

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. 487 of 1994

BETWEEN:

BRENDA EDWIN

Plaintiff

and

1. THE SAINT LUCIA BANANA GROWERS ASSOCIATION
2. H.V. ATKINSON
3. CALIXTE GEORGE
4. DAVID DeMACQUE
5. GEOFF DEVAUX
6. RICHARD PETERKIN
7. MICHAEL JOSEPH
8. OCTAVE FEVRIERE
9. CYRUS REYNOLDS

Defendants

Mr. D. Theodore for Plaintiff
Mr. H. Deterville for Defendants

1995: December 4;
1996: January 10.

J U D G M E N T

MATTHEW J. (In Chambers).

On July 6, 1994 the Plaintiff filed a writ of summons indorsed with statement of claim seeking damages for libel and presumably wrongful dismissal against the Defendants. The Defendants entered appearance between July 15 and 18 of 1994. They also filed defences between November 28 and December 2, 1994.

These proceedings pertain to Defendants 5 and 6 only who were initially represented by another solicitor.

On March 20, 1995 the Plaintiff took out a summons requesting particulars of the defence of Defendants 5 and 6. The said Defendants filed a response to the said particulars in which they basically stated that the Plaintiff was not entitled to the particulars requested but in a further response filed on October

REYNOLDS
+
ATKINSON
+
DEVAUX
+
PETERKIN
+
JOSEPH
+
FEVRIERE
+
ASSOCIATION

16, 1995 the Defendants supplied particulars of the statements of fact on which their defence of fair comment was based.

At the hearing, both learned Counsel made lengthy submissions on the different paragraphs of the pleadings which can be gleaned from the notes of evidence. I shall be content to state below my conclusions only in the interest of brevity.

Both Counsel correctly referred to the function of particulars as contained in the Supreme Court Practice of the United Kingdom as found at paragraph 18/12/2 of the 1979 edition. I think I should state them below. They are as follows:

"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.

The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to reduce costs (cited with approval by Edmund Davies L.J. in *Astrovlanis Compania Naviera S.A. v. Linard* (1972) 2 Q.B. 611; (1972) 2 W.L.R. 1414 at p. 1421. This function has been stated in various ways as follows:

- (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that

- case is to be proved (per Lindley, L.J., in *Duke v. Wisden* (1897), 77 L. T. 67; per Buckley, L.J., in *Young & Co. v. Scottish Union Co.* (1907), 24 T.L.R. 73, 74; *Aga Khan v. Times Publishing Co.*, (1924) 1K;
- (2) to prevent the other side from being taken by surprise at the trial (per Cotton, L.J., in *Spedding v. Fitzpatrick* (1888), 38 Ch. D. at p. 413; *Thomson v. Birkley* (1882), 31 W.R. 230);
 - (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial (per Cotton, L.J. *ibid.*; per Jessel, M.R., in *Thorp v. Holdsworth* (1876), 3 Ch. D. 637; *Elkington v. London Association for the Protection of Trade* (1911), 27 T.L.R. 329, 330);
 - (4) to limit the generality of the pleadings (per Theaiger, L.J., *Saunders v. Jones* (1877), 7 Ch. D. 435) or of the claim or the evidence (*Milbank v. Milbank*, (1900) 1 Ch. 376, 385);
 - (5) to limit and define the issues to be tried, and as to which discovery is required (*Yorkshire Provident Life Assurance Co. v. Gilbert* (1895) 2 Q.B. 148; per Vaughan Williams, L.J., in *Milbank v. Milbank*, (1900) 1 Ch. 376, 385);
 - (6) to tie the hands of the party so that he cannot without leave go into any matters not included (per Brett, L.J., in *Philipps v. Philipps* (1878), 4 Q.B.D. 127, 133; *Woolley v. Broad*, (1892) 2 Q.B. 317), see (n.) "All material facts" to r. 7, *supra*; and *Woolley v. Broad*, (1892) 2 Q.B. 317). But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings (*Dean of Chester v. Smelting Corp.*, (1902) W.N. 5; *Hewson v. Cleeve*, (1904) 2 Ir. R. 536)."

But it is the application of those functions which present some difficulty in a given case.

CONCLUSIONS

1. Under paragraph 8(a) of the defence

The Plaintiff asked for particulars of:

- (a) the said appointment;
- (b) the said qualified privilege; and
- (c) the said operations.

