

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02795

BETWEEN

REPUBLIC BANK LIMITED

Claimant

AND

PETER EASTON

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Tuesday 24th April 2018

Appearances:

Mr. Ian Benjamin instructed by Ms. Marcelle Ferdinand for the Claimant

Mr. Jason Mootoo instructed by Ms. Judy Kublalsingh for the Defendant

JUDGMENT

PROCEDURAL APPLICATION- VOLUNTARY FURTHER AND BETTER PARTICULARS

1. On 12th April 2017 the Claimant was ordered to provide voluntary further and better particulars of paragraph 17 of the Statement of Case. The Defendant takes objection to most of the particulars filed by the Claimant on 25th May 2017 on the following grounds:
 - They fall outside the ambit of paragraph 17 of the Claimant's Statement of Case;
 - They are not permitted by the Court's case management order of 12th April 2017; and
 - They constitute an impermissible attempt by the Claimant to amend the statement of case in circumstances when the first case management conference was concluded prior to the filing of the said particulars.
2. The striking out of pleadings is of course a draconian measure and the Court's powers to do so are set out under Part 26.2 of the Civil Proceedings Rules 1998 as amended (CPR).

3. The Defendant's application raises the following issues:
 - a) The function of particulars under the CPR;
 - b) The synergies between the obligation to set out a party's case pursuant to Rule 8.6, the process to be engaged to change that case pursuant Part 20 and the Court's role in the management of the claim exercising Part 26 case management powers;
 - c) The application of the overriding objective.
4. The starting point in analysing whether the voluntary particulars are further facts on which the Claimant can legitimately rely is this Court's case management order.
5. At the CMC this Court was particularly concerned about the general pleading of "further investigations" appearing in paragraph 17 of the Statement of Case. This is a case where the Claimant is contending that certain bank documents were not signed by the wife of the Defendant, Ms. Susan Correia. In my discussions with the parties this "further investigation" is the next event in the Claimant's sequence of events after receiving a letter from Ms. Correia in 2011 querying certain withdrawals from her account. The Claimant then obtained a forensic report in 2014. The Claimant volunteered to provide further particulars of these investigations and the Court ordered inter alia that:
 - i. The Claimant do file and serve voluntary further and better particulars of the "further investigations" referred to in paragraph 17 of the Statement of Case on or before 5th May 2017;
 - ii. The Defendant do file and serve an Amended Defence to deal with the further information on or before the 23rd May 2017;
 - iii. The Second Case Management Conference is fixed for 26th July 2017.
6. Paragraphs 16, 17 and 18 of the Statement of Case reads:

"16. In or about August 2011 the Claimant received a letter from Ms. Susan Correia inquiring as to the balance in the 663 which had been opened with the sum of USD740,000.00. A true copy of the letter dated 23rd August, 2011 is hereto annexed and marked "I".

17. In or about August 2011 the Claimant further investigated the matter on receipt of the letter from Ms. Susan Correia and discovered the following apparent discrepancies:

- i. In the signature of Ms. Susan Correia on the independent legal advice letter dated 30th July 2009;
- ii. In the letter of instructions to close the 663 account, to transfer USD540,000.00 to the 332 account in the name of Peter Easton Investments Limited and to open the 678 account; and
- iii. In the signature card in respect of the 678 account as compared with the signature card in respect of the 663 account opened on 26th May, 2009.

18. By Forensic Report prepared by Mr. Glenn Parmasar dated 12th March 2014 it was confirmed that the signatures of Ms. Susan Correia on the independent legal advice letter dated 30th July 2009, the letter of instructions dated 23rd September 2009 and the signature card in relation to the 678 account were not executed by Ms. Susan Correia. A true copy of the Forensic Report is hereto annexed and marked "J".

7. The nub of paragraph 17 of the Statement of Case is the Claimant further investigated the matter on receipt of the letter and that discrepancies were discovered by the Claimant in the three disputed documents which are the subject of this action.
8. The voluntary further and better particulars provided were as follows:

"1. At paragraph 17 of the Claimant's Statement of Case filed on 11th August 2016, the Claimant pleads that:

a. In or about August 2011 the Claimant further investigated the matter on receipt of the letter from Ms. Susan Correia and discovered the following apparent discrepancies:

- i. In the signature of Ms. Susan Correia on the independent legal advice letter dated 30th July 2009;
- ii. In the letter of instructions to close the 663 account, to transfer USD540,000.00 to the 332 account in the name of Peter Easton Investments Limited and to open the 678 account; and
- iii. In the signature card in respect of the 678 account as compared with the signature card in respect of the 663 account opened on 26th May, 2009.

