

CITATION: *Sheeraz v. Seathi et al.*, 2024 ONSC 1687
COURT FILE NO.: CV-20-00647185-00CL
DATE: 20240318

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

RE: Kamran Sheeraz, Plaintiff / Moving Party

AND:

Shoaib Seathi and Lending Matrix Inc., Defendants

BEFORE: Peter J. Osborne J.

COUNSEL: *Max Skrow*, for the Plaintiff / Moving Party

Annie Tayyab, for the Defendant Shoaib Seathi

Karen Bernofsky, for the Non-party Respondents on the motion, Hina Rizvi and Rizvi Legal Professional Corp.

HEARD: July 17, 2023

ENDORSEMENT

[1] The Plaintiff, Kamran Sheeraz (the “Plaintiff” or “Sheeraz”) moves pursuant to r. 30.10 for production of documents in the possession, power and/or control of the non-parties Hina Rizvi (“Rizvi”) and Hina Rizvi Professional Corporation (collectively, “the Rizvi Parties” or the “Respondents”).

[2] The Defendants take no position on the motion and do not oppose the relief sought. The Respondents vigorously oppose the motion.

[3] The action arises out of the failed partnership between Sheeraz and Shoaib Seathi (“Seathi”) who together owned and operated their mortgage brokerage business for many years. They shared the profits 50-50. Their relationship broke down in 2019, and Seathi locked out Sheeraz from the office and denied him access to the business of the brokerage or any of its records.

[4] Sheeraz alleges in this action that Seathi then diverted funds to himself which should have flowed to the brokerage and been shared with Sheeraz. He sought production and discovery of the relevant accounting documents, but Seathi maintains that his computer was corrupted with the result that he is unable to produce the documents.

[5] Accordingly, Sheeraz seeks production of the documents from Rizvi and her professional corporation.

[6] Rizvi is not a party to the action, but she is centrally involved in the events underlying the issues and allegations. She is a real estate lawyer who shared office space with the brokerage (and thereafter, with the Defendant Seathi), and derived many of her clients through referrals from the

brokerage. She refuses to produce the documents, taking the position that they are privileged, that every single client has to be personally served with notice of this motion before it can proceed, and that in any event the cost and inconvenience to her outweigh the benefit to Sheeraz.

[7] Sheeraz submits that the documents should be redacted to remove any client identifiers and undertakes to compensate Rizvi for her time (up to a maximum) with the result that her concerns are addressed.

[8] Sheeraz submits that Seathi ought not to be rewarded by the apparent destruction of the documents and by the refusal to cooperate from Rizvi, with whom Seathi worked closely and who clearly has relevant documents.

[9] For the reasons that follow, I am satisfied that (to the extent set out below), the motion should be granted and the documents produced on a redacted basis.

The Rule and the Factors to be Applied

[10] Rule 30.10 of the *Rules of Civil Procedure*, R.R.O. 194, as amended, sets out the test for production from non-parties:

Production from Non-Parties with Leave Order for Inspection

30.10(1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

- (a) the document is relevant to a material issue in the action;
and
- (b) it would be unfair to require the moving party to proceed to trial without having discovery of the document. R.R.O. 1990, Reg. 194, r. 30.10 (1).

[11] Accordingly, the moving party must satisfy three elements:

- a. the documents sought are not privileged;
- b. the documents are relevant to a material issue in the action; and
- c. it would be unfair to require the moving party to proceed to trial without having discovery of the document.

[12] As observed by Perell, J. in *Spina v. Shoppers Drug Mart Inc.*, 2020 ONSC 4000 (“*Spina*”) at paras. 115-116, the threshold for granting such orders is high:

[115] The rule for the production of documents from a non-party requires that the information sought is relevant to a “material issue” in the action. The case law establishes that the disclosure and production of a document from a non-party is a matter of fairness and necessity. The court determines whether it would be unfair to require the moving party to proceed to trial without a document in the possession of a non-party, and balances that against the interests of the non-party, which include concerns about privacy, inconvenience and exposure to liability. Although production can be ordered from a non-party, it is not routinely sought and the threshold for granting it is high. An order under rule 30.10 should not be made as a matter of course and should only be made in exceptional circumstances.

