

THE HIGH COURT

[2022] IEHC 346

[Record No. 2017/7008 P]

BETWEEN

FIONA HOLMES

PLAINTIFF

AND

C.J. FALLON UNLIMITED COMPANY

DEFENDANT

DECISION of Ms. Justice Bolger delivered on the 20th day of May, 2022

1. The plaintiff is a lay litigant who seeks discovery of ten categories of documentation. Her motion for discovery and the costs application in the defendant's motion for discovery were heard by the court over a full day on 11 February 2022. Subsequent to the hearing, the plaintiff corresponded with the court about what she believed was an inaccurate allegation that she was sexually harassed by the education consultant hired by the defendant, and she wished to set the record straight by saying this had not occurred. She also furnished a notice for particulars raised by the defendant and her reply thereto which she described as an unfortunate omission given the debate around how her complaints related to bullying in the statement of claim.

2. There was no allegation made during the hearing that the plaintiff had been sexually harassed by the education consultant. The plaintiff can rest assured that I did not understand her to make such a case.

The plaintiff's claim

3. The plaintiff is an author and the defendant is her former publisher, with whom she entered into a publishing contract on 4 December 2009. The plaintiff claims to have had various difficulties in how she was treated by the defendant in relation to a number of issues including royalties, acknowledgment of her name on book covers, subsidiary rights, promotion of her work and alleged stifling of opportunities. As a result the plaintiff claims she sustained substantial loss of royalties and loss of earning potential. The defendant has filed a full defence in which it denies the plaintiff's claims.

Pre-motion correspondence

4. The categories of discovery sought by the plaintiff are set out in her letter seeking voluntary discovery dated 18 November 2020. The defendant responded by letter dated 1 December 2020 setting out the following: -

- (1) A summary of the law on discovery, which the defendant's solicitor provided because of the plaintiff's lack of legal representation.
- (2) A criticism of the discovery sought by the plaintiff as excessively broad, lacking in temporal limits, an inappropriate fishing expedition, relating to allegations not contained in the plaintiff's pleadings and to matters relating to persons not party to these proceedings.

- (3) In relation to all but one of the categories of discovery sought, the defendant confirmed it would make discovery of some identified documents which it submitted was fair, reasonable and in accordance with what the plaintiff was entitled to secure by way of discovery.

5. The plaintiff wrote back to the defendant by letter dated 22 January 2021, in which she stated that the defendant's proposals were not satisfactory to her and that she intended to issue a notice of motion for discovery, which she did on 2 March 2021. The plaintiff did not engage with the defendant's proposals or their reasons for not providing everything that she had requested.

The plaintiff's submissions

6. The plaintiff's submissions addressed why she sought and was entitled to each category of discovery. I will address those, category by category, further below. The plaintiff made some limited further submissions to the effect that the defendant had deliberately delayed and ostracised her proceedings, and were willing to abuse the court process to do so. The plaintiff did not provide any basis for her assertions apart from the defendant's refusal to make discovery of all of the documentation she had sought.

The defendant's submissions

7. The defendant's reply to the plaintiff's letter seeking voluntary discovery set out an analysis of the law on discovery. The defendants expanded on this in their written submissions on this motion in which they cited authorities including O.31, r.12, *Tobin v. Minister for Defence* [2019] IESC 57; *Peruvian Guano (1882)* 11 QBD 55; *Hannon v. Commissioner of Public Works* [2001] IEHC 59; *Ryanair v. Aer Rianta CLC* [2003] IESC 62

[2003] 4 IR 264; *Dome Telecom Limited v. Eircom Limited* [2007] IESC 59 [2008] 2 IR 726 and *Independent Newspapers (Ireland) Limited v. Murphy* [2006] IEHC 276 [2006] 3 IR 566.

8. The defendant contended that the plaintiff failed to satisfy the relevance and necessity requirements of the law, improperly attempted to use discovery as a fishing expedition, and sought to rely on unsubstantiated assertions that were not properly pleaded. The defendant further contended that the plaintiff's request offended the principle of proportionality and would impose an excessive burden on the defendant, in particular in relation to category I involving confidential information which, according to the defendant, the plaintiff had not established would be relevant to the issues that will arise at the trial of the case she has pleaded.

