

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-00624

BETWEEN

FOSTER PAREJO

First claimant

ALICIA PAREJO

Second claimant

AND

MARIO BERMENT

First defendant

MARREB CONSTRUCTION SERVICES LIMITED

Second defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. Y. Ahmed instructed by Ms. C. Legall for the claimants

Ms. T. Thompson and Mr. G. Mc Master for the first and second defendant

Decision on application for further and better particulars

The Application

1. By application dated the 16th November, 2017 the claimants seek an order pursuant to Part 26 .1(1) (w) of the CPR and/or the inherent jurisdiction of the court for further and better particulars of paragraph 8 of the first defendant's Defence filed on the 25th July, 2017. The claimants further seek that in default of complying with the order for further particulars, the said paragraph be struck out. The claimants also asks that the first defendant pay the costs of this application.

The claim

2. By way of a previous claim, CV2015-00441 **Foster Parejo and Anor v Marreb Construction Services Limited** ("the first claim"), the claimants instituted proceedings against the second defendant for breach of contract. That claim was undefended resulting in default judgment being granted on the 14th July, 2015 and entered on the 23rd September, 2015. On the 2nd December, 2016 at the hearing of the Assessment of Damages before the Master, the following ordered was made;
 - i. Special Damages assessed in the sum of One Hundred and Ten Thousand dollars (\$110,000.00) with interest at the rate of 3% per annum from 10th September, 2014 to 2nd December, 2016;
 - ii. General Damages to be assessed in the sum of Fifteen Thousand dollars (\$15,000.00) with interest at the rate of 6% per annum from 9th February, 2015 to 2nd December, 2016; and
 - iii. The defendant do pay to the claimant 60% of the total prescribed costs.
3. The claimants by their Statement of Case filed on the 16th February, 2017 argue as per paragraphs 17 to 19 that upon attempting to recover the judgment against the second defendant, they discovered that there were no operations at the registered office of the second defendant and that the second defendant had no assets and no business. The

claimants further allege that no annual returns have been filed with the Company Registry and no tax returns have been filed with the Board of Inland Revenue.

4. As such, the claimants claim that the second defendant is a sham company used by the first defendant for the purpose of avoiding personal liability for the tortious acts and other breaches committed by him. Further, that the second defendant is and was at all material times the alter personality and/or alter ego of the first defendant. Consequently, the claimants seek an order that the corporate veil of the second defendant be pierced and the first defendant be held liable for the sums that are due to them in the first claim.
5. The second defendant was at first named as the third defendant in this claim but this court struck out the claim against the then second defendant, the spouse of the first defendant.

The first defendant's defence

6. In response to the claimants' allegations as put forward in paragraphs 17 to 19, the first defendant by his defence filed on the 25th July , 2017 avers at paragraph 8 as follows;

“Save and except that the third defendant has not been fully compliant with certain filing obligations, the first defendant vehemently denies paragraphs 17 to 19 of the statement of case and the particulars therein, and will hold the claimants to strict proof of same at the trial of this action. In response thereto, the first defendant avers that at all material times, the third defendant was a limited liability company and therefore a legal entity and personality, which was separate, distinct and apart from the first defendant.”

7. On the 25th April, 2018 the parties by consent agreed to strike out the following sentence from paragraph 8 of the defence;

“At all material times, the third defendant operated with its own bank accounts, contractual obligations, contract workers, expenses, liabilities, office space, assets, equipment inter alia.”

