

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION

BETWEEN:

KATRINA BEGLEY on behalf of DAVID BEGLEY (Deceased)

Plaintiff;

And

WILLIAM COWLIN & SONS LTD, THE CEMENTATION CO LTD,  
J MURPHY & SONS LTD, KIER GROUP and H & J MARTIN LTD

Defendants.

STEPHENS J

**Introduction**

- [1] This is a plaintiff's appeal from two orders of the Master, namely
- (a) an order refusing the plaintiff's application pursuant to Order 24, rule 7 of the Rules of the Court of Judicature (Northern Ireland) 1980 for discovery of particular documents and
  - (b) an order striking out the plaintiff's claim against each defendant pursuant to Order 18 rule 19.

The second defendant accepts that the appeal against the order striking out the plaintiff's claim against it should be allowed.

[2] The appeals raise issues as to the steps that can be taken by an individual and by those advising him, to find out which employer or employers are on balance likely to have exposed the individual to asbestos where the individual is diagnosed as suffering from mesothelioma caused by asbestos exposure.

[3] In this case the evidence supports the proposition that the mesothelioma from which the deceased died was caused by asbestos exposure and on balance that exposure was caused during a period or periods of employment of the deceased prior to 1980. The difficulty that the plaintiff faces is in establishing which employer exposed the deceased to asbestos. All the defendants contend that they did not expose the deceased to asbestos and all the defendants, except the second, contend that there is no evidence that they did so and that to permit the action to proceed is an abuse of process. The plaintiff acknowledges that there is no *present* evidence that the deceased was exposed to asbestos whilst in the employment of the first, third and fifth defendants but wishes to obtain a specific order for discovery against, amongst others, those defendants to determine whether the undoubted misfortune of the deceased can on balance be attributable in whole or in part to periods of employment with them. The plaintiff has also indicated that an application might also be made for interrogatories with the same aim of determining whether those defendants bear any responsibility. If discovery and interrogatories do not produce any evidence then the plaintiff recognises that her action against those defendants should be dismissed.

#### **Factual background as to the deceased's employment and illness**

[4] The plaintiff, Katrina Begley, is the daughter and personal representative of the estate of David Begley ("the deceased") who died on 26 June 2006 aged 67 years having been born on 4 May 1939. During his working life he was predominantly employed as a Steel Fixer in the construction industry though it is alleged that he was also involved in demolition work. He had numerous short periods of employment with different employers. Some 2½ years after his death and by letter dated 12 September 2008 the plaintiff's solicitors requested HM Revenue and Customs to provide the deceased's employment history. This information was set out by HM Revenue and Customs in their letter dated 17 November 2008. That letter gave the names of the deceased's employers and the year in which the deceased was employed by each employer. It identified some 19 different employers over the period 1963 to 1980 and stated that after 1980 "no further employers recorded". It did not identify where the deceased was employed or the capacity in which he was employed.

[5] The deceased's General Practitioner's records reveal that he was a heavy smoker illustrated by the record that in 1991 he smoked 20 cigarettes per day. He stopped smoking in 2003.

[6] On 12 September 2005, some 6 months before he died, a chest x-ray was performed which showed a right upper lobe tumour. He was seen by Dr Warke (Chest Physician) on 20 December 2005 and a history of increasing shortness of breath for the last few years and of 20-30 yards exercise tolerance on the flat was given. He was admitted to hospital on 23 December 2005 for a bronchoscopy which showed a tumour in the right upper lobe. A CT scan was performed on 4 January

2006 in the Royal Victoria Hospital which showed a mass in the right paratracheal region together with pleural thickening and calcified pleural plaques. The deceased had given a history of having worked as a Steel Fixer and Bender and having asbestos exposure in the 1960s. On 1 March 2006 the first cycle of chemotherapy was given. From these records it is apparent that prior to his death the deceased had been diagnosed as having ordinary lung cancer though, as will become apparent, that diagnosis was incorrect. That is not a criticism of those treating the deceased but is rather a reflection of the fact, well known to those involved with these cases, that the correct diagnosis of mesothelioma is frequently not made before death. It is only at post-mortem examination when a substantial amount of tissue becomes available that the diagnosis is made or confirmed.