Category A

9. The plaintiff sought documents and records relating to contract negotiations between the plaintiff and the defendant.

10. The defendant offered a draft and a final version of the publishing contract agreement the parties had entered on or about 4 December 2009 and correspondence relating to both.

11. During the hearing of the hearing of the motion and on the basis that the defendant's offer encompassed the correspondence relating to the contract, the plaintiff accepted the defendant's offer. I note that the defendant's willingness to make discovery of the correspondence relating to the drafts and final version of the contract was set out in their letter of 1 December 2020 but was not accepted by the plaintiff prior to the hearing of the motion.

Category B

12. The plaintiff sought documents and records relating to all correspondence between the defendant and the education consultant hired by the defendant on the Wonderland Literacy Programme; a record of all written feedback on the work provided by the education consultant; a record of all invoices and clock hours submitted by the education consultant for work reviewing the Wonderland Programme; payments made to the education consultant; records of complaints made by the plaintiff against the education consultant; all documents and correspondence with the defendant's owners, board members, sales representatives or others that refer to the plaintiff's reputation and/or integrity and all documents and records relating to complaints of bullying, harassment and inappropriate conduct within the defendant.

13. The plaintiff identified the following as the reasons for seeking this category of documentation:

“Discovery of the above-mentioned category of documents is required to show how the request for a re-assignment of royalties to the education consultant negatively affected the relationship between the plaintiff and Brian Gilsenan, CEO of the defendant. It is both relevant and necessary in order to provide the evidential evidence that the plaintiff as a result of refusing to reassign some of her royalties to the education consultant, was subjected to bullying behaviour and slurs on her character and furthermore that there was a culture of bullying, harassment and inappropriate misogynistic behaviour and language within the company.

These documents and records are furthermore necessary to establish the burden of costs that the education consultant was placing on the project as the plaintiff's

unwillingness to allow her royalties to cover the cost was the source of the deteriorating relationship and led to the subsequent harassment experienced by the plaintiff.

These documents and records are necessary to establish the fees paid to the education consultant and whether they were offset against the income that was due to the plaintiff if monies were paid in full”.

14. The defendant indicated its willingness to make discovery of documents and records relating to: -

- (a) the retaining by the defendant of the education consultant in respect of the Wonderland Literacy Programme;
- (b) report and suchlike on the work provided by the education consultant;
- (c) correspondence between the plaintiff and the defendant concerning the education consultant; and
- (d) records of payments made to the education consultant.

15. The plaintiff alleged bullying, harassment and inappropriate misogynistic behaviour within the company in her letter seeking voluntary discovery, but no such case is made and no reliefs for bullying or harassment is sought in the proceedings.

16. The plaintiff sought to rely on a single reference in her 30-page statement of claim to the defendant’s CEO’s insulting tone as demonstrating the claim she is now making that she was subjected to bullying, harassment and misogynistic behaviour. I do not consider that her brief reference to the CEO’s alleged insulting tone constitutes a plea and/or a sufficient plea, of bullying, harassment or misogynistic behaviour.

17. Subsequent to the hearing of the motion the plaintiff submitted, by email, that the replies to the particulars she furnished to the defendant outlined her complaint of bullying, in particular reply 3(c) on page 6 of the 60 page replies to particulars where she states, *inter alia*:

“However, after the plaintiff’s refusal to reassign a percentage of her royalties to CJ Fallon’s Education consultant, Brian Gilsenan adopted a confrontational approach to most matters. There was a sustained and concerted effort to bully, undermine and exclude the plaintiff at every opportunity as a result of a personal affront when his request to reassign Royalties by the plaintiff was rejected”.

18. This brief reference in the replies to an effort to “bully, undermine and exclude the plaintiff” does not bring claims of bullying, harassment and misogynistic behaviour within the plaintiff’s case.

