

ROYAL COURT

107.

17th July, 1990

Before: The Bailiff, assisted by
Jurats B. Myles and M.J. Le Ruez

BETWEEN:	Victor Hanby Associates Limited	PLAINTIFF
AND:	John Hyde Oliver	DEFENDANT
AND:	Victor John Belton Hanby	THIRD PARTY

(The First Action)

AND BETWEEN:

	John Hyde Oliver	PLAINTIFF
AND:	Victor John Belton Hanby	FIRST DEFENDANT
AND:	Victor Hanby Associates Limited	SECOND DEFENDANT

(The Second Action)

Advocate P.C. Sinel for the defendant in the first
action (appellant)

Advocate J.G.P. Wheeler for the plaintiff and third
party in the first action (respondents).

Civil Procedure - on appeal against Greffier's refusal to order specific discovery under Rule 6/16 of the Royal Court Rules to exercise own discretion but giving due weight to the decision appealed against.

Background

The defendant in the first action issued a summons returnable before the Judicial Greffier on the 8th June, 1990, actioning the plaintiff and the third party in that action to show cause why an order for specific discovery of the following documents etc. should not be made:-

- (a) Contracts, correspondence and documents between Algemene Bank Nederland N.V. and/or ABN Trust Company (Jersey) Limited and the Plaintiff and/or the Third Party which are not referred to in the Affidavit of Discovery of the Plaintiff and Third Party.
- (b) Contracts, correspondence and documents between Medens (Jersey) Limited and the Plaintiff and/or the Third Party which are not referred to in the Affidavit of Discovery of the Plaintiff and Third Party.
- (c) Contracts, correspondence and documents between Banque Nationale de Paris and/or Capital House and the Plaintiff and/or the Third Party which are not referred to in the Affidavit of Discovery of the Plaintiff and Third Party.
- (d) Contracts, correspondence and documents from 1985 to the present between the Benmore Business Centre and/or the Business Centre and the Plaintiff and/or the Third Party which are not referred to in the Affidavit of Discovery of the Plaintiff and Third Party.
- (e) Bank accounts, credit details and all bank statements of the Plaintiff and the Third Party from the commencement of business of the Plaintiff.

- (f) The course list containing the names of the participants of a computer course held at the Benmore Business Centre in September, 1986, together with all correspondence, invoices, payments and refund details.
 - (g) The course list containing the names of the participants of a part time computer course which ran from October, 1986, to September, 1987, together with all correspondence, invoices, payment and refund details.
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- (h) Copies of invoices referred to in a letter sent by Advocate Wheeler on behalf of the Plaintiff and the Third Party, to Advocate Journeaux on behalf of the Defendant on the 3rd April, 1989, which have not been listed in Schedule 1 part 1 of the Plaintiff and Third Party's list of Discovery or referred to above.
 - (i) Copies of contracts and payment details between the Plaintiff and/or the Third Party and all staff and/or independent contractors employed by the Plaintiff and/or Third Party between November 1988 and September 1989.
 - (j) All invoices sent out and receipts received by the Plaintiff and/or the Third Party from the commencement of the partnership to the present date which are not referred to above.

Paragraph (e) was amended by consent by deleting the words "business of the Plaintiff" and substituting the words "the Partnership".

On the 11th June, 1990, the Judicial Greffier ordered that specific discovery be made in respect of the items set out in paragraphs (a), (b), (c), (f), (g) and (h) above, but refused to order specific discovery in respect of the items set out in paragraphs (d), (e), (i) and (j).

The defendant in the first action appealed against the refusal of the Judicial Greffier to order specific discovery in respect of the items set out in paragraphs (d), (e) and (i) above.

The reasons for the Judicial Greffier's refusal to order specific discovery in respect of those items are attached.

JUDGMENT

BAILIFF: This is an appeal from an order of the Judicial Greffier refusing four matters of specific discovery on the 11th June, 1990, which had been applied for by Mr. Oliver, who was the defendant in the first action and the plaintiff in the second action.

The question arises first of all about which there appears to be no dispute between the parties as to the principles which have to be applied in matters of this sort. However, so far as an appeal is concerned from a decision of the Judicial Greffier on this point, there are two possible ways of approaching the matter. The first is to regard an appeal as merely a review and for the Court to examine the decision of the Judicial Greffier to ascertain if he applied the law correctly, and if he did and even if the Court might itself have come to a different conclusion, the Court should not interfere.