[7] On 21 June 2006 the deceased was admitted to Belfast City Hospital with increasing shortness of breath and cough productive of frothy sputum. Two days later and on 23 June 2006 the deceased died at Belfast City Hospital. A post mortem was carried out on 26 June 2006 by Dr McKenna. The post mortem report dated 8 January 2007 stated that death was due to malignant mesothelioma. The tumour encased and replaced the deceased's entire right lung and had extended across the media stratum around the superior vena cava, the trachea, the pericardium of the heart and onto the left side of the thorax. It infiltrated the majority of the upper lobe and a portion of the lower lobe of the left lung. There was in fact very little lung tissue not involved by the tumour. The deceased also had metastases within the liver and the adrenal gland. There were numerous calcified pleural plaques. The medical evidence is that if the deceased had not died from mesothelioma he would have survived a further 12.4 years approximately.

[8] On 2 March 2008 Dr Todd, Consultant Chest Physician, provided a report to the plaintiff's solicitors. He advised that there was no link "between (the deceased's) cigarette smoking and mesothelioma" and that the "causation of (the deceased's) mesothelioma was his exposure to asbestos over a period of many years". The latent interval between the exposure to asbestos and the development of the tumour is "virtually never less than 15 years". Dr Todd was of the opinion that any periods of employment in the last 15 to 20 years were highly unlikely to have played any part in the causation of the deceased's tumour. He also advised that the latent interval peaks at 30-40 years post exposure. So since the deceased died in 2006 Dr Todd considered that exposure to asbestos in employment more than 20 years previously had caused his mesothelioma and accordingly he dated the cause of the mesothelioma to asbestos exposure in employment prior to 1985. In fact the deceased was not employed after 1980 so in effect Dr Todd identified all of the deceased's employers prior to 1980 as within the pool of those who potentially exposed him to asbestos.

## **The deceased's instructions to his solicitor and the statement of a work colleague**

[9] Prior to his death the deceased was concerned that his cancer may be related to asbestos exposure and accordingly on 21 March 2006 he sought legal advice from Mr Eamon Kennedy, solicitor of Delaney & Co. In this action the plaintiff relies on the hearsay evidence of the accounts given by the deceased to Mr Kennedy. That evidence is admissible under the Civil Evidence (Northern Ireland) Order 1997. It is necessary to analyse what the deceased was asked by Mr Kennedy and what he told Mr Kennedy.

[10] On 21 March 2006 the professional obligation to take full instructions was of particular and immediate importance given the peril to the deceased's life. Mr Kennedy prepared a handwritten note in relation to the attendance of the deceased. That note did not include any details of the deceased's employers nor did it refer to how the deceased believed that he was exposed to asbestos. Instead of taking detailed instructions Mr Kennedy asked the deceased:

"to take his time and sit down at home and prepare a full list of the names of those employers for whom he had worked where he believed he may have been exposed to asbestos".

In addition and on the evidence before me it does not appear that the deceased was asked by Mr Kennedy to set out in that note how the deceased was exposed but rather only to provide the names of employers whom he believed may have exposed him to asbestos.

[11] Around May 2006 the deceased left into his solicitor's office a handwritten note in response to the earlier request that he provide an employment history of his asbestos exposure. The note is on 1½ pages. There is no title to it so that its purpose can only be discerned from its context. It consists of:-

- (a) 23 separate short entries.
- (b) The names of the employer in relation to each entry except one which has no employer against it.
- (c) In relation to two entries the capacity in which the deceased was employed was also specified in one case as "Steel Fixer Bender" and in another as "Steel Fixer."
- (d) In relation to one entry the type of work which the deceased was undertaking was specified though in laconic terms as "cleaning cases painting huts."

- (e) In relation to each entry the place at which the deceased was employed was specified.