2. By way of voluntary further and better particulars, the Claimant says further that:

- a) The Claimant has an in-house investigative department with personnel trained in the areas of fraud prevention and forensic examination;
- b) Over the period 23rd August 2011 to March 2014, the Claimant caused inquiries to be made into Ms. Susan Correia's complaints that monies had been depleted from an account that she held jointly with the Defendant;
- c) In or about April to May 2012 the Claimant's in house Corporate Security Investigator, Jenise Payne began to make inquiries into Ms. Susan Correia's complaints;
- d) As at 28th May 2012 the Claimant's in house Corporate Security Investigator noted that Ms. Susan Correia had executed a mandate governing account 663 which mandate also governed account 678;
- e) As at 23rd April 2012 the Claimant's in house Corporate Security Investigator conducted an interview with Ms. Susan Correia;
- f) In the course of the interview Ms. Susan Correia disclosed that she and the Defendant were going through a divorce and she was asked to provide certain documents;
- g) As at 16th August 2012 Ms. Susan Correia had not provided the documents requested;
- h) On an interim basis, the Claimant's in house Corporate Security Investigator was of the view that signature on the independent legal advice letter did not appear to be genuine and was not verified;
- i) Over the period May 2012 to April 2013 the Claimant made further enquiries of Ms. Susan Correia and the Defendant and/or his agent, one Philip Archie;
- j) On or about October 2012 the Defendant's agent one Philip Archie advised the Claimant that he held a power of attorney for the Defendant and they made an arrangement to resolve this matter between the Defendant and Ms. Susan Correia;
- k) Over the period May 2012 to April 2013 Ms. Susan Correia did not respond.

- l) On or about 7th October 2013 Messrs Byrne and Byrne issued a pre-action protocol letter to the Claimant for and on behalf of Ms. Susan Correia;
 - m) On or about 13th November 2013 Messrs J.D Sellier and Co responded to the pre-action protocol letter dated 7th October, 2013 setting out the facts as known to it and made a without prejudice offer (the contents of which are subject to legal professional privilege which is not waived by reference herein);
 - n) On or about 19th December 2013 the Defendant contacted the Claimant's Mario Affonso by telephone; and
 - o) On or about 6th January 2014 the Defendant wrote to the Claimant:
 - i. Referring to the telephone contact with the Claimant's Mario Affonso on 19th December 2013;
 - ii. Asserting that Ms. Susan Correia was at all material times aware of all transactions complained of;
 - iii. Stating that Ms. Susan Correia was the only one to disburse funds from their accounts; and
 - iv. Gave details of the transactions set out in paragraphs 5, 6 and 10 of the Statement of case- see copy of letter dated 6th January 2014- exhibit K.
3. On or about 12th March 2014, Mr. Glenn Parmasar issued a Forensic Report as set out in paragraph 18 of the Statement of Case based on:
- a. Instructions issued to him dated 18th November 2013 from Ms. Susan Correia; and
 - b. With the co-operation of and in the presence of the Claimant.
4. Prior to making the payment set out in paragraph 19 of the Statement of Case the Claimant sought and obtained legal advice (the contents of which are subject to legal professional privilege which is not waived by reference herein) as to the payment.”

9. The real complaint of the Defendant to the particulars provided is that a proper reading of paragraph 17 of the Statement of Case would suggest that these investigations were conducted in or about August 2011 however the further and better particulars now reveal that the investigations spanned the years 2011 to 2014. The information provided now reveals a change of the Claimant's case.
10. Three material facts from paragraphs 17 and 18 of the Statement of Case are clear:
- (a) the Claimant received a letter from Ms. Correia in August 2011;
 - (b) this triggered an investigation; and
 - (c) a further report was eventually commissioned which confirmed in March 2014 that the signature on the disputed documents were not Ms. Correia's.
11. Have these particulars, voluntary or not, strayed into the realm of changing a party's case which necessitates an application under Part 20 CPR or are they genuinely further facts relevant to the issues raised in paragraph 17 of the Statement of Case? To answer this question involves an appreciation of the intersection of Court driven litigation/active case management and the functions of further and better particulars under the RSC.
12. As Justice Jamadar reminds us in **Real Time Systems Limited v Renraw Investments Limited** C.A CIV 238/2011 (affirmed in Privy Council) the foreword to the CPR emphasises the core feature of active case management.