The second is to take a different approach, perhaps a wider approach, which in fact was taken by the Court in the case of Broad Street Investments (Jersey) Limited -v- National Westminster Bank plc 1985/86 JLR 6. At page 9 of the judgment the Court says this:

"Both counsel recognised that this court was hearing an appeal against the exercise of the Greffier's discretion although the way in which we should approach such an appeal was not argued before us. Our view is, and we are referring only to Rule 6/19, that our duty now is to exercise our own discretion but that although we are not fettered by the previous exercise of discretion by the Greffier, we should of course give it due weight".

In our opinion that approach is to be preferred because we were told by Mr. Wheeler that in England where there is an appeal from a Master to a Judge in Chambers that is the approach which is adopted whereas when there is an appeal from a Judge to the Court of Appeal, the judicial review approach is adopted. We think the nearest analogy to the Greffier is that of a Master and ourselves sitting as a Single

Judge in Chambers or in Court as the case may be in England and therefore we are going to apply the suggestion of the Court in the Broad Street case.

Looking at the summons itself, one finds a request for ten specific orders. The Greffier granted six and refused four and it is in respect of those four that this appeal has come before us today.

The specific paragraphs were these:

- "(d) Contracts, correspondence and documents from 1985 to the present between the Benmore Business Centre and/or the Business Centre and the Plaintiff and/or the Third Party which are not referred to in the Affidavit of Discovery of the Plaintiff and Third Party.
- (e) Bank accounts, credit details and all bank statements of the Plaintiff and the Third Party from the commencement of business of the Plaintiff". (Subsequently changed by agreement to "the commencement of the Partnership").
- (i) Copies of contracts and payment details between the Plaintiff and/or the Third Party and all staff and/or independent contractors employed by the Plaintiff and/or Third Party between November 1988 and September 1989.
- (j) All invoices sent out and receipts received by the Plaintiff and/or the Third Party from the commencement of the partnership to the present date which are not referred to above".

The Greffier, for the reasons he set out in his judgment, refused specific orders for discovery in respect of all those four items.

The principles which apply in deciding whether to make an order are contained and rightly cited by the Greffier in the White Book. Although we do not have, as he rightly said, a Rule identical to that in the English jurisdiction, he followed, and we think he was right to

follow - and both counsel accepted that he was right to follow - the White Book in this respect. The general principle of discovery is set out in the White Book in sub-paragraph 2/5 and it is as follows:-

"Any document which it is reasonable to suppose contains information which may enable the party applying for the discovery either to advance his own case or to damage that of his adversary ~~if it is a document which may fairly lead him to a train of~~ enquiry which may have either of these two consequences must be disclosed".

And the other authority which was not, I think, referred to by the Greffier, but we have been referred to it is contained in Halsbury's Law of England (4th Ed.) Volume 13 paragraph 38, "The relevance of documents":-

"A document relates to the matters in question and the action if it contains information which may - not which must - either directly or indirectly enable the party requiring the discovery either to advance his own case or to damage the case of his adversary or which may fairly lead to a train of enquiry which may have either of these two consequences". (Well, that of course is very similar to the White Book, but the paragraph continues): "Documents relate to matters in question in the action whether they are capable of being given in evidence or not so long as they are likely to throw light on the case the expression "matter in question" means a question or issue in dispute in the action and not the thing about which such dispute arises. Thus in an action to recover possession of land it means the plaintiff's alleged title and not the land. The document may be relevant by reason of its character for example that it is a document of a particular type or by reason of its contents. Relevance must be tested by the pleadings and particulars and when particulars have been served with limit of a particular issue then discovery on that issue is limited to the matter raised in the particulars. Discovery will not be ordered in respect of any relevant allegation in the pleadings which even if substantiated could not affect the result of the action. Nor in respect of an allegation

not made in the pleadings or particulars nor will discovery be allowed to enable a party to 'fish' for witnesses or for a new case such as to enable him to frame a new case. Each case must be considered according to the issues raised but where there are numerous documents of slight relevance and it would be oppressive to produce them or some limitation may be imposed".