19. The plaintiff submitted to this court that her treatment by the defendant after and as a result of her refusal to reassign some of her royalties to the education consultant, was bullying and what she called “slurs on her reputation”. The plaintiff claims she had presented “very substantial” evidence of bullying and sexual harassment and that she required the documentation sought to support the evidence she already had.

20. The plaintiff is not entitled to documentary evidence that she says will assist her in making a case that she has been subjected to bullying, harassment and misogynistic behaviour when no such claim is made and/or sufficiently made, in her pleadings, and no relief is sought as a consequence of that alleged behaviour.

21. The plaintiff has made a case in her pleadings that she suffered damage as a result of her refusal to comply with the defendant’s request to reassign some of her royalties to the

defendant's education consultant. The defendant's offer to make discovery of documentation in relation to the education consultant's retention by the defendant, reports on the education consultant's work, correspondence between the plaintiff and the defendant in relation to the education consultant, and records of payments made to the education consultant are sufficient to meet the plaintiff's entitlement to discovery in relation to the case she has pleaded.

Category C

22. The plaintiff seeks documents and records relating to the requests by the plaintiff for her name to appear on the front cover of her materials; correspondence between the CEO and any other persons in relation to this matter and a list of the previously published titles of first-time defendant authors whose names appeared on the front cover of their publications.

23. The plaintiff cites as reasons for seeking this documentation, *inter alia*, the following.

“The above-mentioned documentation is necessary to prove that the relationship between the plaintiff and the CEO of the defendant was negatively affected after she rejected his request for a reassignment of some of her royalties to the education consultant. As a result of this refusal, she was treated differently to other first time, unknown CJ Fallon authors who had their names placed on the front cover of the materials that they had authored”.

24. The defendant indicated its willingness to make discovery of documents and records relating to the request by the plaintiff for her name to appear on the front cover of her materials, and a list of previously published titles of first defendant authors whose names appeared on the front cover of their publications from 2009 to July 2018.

25. The plaintiff makes a similar case here as she makes in relation to Category B, i.e. that her treatment as credited author on the front covers of her work was different to how

other authors were treated, and that this constituted bullying of her by the defendant's CEO. No such claim of bullying is made by her in her statement of claim, although she does claim that the defendant's CEO's reason for refusing to acknowledge her name as author on the front cover of her books was not a valid reason.

26. Insofar as the plaintiff is entitled to any discovery of what she has sought within this category, what the defendant has offered is sufficient.

Category D

27. The plaintiff seeks what seems to be a vast amount of documentation without temporal limits relating to the sale and distribution free of charge of all Wonderland materials, print runs, opening stock, closing stock; all correspondence between the defendant and printing companies relating to the Wonderland Programme; correspondence relating to the request of the plaintiff for payment for the work done on the Oral Language Programmes; the level of sales by title for each title within the Busy at Maths, Small World, Rainbow, Sounds like Phonics, Wonderland Stages 3 & 4, and My Read at Home series and a comparable level of materials distributed for free for the same titles for each calendar year; correspondence between the defendant and their sales representatives; a log of all Wonderland materials taken from the Spectrum warehouse from 2011 to present; print runs for all Oral Language Development manuals and Oral Language Development samples, calendar year sales for every title in the Wonderland Literacy Programme; figures to show the market share of the Wonderland Literacy Programme for each year, beginning in 2011.

28. The plaintiff says that she requires this documentation to enable her to compare the level of free materials distributed for other programmes with those distributed free of charge in the Wonderland Programme. She says it is necessary to get a log of Wonderland materials

taken from the Spectrum warehouse as the HW Fisher Forensic (her expert) report also details stock which has been unaccounted for, which the defendant has been unable to explain.

29. The defendant offered discovery of documents and records relating to the distribution free of charge of

(a) all Wonderland Programme materials and

(b) other titles published by the defendant,

in the period December 2009 to July 2018.

30. The plaintiff submitted to this court that the documentation sought would enable her to determine the percentage of total sales given away by the defendant and whether her programmes were being used by the defendant as a “loss leader”, which the plaintiff said was “possibly” happening. The plaintiff does not make any such case in her pleadings. For the plaintiff to justify her request for the documentation she seeks as something that was possibly happening indicates a fishing expedition of the type not permitted within the discovery process.

