Other Internal Documents.

Defendants' Response to Request for Information

[8] In the Defendants' Response to the Claimant's Request for Information filed February 21, 2025, among the reasons cited for the Defendants' refusal to disclose the requested documents and information, were inter alia that, a) the information was already disclosed, b) the documents were privileged and/or c) some of the documents were irrelevant to the proceedings.

ISSUES

[9] The issues to be determined by the court are:

- a) Whether the documents/information are exempt from disclosure by virtue of the Data Protection Act?
- b) Whether the documents are protected by legal professional privilege?
- c) Whether the information/documents sought are directly relevant to the matters at hand within the meaning of Rule 28.1(4) of the Civil Procedure Rules?
- d) Whether the documents/information sought are already within the possession of JACDEN?

ANALYSIS

Whether the documents/information are exempt from disclosure by virtue of the Data Protection Act?

[10] The Defendants submitted that information communicated at or regarding the meetings of SERHA's board of directors or its subcommittees contains privileged information and personal and sensitive data as defined in the **Data Protection Act**, which cannot be disclosed to the Claimant.

[11] The Defendants submit that as outlined in paragraphs 6 to 9 of Ms. Stacey-Ann Steele's affidavit, the disclosure of the documents being sought by the Claimant in this regard, would amount to contravention of the Data Protection Act.

[12] In her affidavit, Ms. Steele deponed at paragraphs 6 to 9 that:

1. *The notices of meetings, all minutes of meetings of the board of directors of SERHA and each subcommittee of the board of directors of SERHA at which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered, have not been disclosed on the grounds of being irrelevant to the issues joined between the parties to this claim and/or containing privileged information and personal and sensitive data as defined in the Data Protection Act.*
2. *SERHA oversees, administers and seeks to provide health services to the public. Accordingly, minutes of meetings would contain information determined to be personal data and/or sensitive personal data as defined under the Data Protection Act. Depending on what is discussed, the documentation may include the following information:*
 - a. *Personal data, as defined in section 2 of the Act, which includes information relating to any individual who can be identified from that information or from that information and other information in the possession of the data controller - SERHA. Such data may include the names, roles, and opinions expressed by board members or other individuals during deliberations, especially where such opinions may reflect personal views or professional evaluations of individuals or service providers.*
 - b. *Sensitive personal data, which includes data relating to an individual's health, medical records, or other matters of a confidential nature. As SERHA is a health authority, deliberations of the board and its subcommittees may touch upon health service delivery issues that involve reference to individual patients, specific cases, or health professionals, thereby inadvertently disclosing sensitive personal data.*
3. *Disclosure of such information without the appropriate safeguards or consent would contravene the principles of lawful and fair processing and data minimization under the Act, particularly sections 23 and 24. Furthermore, section 12 of the Act requires that processing of personal and sensitive personal data must be necessary and*

proportionate, and any such data must not be disclosed or processed beyond what is required for the specific and lawful purpose for which it was collected.

4. *Accordingly, the minutes requested have not been disclosed to the Claimant as same would compromise the confidentiality obligations imposed on SERHA by the Act and expose personal and sensitive personal data of individuals who are not party to these proceedings.*

[13] Section 39 of the Data Protection Act provides that:

- (1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court—*
- (2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary—*
 - (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings); or*
 - (b) for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.*

[14] At paragraph 8 of the Steele affidavit, it is said that disclosure of such information without the appropriate safeguards or consent would contravene the lawful and fair processing and data minimization under the Act.

[15] It is also noted that paragraph 10 of the Second Schedule of the **Data Protection Act** provides that *personal data are exempt from the disclosure to data subject requirements if the personal data consists of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings*. However, included in section 39 of the Act is that personal data are exempt from non-disclosure provisions where disclosure is by order of a court.

[16] In **Kasie-Ann Morrison v Elephant Group Ltd (t/a Centerfield Jamaica), AVC Communications Ltd and A&A Services Solutions Consultants (SSC) Ltd** [2024] JMSC Civ 124, one of the first cases emanating from our local courts dealing primarily with the recently enacted Data Protection Act, the claimant was

a former employee of the Elephant Group Limited. Her employment was terminated and she thereafter contested the termination of her employment, which eventually led to proceedings before the Industrial Dispute Tribunal (IDT). In efforts to prepare its defence against Ms Morrison, Elephant Group Limited engaged A&A Service Solutions Consultants (SSC) Limited, an agency that conducts private investigations and background checks, among other services. The Elephant Group Limited provided A&A Service Solutions Consultants (SSC) Limited with the claimant's, personal data, which included her full name, age, date of birth, current address and Taxpayer Registration Number (TRN). A&A Service Solutions Consultants (SSC) Limited then provided the Elephant Group Limited with a Confidential Screening Report dated June 30, 2023 and an Injury Fraud Investigation Report, which the Elephant Group used in its defence against the claim.

