IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)

CLAIM NO. BVIHC (COM) 2013/0160

BETWEEN:

By way of Claim:

[1] RENOVA INDUSTRIES LIMITED
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA

Claimants

and

[1] EMMERSON INTERNATIONAL CORPORATION
~~**[2] TOMSA HOLDINGS LIMITED**~~
~~**[3] ALABASTER ASSOCIATES LIMITED**~~
~~**[4] GARDENDALE INVESTMENTS LIMITED**~~
[5] MIKHAIL ABYZOV
[6] ROMOS LIMITED
[7] FRESKO FINANCIAL LIMITED

Defendants

And by way of Counterclaim:

[1] EMMERSON INTERNATIONAL CORPORATION
~~**[2] TOMSA HOLDINGS LIMITED**~~
~~**[3] ALABASTER ASSOCIATES LIMITED**~~
~~**[4] GARDENDALE INVESTMENTS LIMITED**~~
[5] ANDREY TITARENKO

Claimants by way of Counterclaim

and

[1] RENOVA INDUSTRIES LTD
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED

[4] LAMESA HOLDING SA
[5] VIKTOR VEKSELBERG
[6] INTEGRATED SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
[7] ODVIN FINANCIAL INC
[8] GOTHELIA MANAGEMENT LIMITED
[9] RENOVA HOLDING LIMITED
[10]VLADIMIR KUZNETSOV
[11]ALEXEI MOSKOV
[12]ALEXANDER KOLYCHEV
[13]MIKHAIL SLOBODIN
[14]MAKSIM MAYORETS
[15]RENOVA MANAGEMENT AG
[16]PAO T PLUS
[17]INTEGRATED ENERGY SYSTEMS
(a company incorporated under the laws of Cyprus)
[18]CLERN HOLDINGS LIMITED
[19]STARLEX COMPANY LIMITED
[20]SUNGLET INTERNATIONAL INC.
[21]OOO RENOVA HOLDING RUS

Defendants by way of Counterclaim

And by way of Ancillary Claim:

[1] MIKHAIL ABYZOV
[2] ROMOS LIMITED
[3] FRESKO FINANCIAL LIMITED
[4] ANDREY TITARENKO
[5] GOLDFORT LIMITED
[6] EMMERSON INTERNATIONAL CORPORATION

Claimants by way of Ancillary Claim

and

[1] RENOVA INDUSTRIES LTD
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA
[5] VIKTOR VEKSELBERG
[6] INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
[7] ODVIN FINANCIAL INC
[8] (8) FLOPSY OVERSEAS LIMITED
[9] VLADIMIR KUZNETSOV
[10]ALEXEI MOSKOV

[11]ALEXANDER KOLYCHEV
[12]MIKHAIL SLOBODIN
[13]RENOVA MANAGEMENT AG
[14]RENOVA HOLDING LIMITED
[15]PAO T PLUS
[16]INTEGRATED ENERGY SYSTEMS
(a company incorporated under the laws of Cyprus)
[17]CLERN HOLDINGS LIMITED
[18]MAKSIM MAYORETS
[19]LIWET HOLDING AG
[20]BERDWICK HOLDINGS LIMITED
[21]TIWEL HOLDING AG
[22]A.B.C. GRANDESERVUS LIMITED

Defendants by way of Ancillary Claim

And by way of Third Ancillary Claim:

[1] EMMERSON INTERNATIONAL CORPORATION

Claimant by way of Third Ancillary Claim

and

[1] VIKTOR VEKSELBERG
[2] INTEGRATED ENERGY SYSTEMS LIMITED
[3] VLADMIR KUZNETSOV
[4] EVGENY OLKHOVIK
[5] ANDREY BURENIN
[6] YAKOV TESIS
[7] ALEXEI MOSKOV
[8] IGOR CHEREMIKIN
[9] IRINA MATVEEVA
[10]PAVLINA TSIRIDES
[11]IRINA LOUTCHINA SKITTIDES
[12]PHOTINI PANAYIOTOU
[13]ARTEMIS ARISTEIDOU
[14]A.B.C. GRANDESERVUS LIMITED
[15]STARLEX COMPANY LIMITED
[16]RENOVA INDUSTRIES LIMITED
[17]SUNGLET INTERNATIONAL INC