31. Insofar as the plaintiff makes a case in her statement of claim that she suffered a loss of royalty payments as a result of the defendant giving away excessive stock free of charge, the plaintiff’s entitlement to the discovery of documentation is adequately met by discovery of the documentation the defendant has offered to provide.

Categories E and F

32. Both categories relate to late payment of royalties and errors in the defendant’s royalty statements. Category F in particular seeks very detailed documentation on payment of royalties arising from the defendant’s dealings with third parties, details of downloads of

Wonderland material and related works from online portal, aggregated sales reports for all products that the defendant sells including ISBN and title, financial year and number of units sold, and reconciliation of the total revenue to the annual statements/general ledgers which should include copies of the defendant's finalised annual accounts. The plaintiff also seeks details of group structure, records of stock movements of licensed products to include all stock movements to third parties, year by year reconciliation and analysis of certain data listed from the commencement of royalty statements under the contract to 30 June 2010 including opening stock, materials created, materials distributed for sales on which a royalty fee was paid, materials distributed as samples, and closing stock.

33. The plaintiff's reasons for seeking this documentation is that it would demonstrate the value of the unrecorded royalties and the value of the excessive amount of materials distributed with remuneration, and would allow her to produce a comprehensive picture of the stock movements and levels from the entire review period of 2011 to 2020.

34. The documentation sought by the plaintiff seems to overlap with the reliefs she seeks in her statement of claim. At paragraph (b) of her prayer for relief she seeks "An order for a full unrestricted onsite Audit of the Accounting and Payment of Royalties by the Defendant Company to the Plaintiff from 4th December, 2009". At paragraph (k) she seeks "Judgment for the specific sum of €101,806.00 being under declared and underpaid royalties per Paragraph 11.6 of Addendum to Report of partial Audit of CJ Fallon Limited by HW Fisher dated 6th March, 2017 together with such further sums as are required arising from the full onsite Audit required under (b) above".

35. The defendant offered to make discovery of documents and records relating to royalty payments to the plaintiff pursuant to the publishing contract agreement from 4 December

2009 to July 2018. The defendant contended that discovery relating to the distribution of titles published by the defendant was addressed by the proposal relating to Category D.

36. The plaintiff in her arguments to the court referred to the audit prepared by her expert and to certain internal audits that she claimed had been conducted by the defendant. No such issues are cited in her reasons for seeking these categories of discovery set out in her letter seeking voluntary discovery. The plaintiff says she wants to conduct a “full audit” and needs to see any other irregularities that occurred in relation to royalty payments during the relevant period.

37. This request is an inappropriate fishing expedition. The plaintiff does not require the extensive documentation sought in order to make the case she makes in her statement of claim about late payment of royalties and errors in her royalty statements. What the defendant has offered to provide by way of discovery is sufficient.

Category G

38. The plaintiff seeks documents and records relating to the international sales of the Wonderland Programme including but not limited to correspondence between all potential clients including ITV Signed Stories and Bonnier; documents, invoices and correspondence with Overleaf, India; correspondence and minutes of meetings between the defendant and potential clients; evidence of the marketing, communication plans and steps taken to promote the shortlisting of the Wonderland Programme for the London Book Fair’s International Excellence Awards; all meetings notes and correspondence relating to the Wonderland Literacy Programme from international book fairs; internal communication on the Wonderland Programme between the CEO of the defendant and the CJ Fallon editorial and marketing teams; invoices for titles sent to potential clients; lists of Wonderland titles sent to

potential clients; all correspondence between Jim Schmelzer and any other international agent and CJ Fallon staff and CEO of the defendant; details of all international sales including territories; all correspondence with the owners of CJ Fallon and in particular with Alan Dargan, relating to issues raised by the plaintiff with him about the Wonderland Literacy Programme; a log of all book fair meetings held for Busy at Maths or other CJ Fallon products; details of international sales of other CJ Fallon products; documents outlining the company strategy and business plans supporting the promotion of products internationally; all correspondence relation to the leads that were presented by the plaintiff to the defendant; all correspondence relating to leads sourced by the defendant, independent of the plaintiff; copies of the business case that assessed the leads presented by the plaintiff' documentation that supports the decision criteria to assess the viability of international opportunities.