The request for particulars

8. Further particulars were in fact sought prior to the striking out of the sentence set out above by letter of the 17th October 2017 but to date no reply has been received from the second defendant (who was at the time named as the third defendant). The information requested by the claimants are as follows;

- i. At which local financial institution(s) does the third defendant have bank accounts? Please supply bank statements for the third defendant for the previous four fiscal years (2014-present)*
- ii. Is the third defendant a VAT registered business pursuant to the provisions of the Value Added Tax Act Chap. 75:06?*
- iii. If the answer to question 2 is in the affirmative, please provide details of this registration and supply a copy of the third defendant's certificate of VAT registration.*
- iv. Has the third defendant ever paid National Insurance contributions for its workers pursuant to the provisions of the National Insurance Act Chap. 32:01?*
- v. If the answer to question 4 is in the affirmative, please provide details of these payments and supply documentary proof of same.*
- vi. Where was the third defendant's business office over the past few years? Please provide details of the office space owned and/or rented by the third defendant since its incorporation on 23 September 2008.*
- vii. Were income tax statement ever prepared and filed with the Board of Inland Revenue on behalf of the third defendant?*
- viii. If the answer to question 7 is in the affirmative, please supply copies of all such statements prepared on behalf of the third defendant since its incorporation on 23 September 2008.*
- ix. Has the third defendant ever entered into any mortgage and/or loan agreements since its incorporation with any financial institutions and/or individuals?*
- x. If the answer to question 9 is in the affirmative, please provide details and documentary proof of same.*

- xi. Has the third defendant ever acquired or rents any assets, real or personal in its name?*
- xii. If the answer to question 11 is in the affirmative, please supply details and documentary proof of same.*
9. Further, although given the opportunity to do so in writing, the first defendant has failed to file submissions and so the court must proceed to rule on this application on the presumption that the second defendant does not wish to respond, the time limited for so doing having long elapsed.

The issue

10. The main issue for determination is whether having regard to all the circumstances in this case, this court should order that the first defendant to supply the further particulars sought by the claimants.

The law and analysis

11. In ***Real Time Systems Limited v Renraw Investments Limited & others***¹ Jamadar J.A. found that Part 35 of the CPR is inapplicable where pleadings are not yet closed and discovery has not yet been taken place. That the court is left to further the overriding objective using the provisions of Part 26.1 (1) (w) to order further and better particulars.

12. ***Part 35 of the CPR*** provides as follows;

“Right of parties to obtain information

35.1 (1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.

(2) To do so he must serve a request for information that he wants on that other party.

¹ Civil Appeal No. 238 of 2011

(3) *He must state in his request precisely what information he wants.*

35.2 (1) *If a party does not give information which another party has requested under rule 35.1 within a reasonable time, the party who served the request may apply for an order compelling him to do so.*

(2) *An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.*

(3) *When considering whether to make an order the court must have regard—*

(a) to the likely benefit which will result if the information is given;

(b) to the likely cost of giving it; and

(c) to whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with such an order.

35.3 *An application for an order compelling a reply to a request for information may not be made before the time for serving witness statements has expired nor less than 42 days before the date fixed for the trial. (The time for serving witness statements will be specified in directions given by the court under Part 27)”*

13. **Part 26.1 (1)(w)** of the CPR provides as follows;

“26.1(1) The court (including where appropriate the court of Appeal) may-

...

(w) take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.”

14. In **Republic Bank Limited v Peter Easton**², Kokaram J upon considering the cases of **Real Time Systems Limited v Renraw Investments Limited**³, **Monteil v Central Bank & CLICO**⁴ and **Bernard v Seebalack**⁵ summarized the law in relation to further and better particulars as follows;

² CV2016-02795 at paragraph 16

³ [2014] UKPC 6

⁴ Civ. App. No. 19 of 2015

⁵ [2010] UKPC 15

“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 reasonable 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 issues fairly raised in the pleadings and not advance a new case which would fall for separate consideration under Part 20 CPR.”*

15. Further, in *VSN Investments Limited v Seasons Limited*⁶, Jones J (as she then was) stated that the appropriate manner in dealing with an application for further and better particulars is to first consider whether the information sought is necessary in order to (a) fairly dispose of the claim or save costs or (b) for the purpose of managing the case and furthering the overriding objective.