“Case management under the CPR is predicated upon a system which gives control and management of the pace and shaping of litigation to the courts removing it from the hands of the parties and their attorneys. ...

Clearly judicial officers now have the responsibility not just for managing the pace of litigation but also the shape of litigation. Hence the ‘intense focus ... on the pre-trial stages’. What then are the ‘noble objectives embodied in Part 25’? Simply put, the core objective is to ‘further the overriding objective by actively managing cases,’ which includes achieving, inter alia, the thirteen objectives listed in Rule 25.1, CPR, 1998. I have already identified that these include, the early identification of the issues and the sorting out of which issues need a full investigation and which ones can be dealt

summarily, and ensuring that no party gain any unfair advantage by reason of a lack of full disclosure of all relevant facts.

In order to achieve the above, case management, which necessarily includes issue management, is central to achieving the Overriding Objective of the CPR, 1998, which is to deal with cases justly. And, to achieve success in this task the court is given certain general wide ranging powers of management. These are listed at Rule 26.1, CPR, 1998.”

13. Lord Mance underscored this role in **Real Time Systems Limited v Renraw Investments Limited** [2014] UKPC 6 of issue identification being a core component of this case management exercise. Incidentally it is to be noted that further and better particulars do not feature as a component of Part 35 unlike its UK counterpart. (See Blackstone’s Civil Practice 2016 Chapter 30). Part 35 “further information” includes the former process of interrogatories. Although Rule 18/12 of the predecessor of the CPR was not preserved explicitly in the CPR, the utility of further and better particulars has been resurrected by Jamadar JA and Lord Mance in **Real Time** under the Court’s wide case management powers of Rule 26.1(w) CPR. It is now viewed as a useful tool in the Court’s armoury to deal with a case justly, that is dealing with a case fairly with economy, expeditiously and proportionally.
14. Later Beraux JA noted in **Monteil v Central Bank and CLICO** Civil Appeal No. P 19 of 2015 the synergy between further and better particulars and the requirement to set out one’s case in Rule 8.6 CPR. Lord Woolf’s observations in **Mc Philemy v Times Newspapers Ltd** [1999] 3 All ER 775 are still relevant in relation to the impact of the new rules to the drafting of pleadings.

[23] Consequently, as Lord Woolf MR noted in *Mc Philemy v. Times Newspapers Ltd.* [1999] 3 ALL ER 775 at 792 J, “*the need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged*”. ...

[24] The purport of Rule 8.6 was examined by Lord Dyson in *Bernard v. Seebalack* [2010] UKPC 15 in which the dictum of Lord Woolf in *Mc Philemy* (supra) was approved by Lord Dyson at paragraph 15 of his judgment. In *Mc Philemy*, Lord Woolf noted that “*in the majority of proceedings, identification of the documents upon which*

a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise". Lord Woolf noted however that pleadings were still required to mark out the parameters of the case which was being advanced by each party particularly with regard to the identification of the issues and the extent of the dispute between the parties. He added however that "what is important is that the pleadings should make clear the general nature of the case of the pleader".

15. **Bernard v Seebalack** [2010] UKPC 15 is a poignant reminder of the rigours of Part 20 CPR and the need to properly set out one's case. If a change is required, Part 20 CPR sets out the appropriate mechanism to achieve this.