Now turning to the four matters in dispute we turn first to paragraph (d). Mr. Sinel has rightly referred us to the pleadings. The issue between the parties, of course, relates to the partnership between them and the stamp system which was being prepared by Mr. Hanby and Mr. Oliver, whether as an independent contractor or partner of course, is a matter in dispute. But in the course of these rather long proceedings, Mr. Oliver changed his legal advisers and if one had looked at the unamended answer of Mr. Oliver then our decision might have been somewhat different. But when his new legal adviser came on the scene, he submitted an amended answer and counterclaim to which I shall now turn. It is quite clear to us that the amended answer makes considerable allegations about the integrity and financial solvency of Mr. Hanby. One talks loosely about Mr. Hanby, but of course there was a company, but as Mr. Hanby was the beneficial owner of that company for the purposes of the answer, one may look at what they have said concerning Mr. Hanby.

A number of allegations are made in the amended answer, but in the counterclaim there are allegations that the plaintiff, that is to say Mr. Oliver in this case, had been induced to enter into such agreement as there was - we make no comment at this stage what the agreement was because again that is in dispute - by reason of some representations it is said made to him by Mr. Hanby. I read from paragraph 23 (1):-

- "1. Mr. Hanby was a person of integrity.
2. Mr. Hanby was a person of solvency and financial stability and wealth.
3. He intended to deal honestly and forthrightly with the defendant.
4. He intended to implement the agreement pleaded in paragraph 19 hereof.

5. Mr. Hanby was a reputable businessman.
6. He had expertise and experience to market fully the software systems the defendant was capable of producing".

Under the particulars inasmuch as it is alleged that Mr. Hanby has "wilfully and persistently been in breach of the agreement" occurs the following:-

"(a) Mr. Hanby is not a person of solvency or integrity and has not dealt with the defendant in good faith and has lied to the defendant".

There are a number of other matters which were pleaded earlier, particularly paragraph (h) of the particulars where Mr. Hanby is said to have lied to the defendant by stating that he had not received payment on the 15th August, 1988, whereas in fact he had received certain monies. That is the £5,000 which is referred to in a letter sent during April from Mr. Wheeler to the then Advocate acting for Mr. Oliver, Mr. Journeaux.

It is not really necessary for us to go through the pleadings further than that, except to say that they are very serious allegations and in order to substantiate them if it is possible, the plaintiff seeks to have these orders from the Greffier.

Looking at paragraph (d) which was refused and which I have already read out we are satisfied that although (d) does not appear to be limited to matters of the partnership, having looked at the amended answer we think we can take a wide view as invited to do by Mr. Sinel of what is needed and we find that the Greffier took a somewhat narrower view than was necessary. We think these matters should be available to Mr. Oliver to substantiate, if he can, the allegations in the amended answer. Therefore so far as (d) is concerned, we will allow the appeal and order specific discovery of the matters in paragraph (d).

So far as paragraph (e) is concerned, the basis for the Judicial Greffier's refusal is also on a somewhat narrow approach to the

difficulties between the parties. He does refer in his judgment to the documents being sought, he thinks they are a 'fishing expedition' and that their only relevance would be to the general financial position of the third party and the plaintiff; that is precisely what Mr. Sinel seeks to find out. We disagree respectfully with the Greffier that it is not a fishing expedition. We do not think it is. We do not think that the wording is too wide. We think that having regard to the ~~allegations in the particulars and the pleadings which we have referred~~ to, there again paragraph (e) should properly be provided and we allow the appeal in respect of paragraph (e) and make an order for specific discovery of the documents stated in that paragraph.

As regards paragraph (i) certain different matters apply. Paragraph (i) is covered to a large extent, we think, by a letter which I have already referred to of Mr. Wheeler to Mr. Journeaux then acting as I have said for Mr. Oliver, of the 3rd April, 1989, and to a great extent the documents referred to in that letter and necessary to support the claims in that letter have already been allowed by the Greffier in his order. The order which the Greffier made is in fact order (f) in the Act of the Court but it is paragraph (h) in the actual summons itself. The order of the Court dated 11th June, 1990, orders in paragraph (f) which is as I have said, paragraph (h) of the summons and to which the Greffier makes reference in his judgment and it is in the following terms:-

"Copies of invoices referred to in a letter sent by Advocate Wheeler on behalf of the plaintiff and the third party to Advocate Journeaux on behalf of the defendant of the 3rd April, 1989, which have not been listed in Schedule 1 part 1 of the Plaintiff and the Third Party's list of Discovery or referred to above".

We think that covers adequately the points raised by Mr. Sinel. We do not think the Greffier was wrong in his refusal to allow an order there and the appeal in respect of that paragraph (i) is disallowed.