39. The plaintiff cites the following as her reasons for seeking this documentation.

“Brian Gilsean, CEO of the defendant actively sought the International Rights for the Wonderland Literary Programme. The above-mentioned documents and records are necessary to support the plaintiff's claim that the defendant did not actively pursue credible international business opportunities presented by the plaintiff and stifled many of them. in the context of an insistence by the defendant on acquiring the international rights to the programme, it is necessary to ascertain if CJ Fallon had the wherewithal to fulfil its contractual commitment to selling the programme internationally and to support the view that CJ Fallon sought the rights to the international market solely to block any other publisher from acquiring these rights”.

40. The defendant offered to make discovery of documents and records relating to.

(a) The promotion of international sales of the Wonderland Programme;

- (b) documents relating to the sales, promotion and marketing of the said programme at Book Fairs (to include expenses of the plaintiff paid by the defendant); and
- (c) details of sales,
from 4 December 2009 to July 2018.

41. The extent of documentation that the plaintiff seeks includes for example, “details of international sales of other CJ Fallon products” which goes beyond the international sales of the Wonderland materials in which the plaintiff could have had any interest.

42. At page 6 of the statement of claim, the plaintiff claims that the defendant did not take proactive steps such as taking stands at book fairs, and set up meetings which provided insufficient details, refused to send samples and did not respond to emails. She does not plead that the defendant purposely blocked international sales of her work or that the defendant sought rights to international markets solely to block any other publisher from acquiring these rights.

43. In any event the plaintiff informed the court that she has evidence of where leads were stifled. This confirms her ability to make her case on this point without the discovery she now seeks. The plaintiff referred to wanting further evidence. This resembles an attempt to engage in a fishing expedition.

44. The documentation offered by the defendant is sufficient to enable the plaintiff to make the case that she has pleaded in relation to the defendant’s failure to ensure international sales of her work.

Category H

45. The plaintiff seeks documents and records relating to the Virgin Media Voom competition; all correspondence with the organisers of Voom; all documents and correspondence between Oxford designers and illustrators or any other person(s) in relation to the illustration copyright of Wandsville; Deed of confirmation of Intellectual Property Rights (to include all eight characters of the Wandsville stories and the settings, the modes of transport, the character properties and town buildings and the additional characters they interact with within the stories) vested solely and absolutely in CJ Fallon; documents and records relating to market research on the title Homework Book for Senior Infants; consultant reports commissioner on the title Homework Book for Senior Infants, to include consultants' names and area of expertise and all correspondence relating to parent books written by the plaintiff.

46. The plaintiff's sets out the following reasons for seeking this category:

“In February 2016, the plaintiff entered the Voom Virgin Media Entrepreneur Awards, an entrepreneurial competition run in the UK by Richard Branson, with a pitch for an educational animation series based on a homework book which had been rejected by CJ Fallon. The animation series proposed was based on new work and was not a title included in Schedule 1 of the work. Based on Clause 12 of the contract, the plaintiff is entitled to publish work rejected by CJ Fallon elsewhere. In an email to the plaintiff on 20th June, 2014 the CEO of the defendant Brian Gilson had indicated that he had no problem if the plaintiff wished to pursue this product with another publisher. The CEO for the defendant stated that he remained very concerned about the commercial viability of the book and could not proceed with it under the views expressed from a fairly diverse panel of reviewers. The CEO of the defendant stated that because CJ

Fallon had no direct route to parents and because its entire sales channel is through schools, this feedback must be taken seriously.

The above-mentioned documents are relevant to matters in these proceedings to show that the plaintiff acted lawfully when she entered the Voom Virgin Media Entrepreneur Awards with a pitch for an educational animation series based on work which had been rejected by CJ Fallon.