16. The authorities of **Real Time, Monteil** and **Seebalack** establishes the following in relation to further and better particulars:

- a) the Court will order further and better particulars pursuant to Rule 26.1(w) where it is necessary and proportionate and in keeping with the overriding objective of dealing with the matter justly.
- b) The duty to state your case (Rule 8.6) and to provide witness statements reduces but does not eliminate the need for further and better particulars.
- c) Further and better particulars are further pleadings subject to the rules of pleading. It can be provided or ordered to remedy any defect in pleadings or to properly discharge the obligation to set out one's case under Rule 8.6.
- d) Further and better particulars should be as short as the nature of the claim reasonably allows. Particularity does not mean verbosity as Lord Hope stated in **Three Rivers District Council and Others v Governor and Company of The Bank of England (No 3)** [2003] 2 AC 1 para 49 "a balance must be struck between the need for fair notice to be given on the one hand and excessive detail on the other".
- e) The function of further and better particulars is to
 - i. inform the other side of the nature of the case they have to meet;
 - ii. prevent them from being taken by surprise;

- iii. enable the other side to know what evidence they ought to be prepared with for trial;
 - iv. limit the general pleas for pleading, define issues for trial; and
 - v. tie the hands of the pleading party.
- f) The provision of further and better particulars is entirely consistent with the cards on the table approach.
- g) Further and better particulars, voluntarily provided or Court ordered, cannot be used to side step the requirements of Part 20 CPR if a party wishes to change its case. The further and better particulars must relate to the issues fairly raised in the pleadings and not advance a new case which would fall for separate consideration under Part 20 CPR.
17. In making my order on 23rd May I had indicated my own dissatisfaction with a bald plea of “further investigations”, and as I have done in many matters, asked the party to provide further and better particulars.
18. Having regard to my own observations at the CMC and this Claimant on its own motion volunteering further and better particulars of the alleged investigations referred to in paragraph 17 of the Statement of Case to move the matter forward and give effect to the overriding objective of the CPR, I do not view the entirety of the further and better particulars as objectionable.
- a) They are not prolix.
 - b) They have provided a succinct and in a summary fashion the steps taken by the Bank in the conduct of its investigation.
 - c) It gives a much clearer picture to the Defendant of those investigations conducted by the Bank.
 - d) The Defendant has now placed all its cards on the table in relation to the investigation and the Defendant now knows in more detail about matters which it previously would have no knowledge about.
19. In this context, I do not view most of the particulars provided as a change of case by referring to investigations post 2011. Marginally and I imagine it is open to a liberal

interpretation that reference to August 2011 in paragraph 17 of the Statement of Case may be viewed as a starting date of the investigations and not the “be all and end all”. The further and better particulars has cleared that up. To adopt the draconian approach of striking out these particulars must be counterbalanced with the need to disclose relevant material facts to assist the parties in identifying the areas of dispute at an early stage of the proceedings. What is objectionable, in my view, however, are the following further and better particulars:

- 2 (i) “and the Defendant and/or his agent one Philip Archie”
- 2(j), 2(n) and 2(o)
- Paragraphs 3 and 4

20. The said words in paragraphs 2 (i), paragraphs 2(j), 2(n) and 2(o) specifically refer to the involvement of the Defendant in the Bank’s investigations. This is a matter which should have been clearly articulated in the Statement of Case as it implicates the Defendant with knowledge of Ms. Correia’s claim and being part of the Bank’s investigation. This in my view is a new case for the Defendant to meet and should have formed part of the original or an amended Statement of Case.

21. Paragraphs 3 and 4 exceed the ambit of my case management order. Paragraphs 3 and 4 are impermissible particulars filed outside the terms of the Court’s orders. No such further information was requested nor ordered. This is implicitly recognized in the structure of the document. Paragraphs 3 and 4 appears to be additional particulars voluntarily provided. In any event these are matters of evidence dealing with matters raised in paragraphs 18 and 19 of the Statement of Case. These particulars would be struck out as not being compliant with my case management order. This however does not mean that the Defendant would not be allowed to lead such evidence at the trial in support of paragraphs 18 and 19 of the Statement of Case. That is another matter entirely.

22. In dealing with this case justly, balancing the need for fair notice to be given to the opposing party on the one hand without excessive detail on the other and the proper use of further and better particulars with the obligations of parties under Part 20 CPR if a Statement of Case is to be changed, my orders are that paragraphs 2 (i) the words “and the Defendant and/or his agent one Philip Archie”, 2(j), 2(n) and 2(o) together with paragraphs

3 and 4 of the voluntary further and better particulars are struck out. There will be no orders as to costs.

Vasheist Kokaram
Judge