[17] In **Kasie-Ann Morrison** (supra), similarities were identified between our local section 39(2) and paragraphs 5(3)(a) and (c) of the Second Schedule of the UK Data Protection Act, 2018, in discussing the exemption which allows a party to uphold its right to a fair trial, that is in disclosing personal data for the purposes of defending itself in litigation proceedings. However, for the case at hand, paragraph 5(2) of the Second Schedule of the UK Data Protection Act is also applicable. The relevant provisions in the UK Data Protection Act states:

“(2) The listed GDPR provisions do not apply to personal data where disclosure of the data is required by an enactment, a rule of law or an order of a court or tribunal, to the extent that the application of those provisions would prevent the controller from making the disclosure.

(3) The listed GDPR provisions do not apply to personal data where disclosure of the data—

(a) is necessary for the purpose of, or in connection with, legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights,

to the extent that the application of those provisions would prevent the controller from making the disclosure.”

- [18] Paragraph 5(2) of the UK Data Protection Act bears resemblance to our local section 39(1).
- [19] The Claimant submits that the Defendants’ attempt to rely on the **Data Protection Act** is flawed as section 39 of the Act outlines various instances in which personal data are exempt from non-disclosure provisions. I agree with the Claimant regarding this submission. The working of section 39 is clear as to the instances in which personal data are exempt from non-disclosure provisions, including where the disclosure is required by or under any enactment, by any rule of law or by the order of a court or for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings).
- [20] In relation to the issue of whether disclosure of the information would contravene the Data Protection Act, the wording of section 39 is clear as to the instances in which personal data are exempt from non-disclosure provisions, including where the disclosure is required by or under any enactment, by any rule of law or by the order of a court or for the purpose of, or in connection with, any legal proceedings, including prospective legal proceedings.

Whether the documents are protected by legal professional privilege?

- [21] In **Winston Finzi and Mahoe Bay Company Limited v JMMB Merchant Bank Limited** [2016] JMCA Civ 34, at paragraphs 68 and 69, McDonald-Bishop JA (as she then was) outlined facets of the common law doctrine of legal professional privilege:

[68] The common law doctrine of legal professional privilege that is applicable to our jurisdiction operates in three sets of circumstances. In the first place, it enables a client to maintain the confidentiality of communications between him and his lawyer made for the purpose of obtaining and giving legal advice. This is known as ‘legal advice privilege’.

*In the second way, it enables a client to have communications between him or his lawyer and third parties (such as potential witnesses and experts), the dominant purpose of which was preparation for contemplated or pending litigation. This is known as 'litigation privilege'. Thirdly, the privilege extends to items enclosed with or referred to in such communications and brought into existence for obtaining legal advice, among other things. See Adrian Keane, *The Modern Law of Evidence*, Seventh edition, page 609.*

*[69] The rationale for the rules of legal professional privilege is that they encourage those who know the facts to state them fully and candidly without fear of compulsory disclosure. See *Waugh v British Railways Board* [1980] AC 521 at 531-2 and *R v Derby Magistrates' Court, ex p B* [1996] AC 487.*

- [22] Counsel for the Defendants submitted that there is no duty on the part of a party to disclose any documents that fall within the remit and/or immunity of litigation privilege. In making this submission, they referred to paragraph 53 of **Winston Finzi and Anor v JMMB Merchant Bank** (supra), where the learned judge of appeal spoke to 'without prejudice' privilege and said that *"if the communication to be adduced is, in itself, irrelevant to the proceedings in issue, then it is, simply, inadmissible on that basis and so the question of "without prejudice" privilege would not arise for consideration."*
- [23] In **Three Rivers District Council and Others v Governor and Company of the Bank of England** [2004] UKHL 48 ("**Three Rivers (No.6)**") the issue for determination by the House of Lords was whether the communications between the Bank of England, their solicitors and counsel relating to the content and preparation of a statement submitted on behalf of the Bank to the Bingham Inquiry, qualified for legal professional privilege.
- [24] In **Three Rivers (No. 6)** (supra), reference was also made to the classic statement of Jessel MR in **Anderson v Bank of British Columbia** (1876) 2 Ch D 644 at 649:

"The object and meaning of the rule is this: that as, by reason of the complexity and difficulty of our law, litigation can only be properly conducted by professional men, it is absolutely necessary that a man, in order to prosecute his rights or to defend himself from an improper claim, should have recourse to the assistance of professional lawyers, and it being so absolutely necessary, it is equally necessary, to use a vulgar phrase, that he should be able to make a clean breast of it to the gentleman whom he consults with a view to the prosecution of his claim, or the

substantiating his defence against the claim of others; that he should be able to place unrestricted and unbounded confidence in the professional agent, and that the communications he so makes to him should be kept secret, unless with his consent (for it is his privilege, and not the privilege of the confidential agent), that he should be enabled properly to conduct his litigation. That is the meaning of the rule."

