

THE HIGH COURT

[2022] IEHC 51
No. 2020/5182 P

BETWEEN

PIETRO MACARI

PLAINTIFF

AND

CONCETTA MACARI

DEFENDANT

JUDGMENT of Ms. Justice Stack delivered on the 2nd day of February, 2022.

Introduction

1. This is an application brought by the defendant to compel the plaintiff to reply to particulars raised by Notice dated 28 May, 2021.
2. The Notice runs to 30 paragraphs, with the first ten of these containing sub paragraphs, the result being that over 80 separate particulars have been raised. The plaintiff has taken the view that the Notice is oppressive and need not be replied to. However, I have taken the view that, while some of the particulars are undoubtedly unnecessary, there is a distinct lack of clarity in the Statement of Claim which has made the majority of the particulars sought appropriate and necessary in order to identify the issues between the parties.
3. The plaintiff is the son of the defendant, who is the personal representative of her deceased husband, the father of the plaintiff. The claim arises out of an agreement alleged by the plaintiff to exist between him and his deceased father. Specifically, it is claimed that, in or about 2009, his father promised him that the plaintiff would be left three units in a commercial development in the deceased's will. This did not happen and the alleged breach by the deceased of what the plaintiff says is an enforceable agreement is a central complaint in the proceedings. However, many other matters predating that alleged agreement are referred to in the pleadings, and a large number of reliefs which do not relate to it are included in the Statement of Claim, including a claim for *quantum meruit* and/or *quantum valebat*, and allegations of mismanagement of the estate of the deceased.

The pleadings

4. The plenary summons was issued on 17 July, 2020 and 25 different reliefs are claimed in the Indorsement of Claim. However, leaving aside claims to interim or interlocutory relief, interest, costs, accounts and inquiries, and damages on an entirely general basis, there remains 18 reliefs in the general Indorsement of Claim. However, these can be grouped into three broad categories:
 - i. Paras. 1 to 7 are reliefs relating to an alleged agreement made in or about 2009 between the plaintiff and the deceased, and/or directed at obtaining the ownership of three units in Tallaght Leisure Centre, Tallaght, Dublin 24, being part of the property comprised in Folio 18765 of the Register, County of Dublin,
 - ii. Para. 8 is a claim for *quantum meruit* and/or *quantum valebat*,

- iii. Paras. 9 to 18 are all directed to issues relating to the administration of the estate.
5. A Statement of Claim was delivered on 20 January, 2021. Under the heading "Background to and Terms of Agreement" the Statement of Claim refers to three different agreements, one occurring in or about 2000 and set out at para. 6, one being reached in or about 2005, and referred to at para. 9, and one having been concluded, according to the plaintiff, in or about 2009, whereby the deceased agreed to leave him three units in his will. These units are not identified in the Statement of Claim, even though specific performance has been claimed in relation to them. The defendant sought particulars of which units were said to be the subject of this agreement at para. 30 of the Notice and the plaintiff has agreed to identify them.

6. At para. 12 of the Statement of Claim, it is pleaded:

"In breach of the said agreement and despite representations given by the deceased to the plaintiff on numerous occasions, the deceased failed, refused and/or neglected to devise and bequeath the three units in the development to the plaintiff, causing loss, damage and expense to the plaintiff as a result thereof."

7. Under the heading "Particulars of Breach of Agreement and Misrepresentation", the terms of the deceased's role, and the fact that he died on 29 July, 2018, without leaving the plaintiff three units as the plaintiff alleges he had promised, are set out. Paragraph 17 explicitly pleads that the plaintiff, in accordance with the 2009 agreement, continued to manage the development as agreed with the deceased. At para. 21 of the Statement of Claim, it is then pleaded:

"In the premises, the Deceased was guilty of breach of contract and agreement in failing, refusing and/or neglecting to make the agreed provision for the plaintiff by way of his will and was further guilty of misrepresentation in representing to the plaintiff that he would make the agreed provision, such that for a considerable period of years the plaintiff acted in reliance thereof and to his detriment."

The 25 reliefs originally contained in the plenary summons are then repeated.

8. Delivery of the Statement of Claim provoked the service of a Notice for Particulars dated 12 March, 2021. On 28 May, 2021, paras. 24 to 30 were added to the Notice for Particulars, and most of these deal with reliefs claimed in the Statement of Claim in respect of which no material facts or cause of action is pleaded. It is on foot of this latter Notice that the motion is brought.
9. In the interim, the defendant had, under threat of a motion from the plaintiff, delivered a Defence dated 1 April, 2021. The Defence is extremely lengthy, running to 51 paragraphs, and contains a large amount of narrative or evidence, rather than pleading. However, for the purposes of the defendant's motion to compel particulars of the matters pleaded in the Statement of Claim, I am satisfied that the inappropriate inclusion of evidence in the Defence is not material, as the key question before me is whether the

Statement of Claim pleads the case against the defendant with sufficient particularity to allow her to know the case she has to meet.