So far as the remaining paragraph (j) is concerned, that we think is far too wide and we consider that the Greffier was quite right to regard it as so imprecise as to be almost meaningless in respect of an

order for specific discovery. It is a sweeping up clause which is not appropriate in our view in respect of any order for specific discovery and therefore the appeal in respect of paragraph (j) is likewise disallowed.

The effect is that we have allowed the appeal in respect of (d) and (e) and disallowed the appeal in respect of (i) and (j). By consent, the costs of the appeal ~~were ordered to be costs in the cause.~~

Authorities cited:

Broad Street Investments (Jersey) Ltd -v- National Westminster Bank plc
1985/86 JLR 6.

Jones -v- Atkinson (19th May, 1989) Jersey Unreported.

Royal Court Rules, 1987, Rule 6/16.

~~Rules of the Supreme Court of Judicature, 1988, Order 24.~~

Halsbury's Laws of England (4th Ed.) Volume 13 paragraphs 37 - 51
inclusive.

IN THE ROYAL COURT OF JERSEY

8th June, 1990

Before: Advocate B.I. Le Marquand, Judicial Greffier

BETWEEN	Victor Hanby Associates Limited	PLAINTIFF
AND	John Hyde Oliver	DEFENDANT
AND	Victor John Belton Hanby	THIRD PARTY
	AND	
BETWEEN	John Hyde Oliver	PLAINTIFF
AND	Victor John Belton Hanby	FIRST DEFENDANT
AND	Victor Hanby Associates Limited	SECOND DEFENDANT

Advocate P.C. Sinel for the Defendant, in the first action, John Hyde Oliver.

Advocate J.G.P. Wheeler for the Plaintiff and the Third Party, in the first action, Victor Hanby Associates Limited and Victor John Belton Hanby.

JUDGMENT

JUDICIAL GREFFIER: This was an application by summons for specific discovery of various documents in relation to both the above-mentioned actions. General discovery of documents was ordered on 3rd May, 1990 in the usual form, that is to say : -

"AND IT IS ORDERED, by virtue of Rules 6/16 and 6/21(6) of the Royal Court Rules, 1982, as amended, that the above parties do within twenty-eight days of the date hereof, furnish each other with a list verified by affidavit, of the documents which are or have been in his or its possession, custody or power relating to any matter in question in the action."

The period for general discovery was abridged by an Act dated the 17th May 1990 so as to end at 5 p.m. on 25th May, 1990. On the 25th May, 1990 Victor John Belton Hanby (hereinafter referred to as "the Third Party") swore an affidavit of discovery to which was attached a list of documents in the usual form. The summons for specific discovery arose from the dissatisfaction of John Hyde Oliver (hereinafter referred to as "the Defendant") and of his legal adviser with the general discovery which had been made.

As this judgment is being produced for the purposes of an appeal to the Royal Court by the Defendant against my refusal to grant specific discovery in relation to parts of the application for specific discovery, I shall confine the terms of this judgment to those items which were refused. These were set out in paragraphs (d), (e), (i) and (j) of the summons dated 5th June, 1990 and were as follows:-

- (d) Contracts, correspondence and documents from 1985 to the present between the Benmore Business Centre and/or the Business Centre and the Plaintiff and/or the Third Party which are not referred to in the affidavit of discovery of the Plaintiff and the Third Party.

- (e) bank accounts, credit details and all bank statements of the Plaintiff and the Third Party from the commencement of business of the ^{partnership} Plaintiff.
- (i) Copies of contracts and payment details between the Plaintiff and/or the Third Party and all staff and/or independent contractors employed by the Plaintiff and/or the Third Party between November 1988 and September 1989.
- (j) all invoices sent out and receipts received by the Plaintiff and/or the Third Party from the commencement of the partnership to the present date which are not referred to above.

The reasons for the request for specific discovery of these documents were set out in the affidavit of the Defendant, dated 5th June 1990 which was sworn in support of the application and these are as follows:-

- (d) Documents are requested regarding the Benmore Business Centre and/or the Business Centre as all documents referred to in the Affidavit of Discovery related to room 16 of the premises leased from the Benmore Business Centre (which later became the Business Centre) which was my office, and no reference is made to room 15 which was the Third Party's office. Moreover, I am aware that letters requesting late payment of rental in respect of these premises are missing.
- (e) There are no references made to any of the documents requested in paragraph (e) of the Summons for specific discovery in the Affidavit of Discovery.
- (i) The Third Party, in paragraph 22 of his Affidavit dated 5th September 1989 refers to work done for the Bank by the Plaintiff's staff from November 1988 to September 1989. Accordingly I have requested copies of such contracts and payment details as are in existence, as none are referred to in the Affidavit of Discovery.