[25] At paragraph 102 of **Three Rivers (No.6)** (supra), Lord Carswell stated the following:

*[102] The conclusion to be drawn from the trilogy of 19th century cases to which I have referred and the qualifications expressed in the modern case-law is that **communications between parties or their solicitors and third parties for the purpose of obtaining information or advice in connection with existing or contemplated litigation are privileged, but only when the following conditions are satisfied:***

(a) litigation must be in progress or in contemplation;

(b) the communications must have been made for the sole or dominant purpose of conducting that litigation;

***(c) the litigation must be adversarial, not investigative or inquisitorial.** (emphasis added)*

[26] The Defendants submitted that several of the documents being requested by the Claimant ought not to be disclosed as they are subject to litigation privilege and/or are irrelevant to the proceedings currently before this court.

[27] In the Defendants' Response to the Claimant's Request for Information, regarding the requests for the following information, the Defendants asserted that several of the requested 'Meeting and Other Internal Documents' were prepared in anticipation of litigation, that they are privileged and therefore not subject to disclosure.

a) *"All internal reports of SERHA in which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered"*

b) *All correspondence internal to SERHA, received by SERHA, or issued out of SERHA (including but not limited to memoranda, emails, notations,*

handwritten or other notes) concerning each and all invoices issued by JACDEN (whether approved or not in whole or in part for payment, whether paid or not in whole or in part) and each and all instructions and directives given to SERHA or within SERHA in respect thereof “

- c) *“Notices of meetings and minutes of SERHA’s internal meetings and internal correspondence (including but not limited to memoranda, emails, notations, handwritten or other notes), regarding the minimum wage increases and the increases in the rates payable to or sought by JACDEN*
- d) *“Notices of meetings and minutes of SERHA’s internal meetings and internal correspondence (including but not limited to memoranda, emails, notations, handwritten or other notes), regarding:*
 - i) *the negotiations of payment schedules under which the Defendants or either of them would pay to JACDEN the sums invoiced by JACDEN which are the subject matter of these proceedings;*
 - ii) *reconciliation of the amounts JACDEN has claimed, and which the Defendants have disputed, in these proceedings.”*

[28] The period for which the Claimant requests the documents/information is December 2012 to October 31, 2024. What is evident, based on the pleadings, is that JACDEN’s first relevant contract with SERHA commenced in December 2012, when JACDEN was temporarily engaged by SERHA to provide cleaning and porter services at the KPH and the VJH while the 1st Defendant undertook the tendering process for provision of those services to the KPH, VJH and the BHC. JACDEN was one of the entities that participated in the formal tender process and was ultimately the successful bidder. Further, that the Request for Information was made on November 11, 2024, hence the upper limit of the period for which the documents were requested, being October 31, 2024.

[29] It is somewhat hard to believe that from as far back as December 2012, at the commencement of the working relationship between JACDEN and SERHA, that litigation was contemplated, that all communication was done for the sole or dominant purpose of conducting the contemplated litigation and that it was foreseen that the contemplated litigation would have been adversarial in nature.

[30] Counsel for the Claimant submitted that the Defendants’ assertion that the dominant purpose for which the documents covering the period of December 1,

2012 to October 31, 2024 were created was for litigation, is not credible. I find merit in this submission.

- [31] At paragraph 19 of the Affidavit of Stacey-Ann Steele filed May 16, 2025, Ms. Steele deponed that

*19. In particular, several of the meetings and internal exchanges took place after engagements with the Claimant's representatives, during which disagreements over invoices, payment rates, and outstanding amounts became contentious. **These developments, particularly in the context that they involved significantly large sums of money and the Claimant's strident and repeated demands for payment, reasonably signaled a shift from standard contractual dialogue to a legal dispute, thereby triggering litigation privilege. The dominant purpose of the documentation prepared during this period was to enable SERHA to seek legal advice and prepare for possible legal proceedings.** (my emphasis)*

- [32] Ms. Steele's affidavit contains an admission that the communication regarding JACDEN and its working relationship with SERHA, from inception in 2012, was not created for the sole or dominant purpose of litigation, nor was litigation even contemplated. It shows that communication, where litigation or seeking legal advice was for a dominant or sole purpose, was not done until the litigation privilege was triggered, although a specific date or event is not specified as causing this shift.
- [33] In light of this admission, I see no reason why the Defendants should withhold disclosure of the requested 'Accounting Information' and the 'Meeting and Other Internal Documents'.
- [34] Based on the pleadings, it is alleged that the first demand for payment for sums owed for the period 2012 to 2019, was made by letter on December 23, 2019. It is further alleged that the 1st Defendant wrote a subsequent letter on December 31, 2019 noting the contents of the Claimant's letter, stating that it was working assiduously to resolve the matter. The parties continued their working relationship after this.