Defendants by way of Third Ancillary Claim

Appearances:

Mr. David Quest, QC with him Ms. Arabella di Iorio and Mr. Michael Bolding for the Applicants

Mr. Robert Weekes with him Mr. Ajan Ratan for the Respondents

Mr. Scott Cruickshank with him Mr. Jonathan Child for the Respondent (Mr. Andrey Titarenko)

2019: June 17
June 18

Request for further information — whether necessary — whether a request for further information demanded of answers given to an earlier request for further information is permissible

ORAL JUDGMENT

[1] **JACK, J [Ag.]**: For most of the 20th Century, proceedings in the Commercial Court in London followed a well recognised path. The plaintiff would serve its Points of Claim. The defendant, when it served its Points of Defence would invariably also serve a Request for Further and Better Particulars of the Points of Claim. The plaintiff might then serve Points of Reply, but even if it did not, it would at the same time as serving its Further and Better Particulars of the Points of Claim, also serve a Request for Further and Better Particulars of the Points of Defence. Quite often, there would be another round in which the parties sought further and better particulars of the further and better particulars provided by their opponents. Indeed, sometimes, enterprising pleaders made a request for further and better particulars of the further and better particulars of the further and better particulars, although it is fair to say the reply given to such request was usually the dusty "sufficiently pleaded".

[2] This thriving cottage industry of junior counsel and copy typists met a sudden demise in 1999 when the English Civil Procedure Rules came into force. These replaced the time-honoured request for further and better particulars, and another procedure (a hang-over from the days of the Court of Chancery) called the administration of interrogatories, with the modern request for further information.

[3] Soon after the new Rules came into force, Lord Woolf MR, the architect of the English Civil Procedure Rules, indicated in **McPhilemy v Times Newspaper Ltd**,[1] that a restrictive approach should be adopted to the ordering of the provision of further information.

[4] When the Eastern Caribbean Civil Procedure Rules came into force a year later, an even more restrictive approach was adopted. Rule 34.1 of the Civil Procedure Rules 2000 ("CPR") provides:

> "(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 obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought."

[5] CPR 34.2 provides:

> "(1) If a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party 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 to:
> (a) the likely benefit which will result if the information is given;
> (b) the likely cost of giving it; and
> (c) 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 the order."

[1] [1999] EWCA Civ 1464, [1999] 3 All ER 775.

[6] The Eastern Caribbean Supreme Court has described the modern practice in four cases. In **East Caribbean Flour Mills Ltd v Boyea**,[2] Barrow JA held in the Court of Appeal:

> "[T]here is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader's case.
>
> It is settled law that witness statements may now be used to supply details or particulars that, under the former practice, were required to be contained in pleadings."

[7] In **Reynolds-Greene v the Bank of Nova Scotia**,[3] Blenman J held at paragraphs [62-63]:

> "The pleadings should make clear the general nature of the case... [I]t is well settled that a party no longer has to plead all of the particulars of his case, since the discovery process as well as the witness statements that will be filed will serve the very useful purpose of revealing the entire case."

[8] In **Cedar Valley Springs Homeowners Association Incorporated v Pestina**,[4] Pereira CJ held at para [19] that:

> "[I]t is now well settled that with the advent of witness statements the strictures to which pleadings were required to conform in earlier pre-CPR times have now been ameliorated with the advent of the CPR, where, once the case is sufficiently pleaded to enable the party to know the case which he has to meet, fuller details may be fleshed out in the witness statements."

