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SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No. 719 of 1995

Between:

EUSELIE CLAIRMONT

Plaintiff

and

SOUTHERN BUILDERS ENTERPRISES LTD

Defendant

Mr. C. Theodore for Plaintiff
Mr. H. Deterville for Defendant

1995: January 12.
January 19.

J U D G M E N T

d'Auvergne J.

On the 12th day of October 1995 the Plaintiff filed a writ of Summons endorsed with statement of claim seeking payment of \$107,555.40 and interest on the above sum of \$107,355.40 at the rate of 6% per annum from the date of judgment herein until payment under Article 1009 A of the Civil Code. The defendant entered an appearance on the 23rd of October 1995.

On the 31st October 1995 the Defendant filed and on 2nd November 1995 served on the Plaintiff Request for particulars which reads:

Our clients have been advised that they are entitled to certain particulars of the Statement of Claim herein.

1. Under paragraph 1 (a) of the Statement of Claim:

Of the allegation that "monies paid by the plaintiff to various persons..." state the name of each such person, how much was paid to each such person and when such amount was paid.

2. Under paragraph 1 (a) of the Statement of Claim:

Of the allegation that "monies paid by the plaintiff at the defendant's request..." state in respect of each request, whether such request was written or oral. If written identify the said document. If oral, state when, where and by whom such request was made, identifying the words relied on.

3. Under paragraph 1 (a) of the Statement of Claim:

Of the allegation that "monies paid by the plaintiff for the benefit of the defendant..." identify the benefit referred to in respect of each particular payment.

4. Under paragraph 1 (b) of the Statement of Claim:

Of the allegation that "monies spent on behalf of the defendant at the defendant's request..." state in respect of each request, whether such request was written or oral, when was such request made and who made such a request. If written identify the said document. If oral, state when, where and by whom such request was made, identifying the words relied on.

5. Under paragraph 1 (b) of the Statement of Claim:

Of the allegation that "monies spent on behalf of the defendant for the purchase of materials..." state in respect of each such purchase, where was the material purchased, what materials were purchased, and what was the cost of each item of material.

6. Under paragraph 1 (b) of the Statement of Claim:

Of the allegation that "materials were used with the defendant's consent..." state such consent was written or oral, when was such consent was given and who gave such consent. If written identify the said document. If oral, state when such request was made.

We shall appreciate receiving these particulars within seven (7) days after service of this request upon you in order to obviate the necessity of applying to the Judge for them which we shall do if we do not receive the said particulars, without further notice to you. We are to advise that we require these particulars in order that we may file a defence which would amount to more than a bare denial, as our instructions are that there is not now any sums due by the defendant to the plaintiff as alleged in the Statement of Claim.

On the 7th December 1995 the defendant filed its defence and a **Summons on application for Particulars of Pleadings**. By this Summons the defendant requested the same particulars previously requested.

Under the **Request for Particulars** there were six requests, three under paragraphs 1 (a) and a similar number under 1 (b) of the Statement of Claim (reproduced above) but in the **Summons on application for Particulars of Pleadings** one of the request under paragraph 1 (b) of the Statement of Claim is missing viz

Under paragraph 1 (b) of the Statement of Claim:

6. Of the allegation that "materials were used with the defendant's consent..." state such consent was written or oral, when was such consent was given and who gave such consent. If written identify the said document. If oral, state when such request was made.

The defendant also sought that the plaintiff's claim be struck out in default of service of the said particulars on the defendant within such time as may be specified by the Court and that the defendant pay the costs of the application.

At the hearing Learned Counsel for the defendant quoted from the White Book Supreme Court Practice of the United Kingdom. He read out paragraph 18/12/2 of the 1983 edition which is quite lengthy and which Matthew J, has reproduced in its entirety in Suit 487 of 1994 delivered on 10 January 1996, the same day of the hearing of this Case.

Learned Counsel for the Plaintiff argued that from the Statement of Claim the defendant should know what the Plaintiff's case is and moreover the defendant has all the relevant documents in its possession and upon 'discovery' will be forced to produce the documents.

Learned Counsel for the Defendant replied that the Plaintiff has and can only allege that the defendant possesses all the relevant documents which the defendant has resolutely and emphatically denied and was at a loss as to how to prepare for the trial.

Conclusions.

It is trite law that if the only object of the Summons be to obtain the names of witnesses or some other clue to the evidence of the other party it will be dismissed; but where the information asked for is clearly necessary to enable the applicant properly to prepare for trial..... the information must be given, even though its disclosure some portion of the evidence on which the other party proposes to rely on at the trial order 18/12/38 of White Book 1979.

Having listened to the arguments and applying the relevant law my order is as follows:

That the Plaintiff do within 14 days of this order serve on the

defendant the following particulars:

Under paragraph 1 (a) of the Statement of Claim

of the allegation that "monies paid by the plaintiff to various persons" state the name of each such person, how much was paid to each such person and when such amount was paid.

Under paragraph 1 (a) of the Statement of Claim

of the allegation that monies paid by the plaintiff at the defendant's request..." state in respect of each request, whether such request was written or oral. If written identify the said document. If oral, state when, where and by when such request was made.

Under paragraph 1 (b) of the Statement of Claim

the allegation that "monies spent on behalf of the defendant at the defendant's request "state in respect of each request, whether such request was written or oral when was such request made and who made such a request. If written identify the said document. If oral, state when, where and by whom such request was made.

Under paragraph 1(b) of the Statement of Claim

of the allegation that "monies spent on behalf of the defendant for the purchase of materials "State in respect of each such purchase where was the material purchased, what materials were purchased, and what was the cost of each item of material.

There will be no order as to costs.

SUZIE D'AUVERGNE

PUISNE JUDGE