- [35] Regarding the issue of legal professional privilege, in light of the Defendants' admission that the Claimant's strident and repeated demands for payment reasonably signified a shift from the standard contractual dialogue to a legal dispute thereby triggering litigation privilege, I see no reason why the Defendants should not disclose the requested information/documents that fall before the indicated shift that triggered legal privilege. While Ms. Steele's affidavit does not disclose the specific event that triggered the litigation privilege, based on the pleadings, it is alleged that the first demand for payment for sums owed for the period 2012 to 2019, was made by letter on December 23, 2019. Therefore, documents created before that date would not be protected by legal professional privilege.
- [36] In accordance with Rule 28.7 of the Civil Procedure Rules while this court is satisfied that the criteria for an order for specific disclosure have been met for the accounting information requested, I do not find that the criteria has been met for specific disclosure of the internal reports, minutes of meetings and notices of meetings, outside of those which have already been disclosed by the Defendants. While the Claimant has given its undertaking to pay the reasonable cost of copying the documents, I do not see the likely benefit of ordering such specific disclosure.
- [37] I am therefore of the view that the only documents that could be covered by litigation privilege are those created after December 24, 2019. However, those documents would have to be examined to determine whether the dominant purpose for their creation is that of litigation. As has been suggested, it would be prudent to have those documents disclosed to the court so the court can assess what is the dominant purpose and therefore make an order for specific disclosure if satisfied that the dominant purpose was in contemplation of litigation. That of course is not the end of the matter regarding these documents as even if they are not subject to litigation privilege and are therefore disclosable, the court still has to consider whether they are relevant. In relation to items 3c and 3d the Defendant's response was only that they were privileged and not that they were

not relevant however, the Court still has to be satisfied that they are directly relevant before an order for disclosure can be made.

Whether the information/documents sought are directly relevant to the matters at hand within the meaning of Rule 28.1(4) of the Civil Procedure Rules?

[38] Part 34 of the Civil Procedure Rules (“CPR”) deals with requests for information. Rule 34.2(3) of the **CPR** outlines the considerations the court ought to have regard to when making an order under this rule. The court must have regard to: -

- (a) The likely benefit which will result if the information is given;*
- (b) The likely cost of giving it; and*
- (c) Whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.*

[39] These are similar to the considerations that the court must regard when making an order for specific disclosure. Rule 28.7 of the **CPR** outlines the considerations that the court must have regard to:

- (a) The likely benefits of specific disclosure*
- (b) The likely cost of specific disclosure*
- (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.*

[40] **Rule 28.1(4)** of the CPR provides that for the purposes of this Part, a document is deemed to be directly relevant only if:

- a) The party with control of the document intends to rely on it;*
- b) It tends to adversely affects that party’s case; or*
- c) It tends to support another party’s case.*

[41] **Rule 28.6(5)** of the CPR provides that 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.

[42] In **Old National Bank v Al Socrates Jobson and others** [2024] JMCA Civ 14, McDonald-Bishop JA (as she then was) outlined three matters of immediate importance arising from the text of the rules, when dealing with specific disclosure:

*“[29] Three matters of immediate importance arise from the text of the rules. The first is that rules 28.6(5) and 28.7 disclose a two-staged process to be employed by a judge when determining whether to grant an order for specific disclosure. **The first stage of the process is whether the document is directly relevant, as that phrase is defined by rule 28.1(4), to one or more matters in issue in the proceedings; and the second is, whether specific disclosure is necessary to fairly dispose of the claim or to save costs. The court granting specific disclosure must be satisfied that both questions are answered in the affirmative** (see *Miguel Gonzales v Edwards and another v Leroy Edwards* [2017] JMCA Civ 5 (*‘Miguel Gonzales’*), para. [38]).*

*[30] **Secondly, whether a document is directly relevant is to be determined by having recourse to the specific meaning attributed to that phrase by rule 28.1(4) of the CPR. The rule accords a narrow and exhaustive meaning to the phrase in the sense that a document may only be considered directly relevant for the purposes of an application for specific disclosure “only if” it falls within one or more of the circumstances prescribed in rule 28.1(4)** (see *Miguel Gonzales* at para. [22], and *Attorney General v BRL Limited and another* [2021] JMCA Civ 14 (*‘BRL Limited’*) at para. [103].*

*[31] **Thirdly, and finally, whether a document is directly relevant under rules 28.6(5) and 28.1(4) is to be determined by having regard to the “matters in issue in the proceedings”.** Therefore, there must be a close examination of the issues arising in the claim, as disclosed by the*

pleadings and any evidence filed in support of the claim prior to the grant of specific disclosure (see *BRL Limited* at para. [32] and *Diandra Bramwell* at paras. [18] – [21]).” (emphasis added)

[43] From the above mentioned rules and case law, it is clear that the court must be satisfied that:

- a) The documents being requested by JACDEN are directly relevant to one or more matters in issue in the proceedings, within the definition as provided by Rule 28.1(4), and there must be a close examination of the issues arising in the claim.
- b) Specific disclosure must be necessary to fairly dispose of the claim or to save costs

[44] We will first look at whether the requested documents are directly relevant to one or more matters in issue in the proceedings. One of the main issues in the case is whether there are outstanding sums owed to JACDEN by SEHRA for JACDEN providing porter and cleaning services to the KPH, VJH and BHC, commencing in December 2012. According to the pleadings, while the Claimant alleges that a considerable sum of money is owed to JACDEN by SERHA for services done by JACDEN at the KPH, VJH and BHC, the Defendants allege that from December 2012 to December 2022, it has paid to the Claimant all sums due as a result of the Claimant’s services at the KPH, VJH and BHC. Further that SERHA has made all payments up to August 2024.