The note did not:-

- (a) Set out the dates or approximate dates of employment.
- (b) Give any description of how the deceased believed that he was exposed to asbestos during each period of employment.
- (c) Give any details of any other contractors who were working at the same locations as the deceased or as to what those other contractors were doing and as to whether they could have been working with asbestos.
- (d) Identify any long-term friends or work colleagues of the deceased.

[12] At some unspecified date in May 2006 Mr Kennedy telephoned the deceased and went through the list. There is no evidence as to duration of the telephone call with the deceased. There is no separate file note in relation to it. The deceased informed Mr Kennedy that he was less certain about his exposure to asbestos in relation to some of the 23 entries. However he asserted that he was definitely exposed to asbestos when he was employed by the second defendant (a) at the site of Richardson Chemical and (b) at the site of the Assistance Office Frederick Street.

[13] During the telephone call the deceased also informed Mr Kennedy that he believed that he was exposed to asbestos at other sites whilst in the employment of the second defendant namely:-

- (i) Royal Cinema.
- (ii) Mayfair Cinema at Black Man.
- (iii) Royal UIC Hos Old Mill Park.
- (iv) Moira House Tax Office Lisburn.
- (v) Cyrle [sic] Lord Carpet Factory Donaghadee.
- (vi) Royal Hos Ambulance Yard.
- (vii) Cementation Yard Lisburn.
- (viii) Railway Station Markets.
- (ix) Dennys Portadown.

[14] The deceased also informed his Solicitor that he believed that he was exposed to asbestos while employed by Charles Brand at the Old Haysheds, Donegall Quay but that is the height of the information that is available in relation to any case against the fourth defendant who are the successors in title to Charles Brand.

[15] The only record of that telephone call with the deceased which has been produced in evidence is handwritten additions made by Mr Kennedy to the deceased's note. Those handwritten additions consisted of the letter "A" beside some of the entries and the letters "AAA" beside others. Mr Kennedy has explained that the letter "A" indicated that the deceased told him that the deceased believed he was exposed to asbestos whilst at a particular site whilst the letters "AAA" indicated that the deceased told him that the deceased believed that he was definitely exposed to asbestos at a particular site. There is no evidence as to why the deceased formed either of those beliefs. There is no evidence that the deceased was asked to explain why he believed that he was exposed at any site. There is no evidence that the deceased informed Mr Kennedy as to what he or others were doing at those sites or as to the work that either the second or fourth defendant was doing at those sites.

[16] After the deceased died the plaintiff's solicitors made inquiries from his family as to his work history and asbestos exposure. His ex-wife, who had returned to the deceased to nurse him during his last few weeks of life, was unwell and she died on 14 April 2008. The deceased's children were unable to help but identified the deceased's long-term friend and work colleague a Mr Gerard O'Neill. In November 2009, some 3½ years after the deceased's death the plaintiff's Solicitors obtained a typed statement signed by Mr O'Neill. The statement is not dated. The original handwritten notes from which the typed statement was prepared have not been made available. In it Mr O'Neill stated that both he and the deceased were steel fixers by trade. He also stated that during the 1960s when such type of work was not available they would have worked as labourers for Cementation Ltd whose main type of work was demolition. The statement also identifies periods of employment of the deceased by Charles Brand. It also stated:-

"At the time when we were working for the various companies throughout this period we would not have been aware of asbestos and the dangers of it. However it is very likely that both in our demolition and construction work we would have been exposed to asbestos, we simply would not have known it at the time."

The statement asserts that it is very likely that they "would have been exposed to asbestos" but it gives no indication of what company exposed them or how they were exposed.

[17] So at the date of the deceased's death and without commenting on the strength of the evidence, the only evidence of exposure to asbestos whilst working with a particular employer was with the second defendant, the Cementation Co Limited, and the fourth defendant, "Kier Group," who are the successors in title to Charles Brand. There was no evidence of exposure with any of the other three defendants nor was there any evidence as to the locations at which the deceased

worked for those three defendants. The position has not been improved by the statement of Mr O'Neill.