As part of the plaintiff's Voom pitch, the plaintiff uploaded to the Voom website a video of the Wandsville characters that she had commissioned. The video was made in Argentina where the characters were redrawn based on the original look of the characters. For the avoidance of any doubt in the matter the plaintiff is the copyright owner of both the text and illustrations of the Wandsville characters.

David Lock, the original illustrator assigned the illustration copyright to the plaintiff on 6th November, 2014. The video was created at the plaintiff's own expense and featured the characters and Wandsville land, of which the plaintiff is the legal copyright owner.

The plaintiff believes that discovery of the said documents and records will show that the defendant CJ Fallon took unwarranted and disproportionate action resulting in serious reputational and financial damage to the plaintiff and the further consequential loss of potential financial reward from the involvement in the Voom competition in the UK".

47. The defendant offered to make discovery of documents and records relating to.
- (a) The Virgin Media Voom competition and documents;
 - (b) records in relation to the illustration copyright of Wandsville.

48. At page 16 of her statement of claim the plaintiff has pleaded that the defendant objected to the plaintiff's use of the video, and issued a take-down notice to the online platform YouTube. She referred to correspondence the defendant wrote to the Voom competition organisers objecting to the plaintiff's participation, referring to what was claimed was the plaintiff's illegal use of the artwork paid by the defendant in her Voom pitch, and alleging that the plaintiff was displaying their artwork on her website and attempting to pass it off as her own.

49. During the hearing of the motion the defendant confirmed that the documentation it was willing to provide included the Deed of Confirmation of Intellectual Property in the category it offered at H(b) and the category offered at H(a) included documentation relating to the Homework Book for Senior Infants. The plaintiff says that she entered the Voom competition based on that Homework Book. In those circumstances it seems to me that documentation in relation to the Homework Book must be included in what the defendant previously offered in relation to H(a). I am satisfied that the defendant's offer covered, and should have been understood by the plaintiff to cover, that documentation, and is sufficient to ensure that the plaintiff can obtain what she could have been entitled to as necessary and relevant to the pleas made by her in her statement of claim.

Category I

50. The plaintiff seeks all documents and records pertaining to any and all settlements by the defendant of workplace harassment and bullying of female employees and contractors to the defendant company, including but not limited to workplace harassment, sexual harassment, bullying, and misogynistic behaviour, and any such forms of workplace harassment by the defendant or any third party contractors/consultants to the defendant, leading to complaints to the defendant company and subsequently to threats of or actual

litigation resulting in settlements and compensation being paid out arising from such workplace harassment.

51. The plaintiff set out her reasons as follows.

“Discovery of the within mentioned documents and records are both relevant and necessary in order to prove evidentially that following the initial breakdown in the working relationship between the plaintiff and the defendant, part of the strategy of the defendant company CEO Brian Gilson was to engage in and more critically to encourage his other male colleagues within the defendant company to engage in harassment, bullying, and misogynistic behaviours.

Such continuing harassment following the initial breakdown in the working relationship between the plaintiff and the defendant in conjunction with the defendant’s mishandling of her career as an author within the defendant company and their subsequent underpayment and under declaration of royalties as outlined at categories A to H above was what ultimately led to the institution of the within proceedings against the defendant company”.

52. For the same reasons as I have set out above in relation to Category B, I am not satisfied that the plaintiff has made any or any sufficient claim of bullying, sexual harassment and/or misogynistic behaviour in her pleadings or an allegation (on which the plaintiff relies in her reasons for seeking this category of discovery) that the defendant company’s CEO’s strategy was to engage in and to encourage his other male colleagues within the defendant company to engage in harassment, bullying and misogynistic behaviours. Even if there was such a plea contained in the pleadings, it would be a departure from normal practice to require discovery of settlements arising from claims of workplace bullying and harassment including amounts of compensation paid (although the plaintiff did say in her submissions

that she was not looking for the amounts, contrary to what she had clearly sought in her letter seeking voluntary discovery), as this would inevitably engage issues of confidentiality and potential data protection obligations owed by the defendant to third parties.