[45] The Claimant requested a number of documents, including but not limited to internal reports, minutes of meetings and notices of meetings for the period December 1, 2012 to October 31, 2024. In the Defendants’ Response to the Claimant’s Request for Information filed February 21, 2025, the Defendants asserted that the following documents were irrelevant:

“3. Supply, for the period 1st December 2012 to 31st October 2024, a copy of:

- (a) *All notices of meetings and all minutes of meetings of the board of directors of SERHA at which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered.*
- (b) *All minutes of meetings of each subcommittee of the board of the directors of SERHA at which any of the amounts disputed by SERHA in these proceedings were referred to, and/or deliberated, and/or considered.*

Response to requests 3a and 3b

The Defendants assert that these requests concern matters which are irrelevant to the issues joined between the parties to this claim for reasons including the fact of the Defendants' assertion that the invoiced sums have already been paid to the Claimant..."

...

- (e) *Notices of meetings and minutes of SERHA's internal meetings and internal correspondence (including but not limited to memoranda, emails, notations, handwritten or other notes), regarding the minimum wage increases and the increases in the rates payable to or sought by JACDEN.*
- (f) *Notices of meetings and minutes of SERHA's internal meetings and internal correspondence (including but not limited to memoranda, emails, notations, handwritten or other notes), regarding:*

- (i) *The negotiations of payment schedules under which the Defendants or either of them would pay to JACDEN the sums invoices [sic] by JACDEN which are the subject matter of these proceedings.*
 - (ii) *Reconciliation of the amounts JACDEN has claimed, and which the Defendants have disputed, in these proceedings."*

Response to requests 3e and 3f

The Defendants assert that these requests concern matters which are irrelevant to the issues joined between the parties to this claim for reasons including the fact that the Defendants assert that the invoiced sums have already been paid to the Claimant.

The Defendants assert that the tables of payments from the South East Regional Health Authority to JACDEN Group of Companies Limited in respect of the KPH/VHC and BHC contracts referred to in the Defence filed on October 18, 2024 and already served on the Claimant's attorneys on October 22, 2024 reflect payments regarding minimum wage increases and the increases in the rates payable to or sought by the Claimant.

... “

- [46] The Claimant submitted that a fundamental issue in the case is whether or not SERHA approved, accepted, agreed or acknowledged the rate increases and the services rendered for which JACDEN has duly submitted invoices and which the Defendants have wrongly refused to pay. Further, that such approval, acceptance, agreement or acknowledgement would likely be found in SERHA's records of invoices and corresponding payments and in SERHA's internal correspondence, notes and records of meetings and related documents.
- [47] It was also submitted that the information/documents being sought from the Defendants, as outlined in the Request for Information, are all directly relevant to the following critical issues:
- a) *Whether, contrary to the Defendants' bald assertion, the Defendants or either of them requested and approved the services rendered for which JACDEN has duly submitted invoices which the Defendants have refused to pay;*
 - b) *Whether, contrary to the Defendants' bald assertion, they have accepted, agreed or acknowledged the rate increases;*
 - c) *Whether, contrary to the Defendants' assertion, JACDEN has submitted legitimate invoices for services rendered which the Defendants have not paid;*

d) Whether, contrary to the Defendants' bald assertion, they have made promises to JACDEN, including in meetings with JACDEN, to pay the unpaid invoices in full.

[48] The Defendants submitted that several of the documents being requested by the Claimant, including but not limited to notices of meetings of the board members and sub-committees where any of the amounts disputed by SERHA were deliberated and/or referred to and/or considered as well as notices of meetings of SERHA's internal meetings and correspondences concerning minimum wage increases payable to JACDEN and negotiations of payment schedules and reconciliation of the amounts claimed by JACDEN, ought not to be disclosed as they are not 'directly relevant' to the claim that is currently before the Court.