### **Legal principles**

[18] The adversarial system requires a plaintiff to both allege and to prove his claim, *Graham v E & A Dunlop Limited* [1977] NIJB 1, *Savage v McCourt* [2014] NIQB 38. If a plaintiff launches an action with no evidence to support it then it *may* be struck out *or stayed* as an abuse of the process of the court under Order 18 Rule 19(d). What is to happen if an individual has suffered the undoubted misfortune of contracting mesothelioma but either through lack of knowledge at the time or the failure of recollection or the failings of his legal advisors, he is only able to establish that some employer exposed him to asbestos but he is unable to establish which of his employers did so? In such circumstances he will be unable to prove his case but it would be an indictment of personal injury litigation, the courts and justice if the individual was not without a remedy. It would also be extremely damaging to the reputation of lawyers if such an individual who has suffered such a grievous fate, or his personal representative, does not have a means of enquiry so that he can establish whether he can prove his claim. In fact there are avenues of enquiry open to such individuals, all of which require those responding to do so with absolute precision. The costs of pursuing those lines of enquiry will have to be borne by either the individual concerned or by one or more of the employers if eventually found liable or by the plaintiff's legal advisors if there has been a failure on their part.

[19] The Pre-Action Protocol for Personal Injury Litigation dated 1 April 2008 revised 27 June 2008 places an obligation on a defendant to state whether liability is denied and if it is to provide reasons for the denial of liability. It also places an obligation on the defendant to enclose with the letter of reply any documents in his possession which are material and relevant to the issues between the parties and which would be likely to be ordered to be disclosed by the court either on an application for pre-action discovery or on discovery during proceedings. If there is a failure by an employer to comply with the pre-action protocol then it should be anticipated that orders for costs on an indemnity basis may follow see *Monaghan v Trustees of Milltown Cemetery* [2013] NIQB 53. In short the pre-action protocol can be used to obtain information and documents to assist in the inquiry as to which employer exposed the individual to asbestos.

[20] If there is no appropriate response then the plaintiff can make an application for pre-action disclosure under Section 31 of the Administration of Justice Act 1970. That section provides as follows:-

“On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court in which a

claim in respect of personal injuries to a person or in respect of a person's death is likely to be made, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim –

(a) to disclose whether those documents are in his possession, custody or power ; and

(b) to produce to the applicant such of those documents as are in his possession, custody or power.”

[21] The relevant Rules are Order 24, Rules 8 and 9 which provide as follows:-

“8. – (1) An application for an order under section 31 of the Administration of Justice Act 1970 for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom order is sought shall be made defendant to the summons.

(2) ....

(3) A summons under paragraph (1) ... shall be supported by an affidavit which must-

(a) in the case of a summons under paragraph (1) state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim for personal injuries is likely to be made;

(b) in any case specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) ....



(5) An order under the said section 31 or 32(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become to them.

(6) ...

9. On the hearing of an application for an order under rule ..., 7 ... the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs."

[22] The purpose of pre-action disclosure is to assist those who need disclosure as a vital ingredient in deciding who to sue and as a vital ingredient in pleading their case. There are various jurisdictional thresholds before an order can be made and if the applicant satisfies those thresholds then there remains an exercise of discretion. So in order to obtain an order pursuant to Section 31 the jurisdictional threshold involves establishing that the respondent is "a person who appears ... to be likely to be a party to subsequent proceedings ... in which a claim in respect of personal injury to a person or in respect of a person's death is likely to be made". Likely to be made means "may" or "may well be made" *dependent on the outcome of the disclosure* see *Dunning v United Liverpool Hospitals Board of Governors* [1973] 1 WLR 586. It does not mean "more likely on the balance of probability than not" *in the absence of disclosure*. Rather as I have indicated it means "may" or "may well" or "reasonable prospect" if disclosure is granted see *Black and Others v Sumitomo Corporation and Others* [2001] EWCA Civ. 1819. In this case that jurisdictional threshold is plainly met in relation to any employer of the deceased engaged in construction or demolition works prior to 1980 and in the exercise of discretion an order could have been obtained under section 31 against all of the present defendants.