[116] In making this determination, the court may consider the following factors: (1) the importance of the document to the issues in the litigation; (2) whether production at the discovery stage as opposed to production at trial is necessary to avoid unfairness to the moving party; (3) whether the examination of the opposing party with respect to the issues to which the documents are relevant would be adequate to obtain the information in the document; (4) the availability of the document or its information from another source that is accessible to the moving party; (5) the relationship of the non-party from whom production is sought to the litigation and the parties to the litigation; and (6) the position of the non-party with respect to production.

Analysis

[13] Sheeraz and Seathi are the two founders, directors and equal shareholders of LMI, which operated as a mortgage brokerage business. Since LMI was incorporated in 2005, they have been the officers, directors and equal 50% shareholders. Historically, the two shareholders divided the profits generated by LMI equally, and operated the business together out of an office located at 25 Watline Ave., Mississauga, ON (the “Watline Office”).

[14] In October 2012, LMI began to rent space in the Watline Office to Rizvi. Rizvi was and is a lawyer licenced to practise in Ontario and who operates a residential real estate practice through her professional corporation. Rizvi’s practice was largely dependent on clients referred to her by LMI.

[15] There is a dispute, both between the Plaintiff and the Defendant, and between the Plaintiff and the non-party Rizvi, about almost everything else.

[16] Rizvi rented space from LMI in the Watline Office. Rizvi maintains that there was no formal sublease agreement. Sheeraz, however, asserts that there was no formal sublease agreement but that there was instead a written profit-sharing agreement which provided that Rizvi would pay to LMI 50% of the office expenses associated with the Watline Office as well as 50% of the profits generated from her practice. Rizvi denies there was such a profit-sharing agreement.

[17] The relationship between Sheeraz and Seathi began to deteriorate in 2018, and got worse when Sheeraz began dealing with personal health challenges in January 2019. Seathi began running the day-to-day operations of LMI. Seathi subsequently advised Sheeraz that he wished to terminate their professional relationship, and ceased all communications with him on May 30, 2019. Things came to a head when Seathi locked out Sheeraz from the Watline Office in April, 2019.

[18] One result of all of this was the complete destruction of the business of both Sheeraz individually and LMI. Sheeraz lost his brokerage licence and the brokerage licence issued to LMI was revoked. Sheeraz lost access to all of his records and those of LMI which had been stored either on a laptop computer that remained in the possession of Seathi or were contained in physical files stored in the credenza in Seathi's office at the Watline Office.

[19] Sheeraz and Seathi agreed that they would terminate their professional relationship, dissolve LMI, and that both of them would vacate the Watline Office and sublease it. However, and despite that agreement, Seathi continues to operate his new business, Lionfield Capital, out of the Watline Office and indeed entered into a lease with Lionfield in February, 2021. Seathi also continues to sublease the Watline Office to Rizvi where she continues to operate her law practice.

[20] The allegation of Sheeraz is that Seathi continued to close transactions but redirected commissions to be paid to him directly or indirectly through family members, all with the objective of circumventing his obligation to pay Sheeraz 50% of the profits.

[21] In this action, Sheeraz asserts that Seathi has misappropriated LMI funds for himself and has been unjustly enriched. In particular, Sheeraz asserts that Seathi:

- a. is using the reputation and credibility of LMI to benefit his own financial interests;
- b. has caused several documents such as client "Directions of Funds" to be altered to direct monies to him personally rather than to LMI, with the assistance of Rizvi, in the amount of at least \$450,000;
- c. has received rent from Rizvi directly and in his personal capacity, rather than that rent being paid to LMI such that Sheeraz would be entitled to a 50% share; and
- d. has failed to account to Sheeraz for the business of LMI and has failed to pay Sheeraz his share of the profits of LMI.

[22] This matter already has a lengthy procedural history. Originally commenced as an application on September 10, 2020, it was converted to an action on consent on August 30, 2021 following delivery of an application record from each of Sheeraz and Seathi. That order directed that the affidavits already filed in the application would be admissible as evidence in this action.

[23] I pause to observe that Rizvi, while a non-party, delivered an affidavit in response to the application and has been aware of the proceeding since the outset. Simply put, this motion is no surprise to the Respondents and they are not in any sense strangers to the litigation.

[24] Pleadings were then exchanged in August and September, 2021. Documentary production and examinations for discovery were completed by the end of November, 2021.