[49] In the affidavit of Anserd Williams in support of Notice of Application filed May 15, 2025, Mr Williams deponed at paragraphs 10 to 12:

10. After a reconciliation exercise (undertaken by Jacden's then Chief Financial Officer, Mr Kendron Byfield) at Jacden's offices which I personally attended, former Director of Finance (SERHA) Carol Richards-McCulloch, having confirmed the indebtedness at the time, agreed, at the behest of Jacden, to make direct payments to Tax Administration Jamaica on behalf of Jacden from funds owed by the Defendants to Jacden. I exhibit as "J.G. 2" copies of letter from Jacden to SERHA dated 27th April 2018, letter from Jacden to SERHA dated 1st May 2018, and letter to Tax Administration Jamaica from Jacden dated 1st May 2018.

11. Afterwards, and during the tenure of the current Director of Finance of SERHA (Ms Sophia Moodie-Reid), at a meeting held in June 2022 to discuss the Defendants' indebtedness to Jacden (attended by me, Jacden's Chairman, Sophia Moodie-Reid, the Minister of Health the Hon. Christopher Tufton, Errol Green, and (remotely) the then Permanent Secretary of the Ministry of Health Mr Dunstan Bryan) the Defendants acknowledged their indebtedness to Jacden.

12. In fact, during that meeting the Permanent Secretary promised to pay J\$100,000,000 of the said indebtedness sum from the Ministry of Health's own resources and then obtain the approval of the Cabinet of the Government of Jamaica to liquidate the balance of the additional cleaning that Jacden carried out at the Defendants' request related to Covid-19 pandemic. SERHA promised to make the

necessary submission to the Cabinet. Whilst I do not know whether that submission was ever made to Cabinet, I can confirm that the payment has not been made to Jacden.

[50] The case of **Attorney General of Jamaica v BRL Limited and Village Resorts Limited** [2021] JMCA Civ 14 concerned an appeal against orders made by a judge of the Supreme Court, for the Attorney General to provide further information and specific disclosure, pursuant to rules 34.2 and 28.6 of the CPR, respectively. The gravamen of the appellant's complaint, in sum, was that the orders of the learned judge were not necessary for the fair disposal of the proceedings or for saving costs and the documents ordered to be specifically disclosed were not directly relevant to any issue in the proceedings.

[51] McDonald-Bishop JA (as she then was) at paragraphs 96 to 97, outlined the ways in which the documents ordered to be disclosed by the learned judge would not be directly relevant within the meaning of rule 28.1(4)(a), (b) or (c). Further, at paragraph 103, a portion of which was reproduced in the Defendants' submissions, McDonald-Bishop JA (as she then was) stated:

*[103] The fact that the documents "may" be relevant, or merely "relate" to an issue in dispute is not sufficient to render them specifically disclosable within the ambit of the CPR; they must be 'directly relevant' as defined by the CPR. I endorse the view of the court as expressed by F Williams JA in **Miguel Gonzales and Suzette Saunders v Leroy Edwards** [2017] JMCA Civ 5 at paragraph [22], that:*

"[22] ... [A] pre-requisite for disclosure is a finding that a document is, not just relevant in the usual layman's sense, but "directly relevant" within the meaning of the rule. The rule uses the phrase "only if" in delimiting the matters to be considered in deciding whether a document satisfies the definition. This means that a finding that a document is directly relevant can only be made in the three circumstances outlined in the rule." (Emphasis supplied)"
(original emphasis)

[52] In **Attorney General v BRL** (supra), one of the documents sought was documents/information of meetings of the National Insurance Fund containing plans for the renovation, improvement or upgrading of the property forming part of

the dispute. The Court of Appeal accepted the Attorney General's submission that the order for specific disclosure of those documents and information was too wide, thereby rendering it improper. The documents that were being sought concerned the period after BRL Ltd had vacated the property owned by the Government of Jamaica and so had no bearing on the issues in dispute between the parties.

- [53] McDonald-Bishop JA (as she then was) said the learned judge made a bald assertion as to the relevance of the documents to the matters he identified but failed to demonstrate how he arrived at his decision, by reference to the meaning of the term "directly relevant" as outlined in Rule 28.1(4) of the CPR. Accordingly, it was held that the documents were not directly relevant to the matters in dispute which were to be resolved at trial. She further stated at paragraph 109 that:

"[109] Even if the documents were directly relevant within the legal sense of that term, that would not have been the end of the enquiry. The CPR makes it clear that a finding that documents are directly relevant does not end the enquiry as to whether an order for specific disclosure should be made. The matters stated in rule 28.7 must also be considered. Those matters involve a consideration of the benefits to be derived from disclosure. This rule embodies the concept of proportionality, which is comprised, in part, in the overriding objective. There is no real benefit to be gained from the disclosure of these documents in respect of time, costs and resources."