(j) This request is designed to cover any other omitted documents which have not been seen specifically requested.

At the hearing of the summons it became clear that in paragraph (e) of the summons the words, "of business of the plaintiff," should read "of the partnership". Advocate Sinel indicated that "all these bank accounts, credit details and all bank statements were required as they were relevant to partnership profits."

Advocate Wheeler replied to the affidavit and to Advocate Sinel stating that the Third Party and the Plaintiff had been conducting a separate business which was separate to the partnership with the Defendant and that the requests in (d) and (e) were too wide inasmuch that they related not just to partnership affairs but to all the affairs of Mr. Hanby and his company during the relevant period and that they were thus a fishing expedition. In relation to paragraph (i) Advocate Wheeler said that there was no direct relationship between the documents sought and the claim of expenditure of £5,000 for ongoing project programming costs A B N September 1988 - February 1989 contained in Advocate Wheeler's letter of the 3rd April 1989 to Advocate N.F. Journeaux, a former adviser of the Defendant. Advocate Wheeler said that the terms of (j) of the summons were too wide and that this was a "catch all" paragraph. Advocate Sinel alleged that even if some of the documents requested under (d) and (e) did not relate to the partnership his client was still entitled to specific discovery of these as they were relevant to the financial position of the Third Party and of the Plaintiff and that this was an issue by virtue of the representation pleaded in paragraph 23 (2) of the Defendant's answer and counterclaim, namely that the Third Party had represented that he was a person of solvency and financial stability and wealth. It was also alleged by Advocate Sinel that the claim in paragraph 19(A)(vi) was a claim that

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the Third Party and the Defendant would pool their income and earnings including the Third Party's income from his business and that therefore all the accounts of the Third Party and of the Plaintiff during the period were relevant.

In my view this sub-sub-paragraph of the pleading must be understood in the context of paragraphs 4, 5, 6, 7, 8 and 9 of the amended answer and counterclaim. In the light of these it is impossible to construe paragraph 19(A)(vi) as meaning that the Third Party and the Plaintiff were agreeing to pool all their income with the Defendant including income from the Third Party's own separate business.

I turn now to the legal principles in relation to this application.

There is no specific provision in the Royal Court Rules for an application for specific discovery with the exception of Rule 6/16(5) which is not applicable in this case. Accordingly, any order for specific discovery must be under Rules 6/16(1) and 6/16(2). In England there is a specific order 24 Rule 7 which deals with the matter. In my view the provisions of Rule 6/16(1) and (2) are sufficiently wide to cover the need for specific discovery.

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A general principle of discovery is set out in sub-paragraph 24/2/5 of the white book as follows:-

"Any document which it is reasonable to suppose, "contains information which may enable the party (applying for the discovery) either to advance his own case or to damage that of his adversary, if it is a

document which may fairly lead him to a train of enquiry which may have either of these two consequences" must be disclosed".

However, this is a case in which general discovery has been ordered and an affidavit filed. The position on this³ in England is set out in paragraph 24/7/1 of the white book. This states that in the past statements in a party's affidavit of documents were conclusive subject to certain qualifications. I quote now from the third sub-paragraph of that paragraph which applied to specific discovery.

"The second (and more important) qualification is that under the present rule an application may be made for an affidavit as to specific documents or classes of documents. This must be supported by an affidavit stating that in the belief of the deponent the other party has or has had certain specific documents which relate to a matter in question. But this is not sufficient unless a prima facie case is made out for

- (a) possession, custody or power, and
- (b) relevance of the specified documents (Astra National Productions Limited v Neo Art Production Limited [1928] W.N.218)

This case may be based merely on the probability arising from the surrounding circumstances or in part on specific facts deposed to. The application may be answered by an affidavit of the respondent read at the hearing of the summons, but the usual practice is for the respondent to argue the matter without an affidavit (if he opposes the application) and for the Master, if he thinks a prima facie case is being made out, to order an affidavit of specific documents. The making of the order does not prevent the respondent from deposing, in the affidavit that he makes, that he in fact has had no such

documents, or that they are irrelevant, or from covering up irrelevant parts and on subsequent application for production it may still be decided that the documents are irrelevant (Thornett v Barclays Bank (France) Limited [1939] 1 K.B.675). An application for discovery of a specific class of documents was refused in Kahn (David) Inc. v Conway Stewart & Co. Limited [1972] F.S.R. 174 upon the grounds that the probative value of the documents, if they existed, would be so slight as not to justify the inconvenience of giving discovery; and upon grounds that such discovery was not in the circumstances necessary for determining the issue to which it was said to relate."