[25] What has followed thereafter is essentially a series of continuing requests and demands from Sheeraz to Seathi and Rizvi through 2022, many of which arise out of undertakings given on the examinations for discovery of Seathi.

[26] In the main, the discovery of Seathi, at least with respect to the documents for which production is sought on this motion, was not particularly enlightening or helpful since the evidence of Seathi was to the effect that his laptop computer had been corrupted and the files deleted, with the result that he no longer has the documents either in physical or digital form (examination, Q 53 – 57). The evidence of Seathi on his examination for discovery was to the effect that the documents could not be found from any other source. He also gave evidence to the effect that he no longer has access to his LMI email address. His evidence went further and he stated that he shut down or cancelled the Google mail service with the result that he lost access to all of his email messages. He stated that he took no steps to archive or preserve the accounts because, in his words “I don’t want to”. (Examination, Q. 27-36).

[27] Further, on examination for discovery, Sheeraz asked Seathi to undertake to make inquiries of Rizvi (and other lawyers) and request that they produce letters of direction where sales commissions were paid to Seathi directly. Originally taken under advisement, the question was ultimately answered with the statement that: “inquiries have been made with Ms. Rizvi, but the letters have not yet been received.”

[28] On her own examination, however, Rizvi stated she did not recall receiving any such inquiry, took under advisement a further request to search for that request having been received from Seathi, and subsequently refused the undertaking.

[29] By letter dated May 18, 2022, Sheeraz requested production from Rizvi of a copy of the written profit-sharing agreement between her (or her professional corporation) and LMI as well as the same document production of which is sought on this motion. Neither Rizvi nor counsel on her behalf ever responded or even acknowledged receipt of the letter.

[30] Between May and October, 2022, Sheeraz and Seathi engaged in a mediation but they cannot agree even on what the result of that was. Sheeraz says they reached an agreement, reflected in draft minutes of mediation, with respect to certain production issues. Seathi denies that any resolution was reached but in any event, on October 27, 2022, Seathi confirmed through counsel that he did not oppose Sheeraz pursuing production from the non-party Rizvi (or her professional corporation) and would not oppose a r. 30.10 motion for same.

[31] By letter dated February 3, 2023, Sheeraz then renewed the request to Rizvi for the documents or confirmation of her reason for refusing to produce them, failing which he would bring a motion for the productions and seek costs. Rizvi failed to respond to this letter as well, failed to produce the documents and failed to articulate any basis for refusing to do so. She has simply ignored the requests. Again, the scope of the document request in the February 3, 2023 letter is almost identical to the scope of production sought on this motion.

[32] On her examination, Rizvi gave evidence to the effect that she did not recall receiving that correspondence. Asked to confirm that she had received it, she initially took the question under advisement and subsequently refused it.

[33] Accordingly, Sheeraz brought this motion seeking the documents or categories of documents set out above at paragraph 2.

[34] It is the position of Sheeraz that it would be unfair to require him to proceed to trial without having production of the documents in the possession of the Respondents as they are highly relevant to the material issues in this action. Moreover, he submits that discovery of Seathi was inadequate as it relates to the production sought, with the result that the documents in question are not available from any other sources and can be obtained only from the Respondents, and they simply ignored the requests until this motion was brought.

[35] Sheeraz relies on his own affidavits sworn December 1, 2020 and July 28, 2023 respectively, together with exhibits to each.

[36] The Respondents rely on the affidavit of Rizvi sworn August 30, 2023 together with exhibits thereto. The Defendant Seathi did not file any evidence but did make written and oral submissions on the motion.

[37] The position of the Respondents is to the effect that:

- a. Sheeraz is required to give notice of this motion to the affected clients of the law firm pursuant to r. 37.07(1), and that service on the clients must be effected by personal service, and that has not been done;
- b. even if notice had been given, production of the requested documents would disclose confidential solicitor client relationships and/or client instructions;
- c. some of the requested documents are not relevant to the issues in the action, do not exist, or are subject to solicitor client privilege;
- d. Sheeraz and Seathi (i.e., the parties to the action) can obtain the same information from documents in their own control and power or from witnesses at trial such that it would not be unfair to require Sheeraz to proceed to trial without production from the non-parties; and
- e. many of the documents requested exist in hard copy only, are not organized by date, and would require significant resources to be retrieved and produced.