- [54] The Claimant's request for SERHA's notice of minutes, notice of meetings and internal reports "concerning" and/or "regarding" and/or relating to "any of the amounts disputed by SERHA", casts a wide net as it seeks disclosure of all of these documents from December 1, 2012 to October 31, 2024.
- [55] At a glance, the Claimant's request for these documents appears to speak to specific and distinct documents which contain information pertinent to the issues in the claim. However, upon closer observation, the documents/information requested lacks specificity and is akin to a fishing expedition. The Claimant is

asking for the Defendants to disclose their internal reports and notes of meetings and minutes in order to determine whether information contained in those documents “may” be relevant to the claim. They do not yet know if the documents contain information which would be helpful to their case, adversely affect the Defendants’ case or if the Defendants intend to rely on the requested internal correspondence and notices of meetings and minutes “*concerning*”, “*regarding*”, or relating to “... *any of the amounts disputed by SERHA*”; these were the terms used in the Claimant’s submissions that at a glance gave the impression of the documents requested being directly relevant to the claim.

[56] When the Claim Form and Particulars of Claim and Defence and Reply are examined, the issues relates to what was agreed between the parties. In order to determine this, it would be important to look at any contracts signed by the parties, any meetings where both parties were present and discussed the issue. Discussions in meetings involving one party cannot without more be said to be relevant. Even if the 1st Defendant were to say words agreeing, this would be unilateral and could not supersede the contractual documents and agreement of the parties. It appears to me that the Claimant is seeking to challenge the Defendants with what it hopes to find to be inconsistent. It is not the primary purpose of disclosure to test credibility.

[57] As was stated in **Attorney General v BRL** (supra), it is not enough to say that requested documents in this class “may” be relevant or that they merely relate to the claim. The test under Rule 28.1(4) mandates that they must be directly relevant in order to be specifically disclosed.

[58] The question of relevance must be determined with reference to the Claim Form and Particulars of Claim and the Defence and the Reply to the Defence, taking into account the factual issues in dispute. On a perusal of the pleadings, some of the main factual issues arising are as follows:

- whether or not the 1st Defendant has made good on the payments due to the Claimant;

- whether the Defendants complied with payment timelines;
- whether they agreed to a particular interest rate;
- whether the 1st Defendant paid the increase requested pursuant to the minimum wage increase;
- whether the contract between the parties stipulated that the Claimant should have factored in necessary adjustments;
- whether the Defendants accepted the minimum wage increase and all invoices after a certain time and accepted the arrears;
- whether the Claimant submitted invoices at a higher rate than what was due; and
- whether the Defendants acknowledged the debt owed either orally or in writing.

[59] Before ordering specific disclosure, BRL emphasized that the Court must be satisfied that the documents are necessary for the just disposal of the matter. It is not enough that the documents “may” be relevant or merely relate to an issue in dispute, the documents must be directly relevant.

[60] The requests for information in respect of 3a, 3b, 3e and 3f fall in the same category and so will be dealt with together. The 1st Defendant’s response to this request is that they are irrelevant to the issues joined between the parties.

[61] The Claimant seeks all notices of meetings and minutes of meetings of the board of directors, minutes of each subcommittee of the board of directors in which any of the amounts disputed were referred to and/or deliberated and/or considered. They also seek notices of meeting and minutes of SERHA’s internal meetings and internal correspondence regarding minimum wage increased, increased rates, negotiations of payment schedules etc. were discussed.

[62] I will deal first with 3a and 3b. Having perused the affidavit of Ms. Steele, she pointed out that the request for all notices of meetings is overly broad and not sufficiently tailored to the matters in dispute. I find there to be merit in this assertion. It is to be noted that the notices of the meeting are administrative in nature. There

is nothing in any of the affidavits of any assertion that anything in the meeting is relevant. It is not enough to say they may assist.

- [63] The Notices for example would be expected to have information concerning date, time, location, general subject matter or agenda items. Without any evidence from the Claimant that there was some discussion or admission contained in the Notice, I don't see how it would be relevant. Regarding the minutes of the meeting, the view of the Defendants is that there may have been some discussion in which the Defendants agreed, approved or acknowledged and this is essentially what the Claimant is saying which would be highly speculative and would be equated to what happened in the **BRL** case where the Court of Appeal found that it is not enough that it "may be relevant" but rather that it must be directly relevant.
- [64] When the issues are examined, what would be important to establish is whether the Defendant acknowledged or agreed with the Claimant that these payments were outstanding. Whether or not they made any such reference in any meeting, internal correspondence will not assist in resolving the issues in dispute.
- [65] What would be relevant are the documents or correspondence passing between the parties and not simply what one party has said to someone or a body other than the Claimant.
- [66] Even if the court were to find that the documents as requested are directly relevant, what the Claimant has requested is documents/information spanning a period of almost twelve (12) years.
- [67] In the pleadings, the Claimant referred to a number of written correspondences between itself and SERHA, regarding the claim, the Claimant's demand for unpaid sums and SERHA's alleged acknowledgment of debts owed. It is likely, and expected, that these documents will be produced at the trial of the claim, in furtherance of the Claimant's case, as it is the Claimant who has the duty to prove the claim against the Defendants.