Although Order 24 Rule 7 is not part of our Rules the underlying principles are sound and practical and I applied them in this case. Paragraph 24/2/5 of the white book also indicates that the words "relating to any matter in question" in Rule 6/16(1) of the Royal Court Rules and which are also contained in Order 24 Rule 2 of the Supreme Court Rules refer, not to the subject matter of the action but to the questions in the action.

As the Deputy Judicial Greffier stated in the second paragraph of page 2 of his Judgment in an application for specific discovery in Jones -v- Atkinson on 19th May, 1989, "A document may be relevant by reason of its character or by reason of its contents. Relevance must be tested by the pleadings and discovery will not be ordered in respect of an irrelevant allegation in the pleadings nor in the respect of an allegation not made in the pleadings."

In an application for specific discovery the question also arises naturally as to how specific is "specific." Clearly as stated above it

refers not only to specific documents but also to specific classes of documents.

I turn now to the disputed paragraphs in order to apply the legal principles.

Paragraph (d) of this summons is worded in terms which include not only transactions affecting the partnership but also transactions which were outside the terms of the partnership. Once I came to the conclusion that the Defendant's pleadings could not refer to matters of the Third Party and the Plaintiff's business outside the ambit of the partnership, I must come to the conclusion that clause (d) is too widely drawn. Although, an order could have been made which confined specific discovery to matters relevant to the partnership I declined so to do as the main thrust of paragraph 3 (d) of the supporting affidavit was towards the class of documents in relation to which I was refusing to order specific discovery. Furthermore, as specific discovery was being ordered of all the invoices and other documents relating to the matters referred to in Advocate Wheeler's letter of the 3rd April, 1989 and as rent and services of Room 16 were included therein it appeared to me that all matters relating to the office used by the partnership were covered elsewhere in my Order.

(e) This was couched in extremely wide terms even after the amendment sought above. It appeared to me that this was a classic example of a fishing expedition. Furthermore the principles set out in Kahn KHN (David) Inc. v Conway Stewart & Co. Limited apply here. The only relevance of these documents would be in relation to the general financial position of the Third Party and the Plaintiff. However, details of these documents are

not necessary in order to prove or disprove this. Indeed the Third Party and the Plaintiff might have substantial other assets. I therefore found :-

- (a) That (e) was worded in much too wide terms and was therefore not sufficiently specific to form the 'basis' of an application for specific discovery;
- (b) that the probative value of the documents, if they existed, would be so slight as not to justify the inconvenience of seeking discovery, and particularly as the parties were at the date of making the order ten days away from the trial date;
- (c) that such discovery was not necessary for determining the issue to which it was said to relate, namely the Third Party's wealth or lack thereof.

(i) In his supporting affidavit, the Defendant mentioned certain works referred to in paragraph 22 of the Third Party's affidavit dated the 5th September 1989. These works are also mentioned in Advocate Wheeler's letter to Advocate Journeaux of 3rd April 1989 and their value is quantified at £5,000. There is a difficulty in that neither the Third Party nor the Plaintiff have pleaded the expenditure of this money. I had already granted (h) of the Summons which deals inter alia with discovery of documents relating to this matter and this request was far too widely expressed. I therefore refused this order on the following grounds:-

- (a) that it was not directly relevant to any matter in issue in the pleadings;
- (b) that the request was in far too general terms for a specific order for discovery;

(c) that the area covered by the request would go into other areas of the Third Party's business which were not directly relevant; and
(d) that discovery in relation to the aspects mentioned in the affidavit was dealt with elsewhere in my Order.

(j) This was in such general terms as to be incapable of being embodied in an order for specific discovery.

Finally, dealing with the matter of costs. As the application by the Defendant had only succeeded in part it did not seem appropriate that he obtain an order for taxed costs. However, as the fact that an order was required was resultant upon the failure of the Third Party and the Plaintiff to make full discovery at the first instance, it appeared to me to be right that the Third Party and the Plaintiff be ordered to pay their own costs and one half of the Defendant's costs in relation to the summons for specific discovery.

B. L. M. J. J. J.