[38] In particular, the Plaintiff seeks the following documents or categories of documents. Set out below each request is the corresponding current production status of each:

- a. any written agreements between the Respondents or either of them and the Defendant Lending Matrix Inc. ("LMI") with respect to the sharing of the profits of the Respondents' legal practice with LMI;

existence of the documents denied by Rizvi.

- b. all documents pertaining to lease payments by the Respondents or either of them to LMI with respect to LMI's lease of property located at 25 Watline Avenue, Suite 502 and 503, Mississauga, Ontario, from January 1, 2013 to February 1, 2021;

Rizvi has produced evidence of lease payments for the period 2017 to 2019, but the quantum of those payments does not align with the rent required by the alleged sublease. In response, Rizvi gave evidence that this was caused by a rent increase, although she could not recall when it was effective. Rizvi refused the request to produce rent cheques for the years 2015 – 2016.

- c. all documents pertaining to payments by the Respondents or either of them, to LMI in respect of LMI's office expenses from January 1, 2017 to February 1, 2021;

Rizvi has produced evidence of office expense payments for 2017 – 2019.

- d. copies of all cheques issued by the Respondents or either of them to LMI and/or its directors, Sheeraz and Seathi from January 1, 2017 to December 31, 2019;

Rizvi refuses to produce any LMI cheques on the basis that they disclose the names of her clients and are therefore confidential. Rizvi concedes that with respect to shared clients, LMI would already know the identity of those clients, that the redaction of client names would protect client identities if the documents were produced, and that the LMI cheques are stored in her accounting software from which they can be printed.

- e. all documents pertaining to payments by the Respondents or either of them to Seathi, Seathi's immediate family members, and/or Lionfield Capital ("Lionfield"), from January 1, 2019 until December 31, 2020;

Rizvi denies making any such payments except in respect of brokerage fees (i.e., LMI cheques).

- f. copies of all letters of direction in respect of all real estate transactions for which the Respondents provided legal services which were either referred to the Respondents by LMI, and/or in which the financing was brokered or co-brokered by LMI, from January 1, 2017 to December 31, 2020;

Rizvi refuses to produce any letters of direction again because they disclose the names of her clients and their instructions to her. However, these letters of direction were prepared by LMI itself and given to Rizvi, who would then meet with the client and witness the client signing the letter. Rizvi concedes that with respect to shared clients, LMI had the unredacted contents of the letters of direction, and would know from receiving payment that the instructions of the shared clients were as set out in the letter of direction. Finally, Rizvi concedes that if the names and identifying information of her clients are redacted, production would not compromise their identity.

- g. copies of all transaction documents and trust ledgers in respect of all real estate transactions for which the Respondents provided legal services which were either referred to the Respondents by LMI, and/or in which the financing was brokered or co-brokered by LMI, from January 1, 2017 to December 31, 2020;

Sheeraz has now abandoned his request for production of this category of documents.

[39] Rizvi's position with respect to the LMI cheques and letters of direction is that they contain privileged information, being client identity and disclosure of client communications and instructions, and therefore should not be produced.

[40] As further discussed below, privilege is not asserted as a basis to refuse production of any of the other categories of documents.

[41] With respect to the LMI cheques and letters of direction, however, the concern of sharing client identity and sharing client instructions is addressed completely by two factors.

[42] First, as is obvious from the above, LMI would have (and in fact did have) that information anyway, when the documents were sent to LMI in the ordinary course of business. If the documents have already been disclosed, privilege has been waived: *Ebrahim v. Continental Precious Minerals*, 2012 ONSC 1123, at para. 23.

[43] Second, and in any event, the concern is completely addressed by the redaction of that information from the documents when they are produced in this litigation: see, for example, *Warning v. Toronto District Schoolboard*, 2018 ONSC 253. The many other authorities in which production is sought of the contents of a lawyer's files are distinguishable since in those cases, the identity of the recipient of the legal advice is known. (See, for example, *Normc Developers Inc. v. Dolson*, 2011 ONSC 2770 at para. 30).

[44] Here, all client identifying information (including but not limited to names) would be redacted. The information that is relevant to the determination of the material issues in this action is the amount of money that Rizvi was directed to pay to LMI, Sheeraz or Seathi, and when.