[23] An individual, such as this plaintiff, can use the pre-action protocol and/or section 31 to identify which of his employers exposed him to asbestos. However the plaintiff's advisors chose to issue proceedings despite having no evidence to support

an action against the first, third and fifth defendants and the barest of evidence against the fourth defendant. The question then is whether the action against those defendants should be struck out as an abuse of the process of the court under Order 18 Rule 19(d). An alternative in the exercise of discretion is whether the action against those defendants should be stayed on terms allowing the plaintiff to obtain in these proceedings what should have been obtained by way of a section 31 application or in the alternative by interrogatories. A circumstance which can be taken into account in the exercise of that discretion is whether the party applying for an order striking out the action has misconstrued its own obligations as to discovery or has given inadequate discovery.

### **Discovery to date**

[24] I consider that either the defendants have misconstrued their obligations in relation to discovery or alternatively that they have not persuaded me that they have correctly analysed and therefore complied with their obligations.

[25] The plaintiff has alleged that the deceased was employed by each of the defendants and in turn each of the defendants has denied that allegation in its defence. Accordingly one of the issues is whether the deceased was so employed. Each of the defendants has given discovery by list of documents. In the second schedule each defendant has purported to list out those documents which it had but has not now in its possession, custody or power. The first, second, fourth and fifth defendants did not list out employment records for the deceased in the second schedule. The third defendant in its list of documents refers to the fact that "any employment records relating to the deceased can no longer be located." The letter from HM Revenue and Customs was available to all of the defendants and each of them was bound to consider that evidence when compiling its list of documents. Unless there was a reason to suspect that the Revenue records were inaccurate then, on the balance of probability, each of the defendants ought to have arrived at the conclusion that they had, but no longer have, in their possession, custody or power employment records in relation to the deceased. Schedule II to each of the lists of documents was deficient except that provided by the third defendant. There should be confidence in the analysis that leads to the production of a list of documents. If there is any ambiguity as to the basis upon which discovery is being given then, as was done by the third defendant, that ambiguity should be articulated.

[26] In none of the defendant's list of documents either in schedule I or schedule II is any reference made to documents relating to the purchase, storage or use of asbestos. Accordingly by means of the discovery process all of the defendants are asserting that they have not now, and never have had, in their possession, custody or power any such document or alternatively that no such document is relevant to these proceedings. I am not persuaded that any of the defendants have sufficiently analysed what documents are relevant. Discovery of documents should not necessarily be confined to documents relating to the particular locations identified

by the deceased and/or to the dates or approximate dates during which the deceased was employed as identified in the revenue records. The documents that are relevant depend on context. If it was usual for a defendant to use asbestos on a number of its sites then that *might* give rise to the inference that on balance it was used on the particular site identified by the deceased or at which the deceased was likely to have worked. Accordingly discovery would extend beyond documents relating to a particular site. If the use of asbestos subsequent to the period of employment *might* give rise to the inference that on balance it was used during the deceased's period of employment then discovery would extend beyond documents relating to the deceased's period of employment.

[27] Another example of the required careful analysis of the extent of discovery by the defendants relates to subsequent risk assessments. Risk assessments are aimed at working practices and risks current at the time of the assessment with the aim of avoiding those risks for those presently employed. However they *might* also inform as to what risks existed in the past and if that is so then there is an obligation to give discovery of them. Again I am not persuaded that any of the defendants have sufficiently analysed what documents are relevant.

[28] None of the defendants has made discovery of documents relating to claims by other individuals involving asbestos exposure. Such documents would fall within the test in *Compagnie Financiere du Pacific v Peruvian Guano* [1882] 11 QBD 55. Under that test documents which it is reasonable to suppose "contains information which may enable the party (applying for 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. For instance if the documents available on discovery established that there were numerous previous asbestos related claims against a defendant relating to numerous different building sites that would be evidence of the use of or exposure to asbestos by fellow employees of the plaintiff. Again I am not persuaded that any of the defendants have sufficiently analysed what documents are relevant.