[9] Lastly, in **Huggins v Browne**,[5] Henry J held at para [21] that:

> "It is now well established that a party will be permitted to particularize his or her case by providing evidence to substantiate his or her claims. In

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[2] SVGHCVAP2006/0012 (delivered 16th July 2007, unreported) paras [43] and [44].
[3] ANUHCV2005/0443 (delivered 20th November 2008, unreported).
[4] ANUHCVAP2016/0009 consolidated with ANUHCVAP2016/0010 (delivered 18th January 2017, unreported).
[5] SVGHCV2018/0001 (delivered 21st March 2018, unreported)

> **East Caribbean Flour Mills Ltd. v Boyea**, the court explained that while pleadings circumscribe the broad issues and allegations which are [then] particularized in witness statements or affidavit evidence." (Insertion added)

[10] An important feature of the current case is that it was listed for trial in June 2018. The trial was going to deal with all the issues save what is known as the Schedule 4 Claim. The parties were fully ready for that trial with witness statements served. There were no outstanding pleading issues. Shortly before the trial was due to commence, the United States of America imposed sanctions on Mr. Vekselberg. These had the effect of freezing Mr. Vekselberg's assets insofar as they were subject to American control, so that he was unable to pay his American lawyers. This resulted in the trial being adjourned and the Vekselberg Parties instructing a new team of lawyers.

[11] On 13th February 2019, the Vekselberg Parties served an Amended Fifth Request for Further Information. On 27th February 2019, they served a Sixth Request for Further Information. The Abyzov Parties failed to answer the two requests and on 30th April 2019, the Vekselberg Parties issued the application which is now before me, seeking an order that the Abyzov Parties answer those two requests.

[12] Mr. Weekes in his skeleton points out that the fifth and sixth requests for further information as originally served comprised 96 requests covering 48 pages. Since then, some 64 requests have been abandoned by the Vekselberg Parties, leaving 32 requests, the answers to which are still sought. What Mr. Weekes says about this in his skeleton argument is that these requests amount to an abuse of the court's process. All of the requests that are pursued in the Fifth Request for Further Information concerned matters that insofar as they are pleaded, (a) were raised approximately 14 months ago back in February 2018 by amendments made with the consent of the Renova Parties at a hearing before Chivers J; (b) had been addressed by the Renova Parties in their pleaded response in the form of detailed amendments to their Defence back in March 2018, and most importantly, (c) would

have been the subject of the trial that was fixed to commence in June 2018, and which was only adjourned on account of the sanctions imposed by the US Office of Foreign Asset Controls.

[13] In these circumstances, he submits that it cannot possibly be the case that any of the information still sought in the Fifth Request for Further Information is being sought to facilitate a fair hearing or save costs. The Renova Parties' conduct is wholly inconsistent with any such suggestion.

[14] Some of the requests which are pursued in the Sixth Request for Further Information, he further submits, are likewise historic and stale. Thus the Renova Parties seek to make requests about answers to previous requests for further information where the information was requested in November 2016, and the answers provided as long ago as March 2017. Witness statements have long been exchanged over 14 months ago and the claim would have been tried a year ago but for the imposition of sanctions. It cannot sensibly be suggested that such information is even remotely needed by the Renova Parties to facilitate a fair hearing or to save costs. If that were so, the Renova Parties would have raised such issues in the intervening two years rather than simply proceeding to trial.

[15] He then makes some detailed points about the timing.

[16] In my judgment, the lateness of an application for further information is not necessarily fatal to the granting of an order, but the Court will pay particular attention to whether a late application is truly necessary in order to dispose fairly of the claim or save costs. There should be a strong presumption that a late application is not necessary for those purposes. In the current case, I can see no basis on which the further information requested will save costs. The purpose of the request is not to obtain admissions, but rather are an expensive way of

obtaining material for cross-examination. As such, they will increase rather than save costs.

[17] I therefore examine whether the requests are necessary for a fair disposal of the case. I emphasize that the test is one of necessity.

[18] The majority of the requests in the Sixth Request concern the Schedule 4 Claim. It will be recalled that claim was not going to be tried as part of the June 2018 trial. At present, it is undecided whether that will remain the position. A decision will be made at the Case Management Conference in November this year whether the Schedule 4 Claim should remain hived off. Accordingly, at the moment there is no need to provide the further information. The Schedule 4 Claim is not currently listed for trial and may never be listed for trial. Only once it is clear that the Schedule 4 Claim will be coming for trial will the question of the necessity of answering the requests arise.

[19] Further, even if the Schedule 4 Claim is to come to trial, the request is premature. The Reply of the Abyzov Parties to the Schedule 4 Defence is not due to be served until next month. The learned pleader of that Reply will no doubt consider whether and to what extent facts which are the subject of the Request for Further Information should be pleaded voluntarily. Unless and until the pleadings are closed, the Sixth Request for Further Information in respect of the Schedule 4 Claim is premature. It is not currently necessary to order that it be answered.