16. In the text, *Zuckerman on Civil Procedure*, the learned author, Adrian Zuckerman at paragraph 7.36, page 304 stated that in dealing with an application for further information the court should have regard to the following considerations;

“...the likely benefit that the information would have for the just determination of the issues; the cost that is likely to be involved in supplying it; whether the request places an unreasonable burden on the respondent; and the respondent’s conduct in the litigation. In assessing the need for such an order the court will want to be persuaded that it is necessary, proportionate and does not involve disproportionate expense.”

17. Upon analyzing the claimants’ statement of case and the defence of the first defendant, it is pellucid that a major issue in this case is whether the second defendant is a sham company, and/or the alter ego of the first defendant. This is a well set out issue that requires specific information in the nature of that which is sought by the claimants having regard to the first defendant’s bald response to such grave allegations. Further, these are matters which it is reasonable to infer would lie within the specific knowledge of the defendants.

18. In the court’s view therefore the particulars sought by the claimants are clearly necessary to (a) fairly dispose of the claim on the specific issue pleaded by the claimant and (b) for the purpose of managing the case and furthering the overriding objective in that there is a likelihood that the information when supplied may lead to the narrowing of particular factual or other issues.

⁶ CV No. 2006 – 01349

19. Accordingly, the court finds that the further particulars sought by the claimants would benefit the just determination of the issues in this case and would allow the claimants to fully understand and be prepared to meet the case put forward by the first defendant. The court further finds that if disclosed, the provision of the further particulars is entirely consistent with the cards on the table approach and so ordering same would be in keeping with the overriding objective of dealing with the matter justly.
20. However, the court must also consider the cost that is likely to be involved in supplying the further particulars; whether the request places an unreasonable burden on the first defendant; and the first defendant's conduct in the litigation. In his defence, the first defendant did not assert that the third defendant is a medium or large scale enterprise. As such, it is reasonable to infer that sourcing the particulars requested by the claimants would not be excessively expensive and/or place an unreasonable burden on the first defendant.
21. Further, although the first defendant was aware that the claimants were pursuing this application for further particulars, he failed to file any affidavit in opposition to the claimant's application and also failed to file submissions. As such, due to the first defendant's conduct, there is no evidence before the court that the provision of the further particulars would be unduly burdensome upon him. Common sense would dictate that if the provision of the further particulars would be onerous, the first defendant would have attempted to state same. Consequently, the court finds that it is reasonable to infer that the provision of the further particulars would not be unduly burdensome on the first defendant.
22. The court notes that the second defendant has failed to enter an appearance or file a defence. In that regard the submission is that the first defendant being a director of the second defendant and the incorporator is the one to supply the relevant information. The court accepts this argument. Further, the process of disclosure has not yet been effected so that an order will not be made that the first defendant provide copies of documents at this stage. That is a matter for either standard or specific disclosure upon the close of pleadings.

23. The court therefore orders as follows;

- a) The first defendant shall provide the following information to the claimants by the 29th June 2018;
 - i. The names of local financial institutions at which the second defendant has bank accounts.
 - ii. Whether the second defendant is VAT registered pursuant to the provisions of the Value Added Tax Act Chap. 75:06. If so, the VAT registration number.
 - iii. Whether the second defendant has ever paid National Insurance contributions for its workers pursuant to the provisions of the National Insurance Act Chap. 32:01.
 - iv. The location of the second defendant's business office over the past few years.
 - v. Whether income tax statements/returns were ever prepared and filed with the Board of Inland Revenue on behalf of the second defendant.
 - vi. Whether the second defendant has ever entered into any mortgage and/or loan agreements since its incorporation with any financial institutions and/or individuals and the general details thereof.
 - vii. Whether the second defendant has ever acquired or rented any assets, real or personal in its name and the particulars thereof.
- b) In default of compliance with the first paragraph of this order, paragraph 8 of the defence of the first defendant is struck out.
- c) The first defendant shall pay to the claimants the costs of this application to be assessed in default of agreement.

Dated the 12th day of June, 2018

Ricky Rahim
Judge