[45] In my view, and in the circumstances of this case, it cannot reasonably be said that the identity of any particular client, or the confidentiality of that client's legal advice, is compromised by the production of a document that reveals only that some unnamed and unknown person directed Rizvi to pay a particular amount to LMI/Sheeraz/Seathi.

[46] The relevance of the documents is defined by the pleadings, and there is no issue here for the reasons set out above that given the allegations of Sheeraz, these documents are centrally relevant as they relate to both funds that Sheeraz claims should have been paid to LMI which in turn include revenues of LMI (from commissions and fees received from Rizvi) and rent received in respect of the Watline Office.

[47] The same is true with respect to the profit-sharing agreement. If it exists, it should be produced. Rizvi should confirm under oath her advice to the effect that no such agreement exists, if that position is maintained.

[48] The same is also true with respect to the LMI cheques, lease payments, office expense payments, and payments to Seathi, which obviously will reflect the amount of rent or other amounts paid by Rizvi to LMI, including rent or other amounts paid during the period in which Sheeraz was locked out of the office. This, also, is centrally relevant to the claim of Sheeraz to his entitlement of 50% of the revenues of LMI.

[49] The letters of direction are equally relevant as they will show the funds that were directed to be paid to Seathi directly rather than to LMI, and therefore inform the issue of the extent to which Seathi was overpaid and Sheeraz is entitled to a claim. Moreover, to the extent that they do not correspond with the LMI cheques (either because funds were directed to be paid to LMI but were in fact paid to Seathi, or because monies were directed to be paid to Sheeraz or LMI which are unaccounted for in the LMI cheques), the letters of direction are directly relevant to the claim of Sheeraz that Seathi has enriched himself to the detriment of Sheeraz.

[50] For the same reason, Seathi's potential solution, suggested by counsel in argument, to the effect that any unfairness to the Plaintiff could be addressed if the numbers were provided only in the aggregate (i.e., total revenue numbers, not broken down by client or transaction) is not sufficient given the issues as defined by the pleadings. Aside from credibility issues, which are central, such an aggregation of the numbers would not permit an analysis of whether appropriate amounts were accounted for in respect of all transactions in each relevant period.

[51] I am further satisfied that it would be unfair to require Sheeraz to proceed to trial without the production sought. The productions need not be "vital" or "crucial" to the case to justify production: *D'Angelo v. Regional Municipality of Niagara*, 2020 ONSC 5166, at para. 10, citing *Ontario [Attorney General] v. Ballard Estate*, 1995 CanLII 3509 (ONCA). In this case, however, I am satisfied for the above reasons that they are vital and crucial.

[52] The Supreme Court of Canada has been clear that not all communications between a lawyer and her or his client are privileged. In order for the communication to be privileged, it must arise from communication between a lawyer and the client where the latter seeks lawful legal advice: *R. v. McClure*, 2001 SCC 14 at paras. 36 – 37.

[53] Moreover, all of the factors identified by Perell, J. in *Spina* are also satisfied here:

- a. the documents are obviously important to the issues in the litigation for the reasons set out above;
- b. production at this stage, as opposed to production at trial, is necessary to avoid unfairness to the moving party. The chronology clearly reflects that Rizvi will not produce the documents absent a court order. Having her attend at trial pursuant to a summons and then be ordered to produce the documents would very likely result in an adjournment of the trial and additional expense and delay. Moreover, Seathi would have to undertake then the very same work in gathering the documents that she must undertake now, albeit in a more compressed timeframe;
- c. the examination of the opposing party (i.e., Seathi) would not be adequate to obtain the information in the documents. Sheeraz has already exhausted that avenue, and

Seathi maintains that his computer was corrupted and the documents lost. He does not oppose the relief sought on this motion;

