

ROYAL COURT

120B.

8th July, 1992

Before: The Judicial Greffier

<b>BETWEEN</b>	Brian Sydney West	FIRST PLAINTIFF
	Gustav Brian West	SECOND PLAINTIFF
	Birgitta Ingegered West	THIRD PLAINTIFF
	Maria Melanie West	FOURTH PLAINTIFF
<b>AND</b>	Lazards Brothers & Co (Jersey) Limited	FIRST DEFENDANT
	Lazard Brothers Trustee Company (Jersey) Limited	SECOND DEFENDANT

Application by the Defendants for further and better particulars of the Plaintiffs' re-amended Order of Justice.

Advocate P.C. Sinel for the Plaintiffs.  
Advocate J.G. White for the Defendants.

**JUDGMENT**

**JUDICIAL GREFFIER:** This is an application for further and better particulars. In December 1991, the Royal Court adopted the following amended Rule 6/14(1) -

*"(1) In any proceedings, the Court may order a party to serve on any other party particulars of any claim, defence or other matters stated in his pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just."*

The wording of this is very similar to that of Order 18, Rule 12(3) of the Rules of the Supreme Court 1965. However, the distinction is retained in this new rule (as it was in the former Rule 6/14(1)) between "particulars of any claim, defence or other matter stated in his pleading", on the one hand, and "a statement of the nature of the case", on the other hand. The following

quotation from the start of section 18/12/2 of the 1991 R.S.C. confirms this -

***"Function of particulars - This rule imposes on the parties a primary obligation to state in their pleadings all the "necessary particulars" of any claim, defence or other matter pleaded, and if any pleading does not state such particulars or states only some or insufficient or inadequate particulars, the rule enables the Court to order a party to serve either (1) particulars or further and better particulars of any claim, defence or other matter pleaded, or (2) a statement of the nature of the case relied on, or (3) both such particulars and statement. It is therefore an essential principle of the system of pleading that particulars should be given of every material allegation contained in the pleading."***

It follows from this that a person who is applying for a statement of the nature of the case of his opponent ought to make it clear that he is doing this and that a request for further and better particulars is not a request for a statement of the nature of the case.

I turn now to the details of the specific requests being made by the Defendants and I will deal with them under the relevant paragraph numbers of the re-amended Order of Justice as follows:-

- 9(i) This request is refused. It is agreed between the parties that the Defendants' bank was concerned over the overdraft. The precise dates upon which such concern was expressed are not necessary particulars of the Plaintiffs' claim. Clearly the Defendants wish to obtain these but in so doing they are seeking evidence.
- 9(ii) These are refused. An earlier meeting is not pleaded and the details of this are not necessary particulars of the Plaintiffs' case. Any notes of any such meeting are also not necessary particulars but are obtainable on discovery, if relevant to the matters in issue between the parties.
- 9(iii) These are also refused. Again matters relating to earlier meetings are not necessary particulars of the Plaintiffs' claim. They are part of the background material and as such are more in the way of evidence than of necessary particulars.
- 10(i) The Plaintiffs have ignored the request for a date and they should provide the best available particulars thereof.

- 10(ii) The Plaintiffs have ignored the request for a date and they should provide the best available particulars thereof.
- 10(iii) The Plaintiffs have ignored particulars both of the date and also of how such agreement was communicated to Mr. West and they should provide the best available particulars thereof.
- 11(i) The Plaintiffs have simply indicated that the date of the meeting was unknown but they should provide the best available particulars of the date.
- 11(ii) Details of earlier meetings were not in paragraph 11 of the re-amended Order of Justice. Notwithstanding this the Plaintiffs have provided some particulars of a meeting and a lunch on the same day as the meeting referred to in paragraph 11 of the re-amended Order of Justice. The Defendants are now seeking additional particulars of those meetings. This goes well beyond necessary particulars and is extending into the area of evidence and so it is refused. Similarly, the matter of who was present at the lunch goes well beyond necessary particulars and is an attempt to obtain evidence.
- 11(iv) It is noted that the earlier request for information on this is now withdrawn.
- 12(i) The Plaintiffs have now effectively abandoned the claim for damages in paragraph 12(a) as is indicated in the Schedule of damages and so further details of this are irrelevant.
- 12(ii) This is the first of a number of paragraphs in which the Defendants are asking the Plaintiff to plead in anticipation of a defence which the Defendants have not yet pleaded. I have recently ordered that the Defendants file an answer to the Plaintiffs' Schedule of damages. In a brief undistributed Judgment dated 10th June, 1992, I gave reasons for this. However, in addition to those reasons, I have just realised that the matter of such particulars is expressly dealt with in England under Order 18, Rule 12(1)(c) which states -
- "12.-(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing,**
- (c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages."**

The particulars being sought here are not further and better particulars of the allegations under these paragraphs.

- 12(iii) Again what is being sought here is not further and better particulars and appears to be related to a line of defence which the Defendants have not yet pleaded.
- 12(iv) Again what is being sought here is not further and better particulars and appears to be related to a line of defence which the Defendants have not yet pleaded.
- 14(i) It appears to me that this has already been satisfactorily answered by the Plaintiffs and so further particulars are refused.
- 15(i) Again it appears to me that it has been satisfactorily answered by the Defendants and so these further and better particulars are refused.
- 17 The Plaintiffs have not pleaded that they sought and failed to obtain alternative financing. It may well be that the Defendants will wish to plead that they ought to have mitigated their loss in this way but that has not yet been pleaded. Accordingly these particulars are also refused.

In my view a large number of the Defendants' applications are attempts to obtain evidence or attempts to obtain answers to lines of defence which have not yet been pleaded by the Defendants.

Finally, I will need to be addressed by both parties on the matter of costs.

Authorities

Royal Court Rules, 1982, as amended: 6/14(1); 6/8.

R.S.C. (1965 Ed'n): O.18; r.12(3); r.8/8; r.12/36.

R.S.C. (1991 Ed'n): 18/12/1c & 2.

Associated Leisure Ltd -v- Associated Newspapers Ltd (1970) 2QB  
456.

Davey -v- Garrett (1877) 7 Ch. D. 473 @ p.489.

Re Wrightson (1908) 1 Ch. 789 @ 799.

Belmont Finance Corporation Ltd -v- Williams Furniture Ltd (1979)  
1 All ER 118 C.A.