[68] The following were attached to the Defendants' Response to the Claimant's Request for Information filed February 21, 2025:

- i) Notes from meeting with JACDEN held on April 29, 2022 at 2:25PM at the Regional Office;
- ii) Notes from meeting with JACDEN held on May 11, 2022 at 2:18PM at the Regional Office;
- iii) Notes from meeting with JACDEN held on June 8, 2022 at 1:50PM at the Regional Office;
- iv) Meeting with SERHA and JACDEN held on Thursday, February 16, 2023 at 12:30PM at the SERHA's Corporate Office; and
- v) Meeting with SERHA and JACDEN held on Thursday, July 13, 2023 at 9:00AM at the SERHA's Corporate Office.

[69] These disclosed documents, which fall within the class of 'Meeting and Other Internal Documents' signify those that the Defendants deem relevant to the claim and to be specific to the issues to be determined at trial.

[70] Therefore, while several of the 'Meeting and Other Internal Documents' being sought, are not privileged, with exception of those that have been attached to the Response for Information and thereby disclosed, I do not find them to be directly relevant to the issues to be ventilated in the claim.

[71] I therefore do not find that the notices of meetings, notices of minutes, internal reports and correspondence internal to SERHA, as requested and outside of what has been disclosed by the Defendants by attachment to their Response to Request for Information, are directly relevant to the claim, within the definition prescribed by Rule 28.1(4) of the CPR or necessary to fairly dispose of the case and save costs.

[72] Even if the Court finds that the documents sought are directly relevant, that is not the end of the matter, based on Rule 28.7 the court has to take into account the

time, cost and resources to be expended in ordering the disclosure. The court is therefore mindful that it must also be satisfied, not only that the information is directly relevant, but also that specific disclosure is necessary to fairly dispose of the case and to save costs.

[73] The Claimant is seeking disclosure for documents for over a ten (10) year period. This will no doubt take time to put together. The cost to do so would no doubt be high. The court has to ensure that this is not merely a fishing expedition, is it onerous, is it being done simply for the purpose of investigation?

[74] I do not see where the Claimant has demonstrated that there is any real benefit to be gained from the Defendants disclosing these documents, nor do I see, on the pleadings or evidence presented thus far in the claim, that disclosure of the Meeting and Other Internal Documents, is necessary to fairly dispose of the case and to save costs.

Whether the documents/information sought is already within possession by JACDEN?

[75] The Defendants asserted that the Claimant is already in possession of:

a) All correspondence exchanged between the Claimant and the 1st Defendant concerning each invoice issued by the Claimant further to contracts concerning KPH/VJH and BHC.

[76] However, in the affidavit of Anserd Williams filed May 15, 2025, Mr. Williams deponed that the Defendants have erroneously alleged in paragraphs 1 and 2 of their Response to Request for Information that the Defendants served the information sought in paragraph 1(1) of JACDEN's Application by way of tables attached to the Defendants' Notice of Information to Tender Documents that was filed October 22, 2024.

[77] Mr. Williams said that the fundamental errors of those tables lie in the fact that:

(1) the period of Jacden's claim ended 30th June 2023 whilst those tables wrongly included activity (that is, invoices and related payments) up to 1st August 2024 in respect of Kingston Public Hospital/Victoria Jubilee Hospital ("KPH/VJH") and up to 16th September 2024 in respect of Bustamante Hospital for Children ("BHC");

(2) those tables reflect omissions, which are of great significance, of:

- (a) relevant invoices submitted by Jacden;*
- (b) minimum wages adjustment to 31st May 2022;*
- (c) minimum wages adjustment 1st June 2022 to 30th June 2022;*
- (d) Covid-19 additional cleaning for the period April 2022 to May 2023;*
- and*
- (e) Jacden's substantial entitlement and claim for interest (at a rate of 2.7778% per month payable on overdue amounts from 1st January 2015.*

If it is that the items listed above have not been disclosed to JACDEN, despite the Defendants' duty to disclose them, then that information should be forthcoming from the Defendants, in compliance with the Claimant's Request for Information. If it is that the documents requested by JACDEN and purportedly already disclosed by the Defendants, contain errors or omissions, then the correct documents/information should be forthcoming from the Defendants, in compliance with the Claimant's Request for Information.

DISPOSITION

[78] It is hereby ordered as follows:

- a) The order prayed in paragraphs 1(1), 1(2) and 1(3) g of the Notice of Application filed January 6, 2025 is granted.

- b) The order prayed in paragraphs 1(3)(a) to 1(3)(f) of the Notice of Application filed January 6, 2025 is refused.
- c) Unless the 1st and 2nd Defendants fully comply with the orders made on the application set forth in paragraph 1(1) and 1(2) hereof, then all the statements of case herein of the 1st and 2nd Defendants herein shall be automatically struck out without further order forthwith upon the expiry of the period for compliance set forth in those orders.
- d) The Claimant's application for leave to appeal refused.
- e) Costs to the Claimant.

.....
Stephane Jackson-Haisley
Puisne Judge