- d. the documents are not available from another source accessible to the moving party. For the reasons set out above, Sheeraz cannot get them from Seathi. Rizvi takes the position on this motion that before the Respondents should be ordered to produce the documents, Sheeraz should exhaust other potential sources such as the accountant for LMI. In my view, this is not an answer to the production request. The accountant may or may not have the documents, they may not be complete and they may not be accurate. The Respondents were parties to the transactions and fund transfers reflected in the documents requested. I am satisfied that they are the only parties from which production can be obtained, certainly on an accurate and efficient basis;
- e. the relationship of Rizvi, as the non-party from whom production is sought, to the parties and to the litigation further supports an order for production. Rizvi is not by any means a stranger to this litigation. While not a named defendant, for the reasons set out above she was obviously central to the very transactions that lie at the heart of the litigation. This is perhaps best reflected by the fact that she herself swore an affidavit that was included in the responding application record of Seathi. She is in fact central to the issues, as the counterparty to many if not most of the very transactions that are at issue in the litigation between Sheeraz and Seathi; and
- f. Rizvi's position with respect to production as the non-party also favours an order for production. The concerns of privilege and client confidentiality are addressed by the anonymization referred to above. Her second concerns relate to her request to be compensated for the time she says it will take her to assemble the documents. Sheeraz has undertaken to pay her the amount of \$350 per hour to a maximum of 50 hours, to gather and produce the documents. She demands compensation that her client hourly rate. I am satisfied that there is no basis under this sixth factor as identified in *Spina* not to order production on the terms proposed by the Plaintiff.

[54] Finally, I reject the submission of the Respondents that not only must each individual client be given notice of this motion, but that each individual client must be given notice via personal service, and aside from the massive undertaking and expense associated with that, the Respondents state that such service cannot be affected with any confidence since some of the requested documents are dated years ago, and the clients may have moved with the result that they will not receive notice. (Naturally, the Respondents take the position that there is very significant expense which must be borne by Sheeraz).

[55] In my view, this additional argument raised by the Respondents is a further attempt to delay production of clearly relevant documents.

[56] I accept the position of Sheeraz with respect to this argument. First, it presumes that the productions are privileged. Again, the anonymization and redaction of the documents to remove all client identifying information fully addresses this purported concern. If the clients are not

identified, I am satisfied that they are not affected by the order sought and need not be given notice of the motion.

[57] Second, Sheeraz naturally cannot notify the clients because he does not know who they are (and Rizvi's entire argument is premised on the position that he should never know). Even if it were sought, and it does not appear to be, I would not order that the clients be put on notice by Rizvi but at the expense of Sheeraz, for the reasons set out above.

[58] Third, Rizvi takes the position that Kimmel, J. has already determined in her Endorsement issued earlier in this proceeding that the clients need to be put on notice. That is not accurate. The Endorsement states that "the precise timing and mechanic of [giving notice] will be left to counsel to agree upon, or failing agreement, to be addressed by the judge presiding over the motion." [Emphasis added]. I am satisfied that the Endorsement clearly contemplated that the motion might be brought and determined without notice to the clients and that Kimmel, J. left it to the motions judge to determine whether notice was required, and if so, the manner in which it ought to be given.

Result and Disposition

[59] The motion is granted. Counsel for Sheeraz will provide to me a clean version of the draft order that reflects the disposition in this Endorsement through my judicial assistant, Mary Sibenik at mary.sibenik@ontario.ca.

[60] Pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, costs are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

[61] Rule 57.01 provides that in exercising its discretion under s. 131, the court may consider, in addition to the result in the proceeding (and any offer to settle or contribute), the factors set out in that Rule.

[62] The overarching objective is to fix an amount that is fair, reasonable, proportionate and within the reasonable expectations of the parties in the circumstances: *Boucher v. Public Accountants Council for the Province of Ontario*, (2004) 71 O.R. (3d) 291 (C.A.), 2004 CanLII 14579 (Ont. C.A.).

[63] Having considered all of the circumstances of this case as against the factors set out in r. 57.01, I reserve the costs of this motion to the trial judge. In my view, the motion could and probably should have been unnecessary at all, particularly given the two undertakings of the moving party to redact all client-identifying information and to pay the Respondents in respect of their time assembling the documents (up to the maximum identified above), all in the circumstances where Rizvi is no stranger to this litigation, in contradistinction to the circumstances in many cases where production is sought from a non-party. The Respondents are centrally involved both in the facts underlying the litigation and in the litigation itself through the filing of Rizvi's responding affidavit to assist the Defendant Seathi.

[64] However, the relevance of the documents now ordered to be produced, and what costs consequences ought to flow from this motion, are best determined following a trial.

[65] Order to go to give effect to these reasons.

Osborne J.