At the hearing learned Counsel for the Plaintiff seems to have obtained satisfaction with what learned Counsel for the Defendants had provided so this issue does not require an order. But I would have thought it to be obvious that the appointment and operations in respect of which particulars were required were those referred to in paragraph 3 of the Plaintiff's statement of claim. I would also have found that there was no need for particulars of qualified privilege which were sufficiently explained in paragraph 8 of the defence.

2. Under paragraph 8(b) of the defence

The Plaintiff asked for particulars of:

- (a) the said duty; and
- (b) the said relevant matters.

Counsel seems to have abandoned the particulars in respect of the duty but in my view this duty was sufficiently contained and explained in the particulars of the defence of qualified privilege mentioned above. I think to ask for particulars of the relevant matters is an abuse of the process of the Court and I agree with the Defendants that no particulars ought to be supplied.

3. Under paragraph 8(c) of the defence

The Plaintiff asked for particulars of:

- (a) the said sense of duty; and
- (b) the said honest belief.

She seems to have abandoned the particulars in respect of honest

belief. I think in both cases the requests are an abuse of the process of the Court and are rightly withheld.

4. Under paragraph 8(d) of the defence

The Plaintiff asked for particulars of:

- (a) the said common interest;
- (b) the said corresponding interest;
- (c) the said social duty;
- (d) the said moral duty; and
- (e) the said legal duty.

I think this is harassment. I do not think there is need for particulars or explanations of any of these terms all of which were used to explain and particularise the defence of qualified privilege.

5. Under paragraph 9 of the defence

The Plaintiff asked for particulars of the facts on which the defence of fair comment was based. I agree, and it is trite law, that this is a requirement if the defence of fair comment is to be entertained. The Defendants refused at first to supply the particulars but whether they were right or wrong to have maintained this stance does not call for inquiry since, and using the terminology of learned Counsel for the Plaintiff, they had a "change of heart, and supplied them later.

6. Under paragraph 10(a) of the defence

The Plaintiff asked for particulars of:

- (a) the said assessment;
- (b) the said compelling reality;
- (c) the said massive financial failure;
- (d) the said top management and financial management; and
- (e) the said allegation that top management were held accountable.

The assessment referred to is clearly the one referred to in paragraph 5 of the statement of claim as contained in the report of the Banana Review Committee.

I am not sure what is the compelling reality referred to and I think the Plaintiff is entitled to the particulars requested under that head within twenty-one days failing which that pleading shall be struck out.

I think too that the Plaintiff is entitled to know whether she is included in the terms "top management" and/or "Senior financial management" and these particulars are likewise ordered to be supplied within twenty-one days failing which reference to those terms shall be ordered to be struck out.

However, I do not think particulars are required of the phrase "massive financial failure" or of the allegation that top management were held accountable as these appear to be the findings of the Committee and are properly the subject of disclosure of documents.

7. Under paragraph 10(b) of the defence

The Plaintiff requested particulars of:

- (a) the said internal documents; and
- (b) of the allegation that the Board of Directors had been concerned with the performance of the Accounting Department.

Learned Counsel for the Plaintiff conceded that if they got the documents that would answer the allegation that the Board had been concerned with the performance of the Accounting Department. I do not think there is need for particulars of the internal documents. At paragraph 10(b) of the defence the Defendants plead that there was evidence from internal documents that the Board had for some time been concerned with the performance of the Accounting

Department. I am of the view that this is a proper subject for disclosure of documents and the request is accordingly refused.

8. Under paragraph 10(c) of the defence

The Plaintiff asked for particulars of:

- (a) the said complaints; and
- (b) the said response by the Plaintiff.

In my judgment paragraph 10(c) of the defence sufficiently explains by whom the complaints were made and the Plaintiff ought to know whether or not she responded to them. Any further information should be directed to disclosure.

9. Under paragraph 10(d) of the defence

The Plaintiff asked for particulars of the said minutes of directors' meetings, management letters, external audit report and internal audit report.

These are the documents which the Defendants allege helped them to come to the conclusion that the words in their report mentioned in paragraph 5 of the statement of claim are true in substance and in fact. It seems to me that the Plaintiff's real concern is to examine the documents under disclosure and these documents are not properly the subject of particulars.

As I indicated earlier these proceedings have been long and tedious and for the most part were unnecessary.

There shall be no order as to costs.

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A.N.J. Matthew
Puisne Judge