53. The plaintiff says that she is aware of complaints having been made by other employees. If that is so then she can seek to establish evidence of those complaints by suitable means. She does not need, and in any event is not entitled to, discovery of settlement agreements that she cannot say were actually entered into by the defendant.

54. This category is an inappropriate category of discovery documentation for the plaintiff to seek and I refuse it.

Category J

55. The plaintiff has set out what she seeks under this category:

“Per letter Flynn O’Driscoll Solicitors dated 17th September, 2020 acting on behalf of the defendant confirming consent to the voluntary release of any and all documents and records furnished to HW Fisher Forensic Accountants acting on behalf of the plaintiff in the interim mediation from 2019 into 2020 and regarding all such release of information arising from the site audit carried out by HW Fisher in the period of three days from 1st October, 2019 to 3rd October, 2019 and all further information released on follow up enquiries, the plaintiff on the basis of such letter of consent from the defendant’s solicitors dated 017th September, 2020 requests the voluntary release of all such records and information to her in the defendant’s affidavit of discovery”.

56. The plaintiff cites the following as her reasons for seeking this documentation.

“Discovery of the within mentioned documents and records are both relevant and necessary to the prosecution of the plaintiff’s case and area already agreed as being fully available by voluntary discovery per letter form Flynn O’Driscoll Solicitors dated 17th September, 2020.

In respect of each category set forth above, having regard to the dispute between the parties in respect of the issues set forth above, the said documents and records are relevant to matters in these proceedings. Furthermore, it is necessary that the plaintiff obtain discovery of the said documents for the fair disposal of the case. The plaintiff has no means of obtaining access to documents in the possession, power, procurement of the defendant, its servants and/or agents, in relation to these issues other than by way of discovery. The plaintiff believes that the said documents and records will greatly assist the prosecution of her case in these proceedings and will undermine the defence being made by the defendant. Furthermore, discovery of the said documents is likely to result in a saving as to costs in that it will ensure that all such documents and records are available to the parties in advance of the trial hearing and may enable oral evidence in the case hearing to be reduced by service of a notice to admit facts and/or a notice to admit documents or interrogatories and may avoid unnecessary waste of court time brought about by production of documents and records at trial hearing for the first time. The plaintiff further believes that discovery of the said documents and records would better facilitate the efficient determination of these proceedings and therefore such discovery is likely to result in a saving as to costs”.

60. The defendant’s letter responding to the plaintiff’s request stated that the documentation came within what the defendant had agreed to provide in relation to categories

D, E and F. At the hearing of the motion counsel for the defendant submitted that they had made proposals to the plaintiff after she had sought voluntary discovery but that the plaintiff did not engage with them. In any event the plaintiff confirmed to the court at the hearing of the motion that she was not proceeding with this category as the defendant had confirmed to her on 17 December 2020 that any documentation furnished to H.W. Fisher would be provided to her. There is therefore no need for the court to make any order in relation to this category.

Orders for Discovery

56. I direct orders for discovery against the defendant in terms of the documentation which they agreed to furnish in their solicitor's letter of 1 December 2020. Discovery is to be made within a period of eight weeks of this judgement and the name of the deponent should be furnished by the defendant.

Indicative view on costs

57. My indicative view on costs is that as I have directed the defendant to make discovery in line with the proposals they made to the plaintiff prior to the issuing of this application then, in accordance with s.169 of the Legal Services Regulation Act 2015, the defendant is entitled to the costs of the motion to be adjudicated upon in default of agreement.

58. In relation to the defendant's motion for discovery against the plaintiff, I understand that the plaintiff has now sworn an affidavit of discovery that is acceptable to the defendant. This took some time, including after the defendant had issued their motion, and also required a number of letters from the defendant's solicitors setting out what the plaintiff needed to do

in order to comply with the rules for example in relation to a schedule of documents over which the plaintiff was seeking to assert privilege.

59. There should be no order as to costs in relation to the defendant's motion for discovery against the plaintiff.

60. If the parties wish to make submissions to me as to why a different order should be made *vis-à-vis* costs and/or final orders to be made, they may do so on 17 June at 10 a.m. when the matter will be listed before me for mention.