10. *Delany and McGrath on Civil Procedure* 4th ed., (2018), sets out (at para. 5-106) the considerations relevant to the application of this kind as follows:

"In considering whether particulars should be ordered, a court will have regard to the purpose of pleadings as identified by Fitzgerald J. in Mahon v. Celbridge Spinning Co. Ltd. [1967] I.R. 1, 3. Thus, the general principle is that particulars will be ordered if they are necessary to clarify the issues so that the party requesting them can know the case he has to meet or if there is a danger that he may be taken by surprise at the trial of the action. This was regarded by the Court of Appeal in Ryanair Ltd v. Goss [2016] IECA 328 at [11] as the governing principle when deciding whether particulars should be ordered. It follows that an order compelling a party to reply to a Notice for Particulars will be refused where the court is satisfied that the party seeking the particulars knows the broad outline of the case that it will have to meet."

The authors then state that the courts enjoy a broad discretion in deciding whether or not to order particulars, which will often depend on a view of fairness or convenience which is essentially a matter of degree.

11. The plaintiff relied on *Armstrong v. Moffatt* [2013] 1 I.R. 417 for the proposition that the particulars raised were oppressive and did not require reply. However, that case concerned the materially different circumstance where particulars were raised in relation to a personal injuries summons which complied, except for a minor defect relating to the plea of breach of statutory duty, with the requirements of s. 10 of the Civil Liability and Courts Act, 2004, and which fell outside the particulars which a defendant was entitled to raise pursuant to s. 11 of that Act. The notice went so far as to demand details of matters such as the time the accident occurred, even though they had not been referred to at all in the personal injuries summons.
12. At para. 15, Hogan J. restated the long-established position that pleadings (including particulars) are designed to tell a defendant of the broad outline of the case which he or she has to meet, as distinct from the evidence which the plaintiff will lead in support of that case.
13. The parties, and indeed particularly the Defendant in her Defence, have in these proceedings set out a relatively detailed narrative of the background to the plaintiff's case. In that sense, it might be said that the Defendant knows the broad outline of the case.
14. However, what is not clear from the statement of claim is the nature of the agreement that is being relied upon, nor is there any clarity about the nature of the other causes of action. There is a reference to "*misrepresentation*" for example, but no cause of action reliant on misrepresentation is pleaded. The reliefs seek a declaration that the defendant

is estopped from denying that a concluded agreement was reached in 2009 but it is not clear if there is a separate cause of action in misrepresentation or what reliefs are sought on foot of it.

15. This is not a case of oppressive particulars which do not require replies but is instead a case where, due to lack of clarity in the Statement of Claim, the Defendant is entitled to raise particulars so as to know the case being made against her. This includes clear identification of the causes of action relied upon and the material facts relevant to each. While the Defendant has gone further than she was entitled to by way of seeking particulars, much of what was sought arises directly out of the lack of clarity in the Statement of Claim.

Particulars raised

16. Subject to some sub-paragraphs which I exclude from these general comments and deal with specifically below, the Notice for Particulars can be divided into the following categories, in my view:
 1. Particulars seeking details of the agreement relied on: para. 1, 3, 4, 5, 6, 8, 9, 10 and 30;
 2. Particulars seeking the basis for the *quantum meruit* and/or *quantum valebat* claim: paras. 24 and 25;
 3. Particulars seeking the basis for the claim against the estate: paras. 21, 22, 23, 26, 27, 28 and 29;
 4. Matters for evidence: paras. 2, 7, 11, 12 and 13; and
 5. Particulars arising out of the defence: paras. 14, 15, 16, 17, 18, 19 and 20.
17. The purpose of raising particulars is to clarify the nature of the plaintiff's claim, and not to seek disclosure of evidence. Accordingly, I will not order the plaintiff to reply to paras. 2, 7, 11, or 12 of the Notice for Particulars. The plaintiff has already agreed to reply to para. 13.
18. Similarly, particulars designed to elicit further evidence of matters mentioned in the defence are not appropriate matters to the raising of particulars out of a statement of claim. The plaintiff is therefore not required to reply to paras. 14-20 of the Notice.
19. As regards those particulars, which seek details of the agreement on which the proceedings are brought, it is notable that in the replying affidavit to this motion, at para. 11, the Plaintiff's solicitor objects to the particulars sought at paras. 1, 3, 4, 5, 6, 9 and 10 on the basis that they proceed on an assumption that the plaintiff is asserting the existence of "*several independent and distinct contracts or agreements with his late father concluded, apparently, in 1983, 2000, 2004, 2005 and 2009.*" It is then clarified that the plaintiff makes no such assertion. Similarly, at the hearing of the motion, counsel

for the plaintiff did not resile from a reliance on earlier agreements, saying they did not operate "*in silos, independently of each other*".