### **Appeal in relation to the order striking out the plaintiff's claim**

[29] I allow the appeal insofar as it relates to the second defendant.

[30] There is at *present* no evidence against the first, third and fifth defendants and the barest of evidence against the fourth defendant. If I was persuaded that in the discovery process each of these defendants had sufficiently analysed their obligations then I would have struck out the plaintiff's claim against each of them. However I am not so persuaded and accordingly I allow the appeal in relation to each of those defendants against the order striking out the plaintiff's claim but instead impose a stay of the plaintiff's action against each of them except in relation to the application for specific discovery of documents and except in relation to any application by the plaintiff for interrogatories. This will permit the plaintiff to obtain

information that could and should have been obtained at an earlier and more appropriate stage. The stay can be removed depending on the outcome of the discovery and interrogatory process or alternatively at that stage the action could be struck out as against any of those defendants.

[31] I will hear counsel in relation to the costs of the appeal and specifically as to whether those costs together with the costs of complying with any specific discovery order should be borne by the plaintiff's solicitors personally given the inadequacies of the instructions obtained from the deceased. The issue will also arise as to whether the costs of any defendant that is ultimately successful in having the claim struck out against it should also be borne by the plaintiff's solicitors personally.

### **Appeal in relation to the application for specific discovery**

[32] I have amended the categories of specific documents in relation to which the plaintiff seeks an order, for instance, by deleting the words "at any time whatsoever" and by substituting the words "in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant." The respective defendants with the benefit of legal advice have to determine the period of time against the obligation to give discovery. The amended categories are

- (i) All documents and records relating to the deceased's employment with the Defendant.
- (ii) All documents and records relating to safety advice and instruction provided to the deceased or to other employees in relation to exposure to asbestos in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.
- (iii) All documents and records relating to safety audits and investigation carried out by the defendant in relation to the presence of asbestos dust and fibres in the defendants' factory premises, work sites or in its building or manufacturing processes in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.
- (iv) All scientific or medical literature obtained by the defendant and its servant and agents in relation to the risk of exposure to asbestos dust and fibres in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.
- (v) All documents and records relating to the Defendants' safety policies in respect of exposure to asbestos dust and fibres and the means of preventing or minimising same in so far as such documents

might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.

(vi) All statutory documents completed by the Defendant and its servants and agents in relation to each and every incident of exposure to asbestos dust and fibres in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.

(vii) All risk assessments carried out by the Defendant and its servants and agents in relation to the risks of exposure of asbestos dust and fibres in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.

(viii) All documents and records relating to any previous complaints or claims in respect of injury or death caused or contributed to by reason of exposure to asbestos dust and fibres in so far as such documents might advance the plaintiff's case that the deceased was exposed to asbestos with the defendant.

[33] Opposition to the order for specific discovery is that the grounding affidavit does not state the belief of the dependent that the party from whom discovery is sought has, or at some time had, in his possession, custody or power the document, or class of document specified as described in the application. There is no such express statement in the affidavit though it could have been made given that (a) each of the defendants falls within the pool of those who potentially exposed the plaintiff to asbestos as identified by Dr Todd (b) each were involved in the construction or demolition industry in the 1960s and 1970s and (c) the widespread use of and diverse means of exposure to, asbestos in those industries at that time.

[34] For the reasons that I have given I consider that all of these categories of documents are necessary for disposing fairly of this action and provided that the plaintiff's solicitor undertakes to swear a further affidavit containing the statement required by Order 24 rule 7(3) I will make a specific order for discovery against each of the defendants.

## **Conclusion**

[35] I allow the appeal by the plaintiff against the order striking out her claim against the second defendant.

[36] I allow the appeal by the plaintiff against the orders striking out her claim against the other defendants but impose a limited stay of her action against those other defendants.

[37] I will make an order for specific discovery against all of the defendants provided the plaintiff's solicitor undertakes to swear a further affidavit containing the statement required by Order 24 rule 7(3).

[38] The name of the fourth defendant is incorrect. The "Kier Group" is not a legal entity. There will have to be an application to amend the writ of summons.