20. It seems to me from that submission that, at least in relation to the matters pleaded from the year 2000 onwards, the plaintiff may have been asserting an agreement in 2000 which changed from time to time. Whether that was by way of variation of the initial agreement, or a substitution of subsequent agreements by way of novation, or a series of related agreements, was unclear. It is a matter for the plaintiff to clarify the relevance of those agreements and to explain why they are pleaded, or alternatively to clarify that they are not being relied upon as they do not form part of the agreement on foot of which the plaintiff is suing.
21. I do not think it is appropriate to put the necessary clarification in a replying affidavit, filed in response to an interlocutory motion. The Replies will be a significant document for consideration in the future, including on the hearing of the motion for discovery which was also listed before me, but which I have adjourned for mention pending resolution of the dispute as to particulars. It is not possible to say what the issues between the parties are until the plaintiff clarifies his claim, and therefore it is not possible to identify what discovery would be necessary or appropriate. Furthermore, at trial, the defendant and the court are entitled to see the formal Replies for the purpose of informing themselves what the plaintiff's claim is.
22. However, the key point is that the legal relevance of any of the matters pleaded as having occurred prior to 2009 is entirely unclear from the Statement of Claim. In my view, the particulars sought at paras. 1, 3, 4, 5, 6, 8, 9 and 10, should all be replied to by way of formal Replies to Particulars.
23. The situation in relation to *quantum meruit* and/or *quantum valebat* is even less satisfactory, as this is contained only in the indorsement of claim, and no cause of action in relation to it is pleaded at all. In my view, paras. 24 and 25 of the Notice for Particulars, which seek particulars of the works done, services rendered, and goods supplied upon which this claim is made, as well as the dates upon which these were done, are all appropriate matters for particulars. Although it does not appear that a claim of *quantum meruit* was even included in the indorsement of claim in *Reynolds v. Blanchfield* [2016] 2 I.R. 268., it is evident from that judgment that such a claim must be properly pleaded. I will therefore also order that the plaintiff reply to paras. 24 and 25.
24. Finally, all of the reliefs against the defendant *qua* executrix of the estate are maintained in the Statement of Claim, but only in the prayer for relief and not otherwise. This is so even though these include a claim for damages against the defendant personally by reason of her alleged mismanagement of the estate of the deceased, her failure to exercise due diligence in protecting the assets of the estate, and damages for negligence and breach of duty including breach of statutory duty and breach of trust in her capacity as personal representative and/or in her personal capacity relating to the management of the estate.

25. In relation to these claims against the estate, some of which appear to assert wrongdoing by the plaintiff against his mother, the plaintiff's solicitor says in his replying affidavit (at para. 23) that the particulars sought at paras. 21 to 23 were in the nature of a fall back remedy and "may need to be re-visited." He also asserts that the particulars sought at paras. 27 to 29 are merely repetition of particulars raised elsewhere.
26. I am satisfied that, given that the plenary summons was issued over 18 months ago, and given that the plaintiff was pressing for a defence in March, 2021, the issue of whether the plaintiff wanted to maintain these claims, and particularly those which allege *devastavit* (a claim that the defendant had wasted or misapplied the assets of the estate), as well as mismanagement, should have been reconsidered before now and certainly in response to the Notice for Particulars. I would add that some of these claims appear to allege wrongdoing against the defendant and a claim for breach of trust is specifically *pleaded*. *Order 19, rule 5 (3) specifically states that particulars of such a claim should be "delivered with the pleadings"*. This reinforces my view that replies to particulars should be furnished, and that the plaintiff should formally abandon these claims now if it is not intended to pursue them.
27. I will therefore also order the plaintiff to reply to the particulars set out at paras. 21, 22, 23, 26, 27, 28 and 29 of the Notice for Particulars of 28 May, 2021. If all or any of these claims are being abandoned, that should be stated by way of Replies to particulars.

Matters to be excluded from particulars ordered

28. However, the particulars sought at para. 1 (e) and (g), para. 3 (f), and (g), para. 4 (f) and (m), para. 5 (a), and para. 6 (f) are matters of evidence in respect of which replies are not necessary.
29. Finally, at para. 1 (f), para. 3 (e), para. 4 (i), para. 5 (f), para. 6 (e), para. 8 (e), para. 9 (i), and para. 10 (b), the defendant seeks particulars of witnesses to alleged agreements and representations. It is not appropriate to direct the plaintiff to reveal his witnesses, as that is a matter for evidence. If agreements and representations were made orally, however, then in order for the defendant to have any hope of meeting the claim against him, he is entitled to know who on behalf of each party made and received the alleged representations and who is said to have concluded the alleged agreements on behalf of the plaintiff and defendant, respectively. Accordingly, further replies to these particulars will not be ordered. However, to avoid, if at all possible, further motions, the plaintiff should identify the persons said to have acted on behalf of each party in concluding any verbal agreement or who made or received verbal representations relied upon and in respect of which a cause of action is pleaded.
30. On the other hand, there is repeated reference in the particulars, which the plaintiff is going to be compelled to answer, to the furnishing of "*detailed particulars*". The plaintiff is only required, on foot of the order to be made in this motion, to disclose the material facts necessary for a cause of action and is not required to furnish evidence in support of the claim.

31. There is no motion to amend the Statement of Claim before me, but it may be that the plaintiff will seek it to recast his Statement of Claim, as that may in fact be the most workable manner of progressing the matter. The danger at present is that it will only be necessary to identify the plaintiff's claim from a lengthy notice for particulars and replies thereto.
32. It is my view that, as the existing Statement of Claim does not properly identify the nature of the claim being made by the plaintiff, it is appropriate to order the particulars as set out above.