[20] I turn then to the remaining individual requests. Many of the requests in the Fifth Request for Further Information concerned a series of oral assignments of the claims against the Vekselberg Parties. They are pleaded at paragraph 4A of a pleading dauntingly described as the "Re-Re-Re-Re-Amended Defence and Counterclaim of the First Defendant; Counterclaim of the Fifth Claimant by way of Counterclaim; Re-Amended Ancillary Claim of the First and Second Claimants by

way of Ancillary Claim; and Ancillary Claim of the Fourth and Fifth Claimants by way of Ancillary Claim." The series of assignments pleaded in paragraph 4A finished with a written "Restated Asset Swap and Assignment Agreement" dated 28th January 2018.

[21] Now, there are obvious oddities about this series of oral assignments supposedly made by the Abyzov Parties between themselves. The Vekselberg Parties are right to be curious about the reasons they were made. However, the validity of the oral assignments will not be an issue at trial. This is because, by the written agreement of 28th January 2018 between nine Abyzov Parties, Mr. Abyzov himself and Mr. Titarenko, all the previous assignments were confirmed. Accordingly, the questions about the oral assignments are not necessary for the fair disposal of the case. Questions as to whether notice of the assignments were given are not necessary either. The Vekselberg Parties can make whatever points they want to on notice without receiving an answer to the request for further information.

[22] Under the Sixth Request for Further Information, various requests are made as to the state of mind of various parties and various witnesses. I can take request 4 as typical. This begins by reciting the pleadings in respect of which the further information is sought. It reads:

> "Under paragraph 143D.1 of the Re-Re-Amended Defence, Counterclaim and Ancillary Claim:
> Of: '143D.1. Fresko made the Partial Payment to Flopsy on the basis of the belief that the Elsib/UTZ Joint Venture Agreement was a valid and binding contract. If the Elsib/UTZ Joint Venture Agreement was not valid and binding then such payment was made as a result of a mistake of law and/or fact by Fresko'
> Under response 33 of the Third, Fourth, Sixth and Seventh Defendants' Further Information and under response 33 of the Fifth Defendant's Further Information, dated 27th March 2017
> Of: '33 Request - please identify the individuals who are alleged to have held the alleged belief and/or made the alleged mistakes and whose states of mind is/or are sought to be attributed to Fresko in relation to the 'Partial Payment', and explain the basis on which each of their states of mind is alleged to be attributed to Fresko.'

> Of: '33 Response - In respect of the Partial Payment, the knowledge of Mr. Abyzov and/or Ms. Victoria Uryupina is attributable to Fresko. Mr. Abyzov believed that he bound Fresko to a binding oral agreement, the Elsib/UTZ Joint Venture Agreement, acting as the company's authorised representative. Mr. Abyzov's state of mind was therefore attributed to Fresko upon entry into the Elsib/UTZ Joint Venture Agreement. Ms. Uryupina, acting as an authorized representative of Fresko, instructed the Partial Payment to be made through a bank under the belief that the Partial Payment was made by Fresko pursuant to a binding agreement.'
>
> *Requests:*
> 4. Please confirm whether the 'binding agreement', pursuant to which it is alleged Ms. Uryupina believed the payment she instructed was being made was the alleged oral Elsib/UTZ Joint Venture Agreement:
> 4.1. If so, please explain how it is alleged that she came to hold her belief in the binding nature of the alleged oral Elsib/UTZ Joint Venture Agreement.
> 4.2. If it was not that agreement pursuant to which she believed the payment she instructed was being made:
> 4.2.1: Please identify the 'binding agreement', pursuant to which it is alleged Ms. Uryupina believed the payment she instructed was being made; and
> 4.2.2: Explain how it is alleged that she came to know of that agreement and how she came to hold her belief in its binding nature."

[23] Mr. Quest, QC, made various formulations of, what he said was, the CPR 34.2(2) test. He said: "We are entitled to know how the case is made" and "fairness requires that they give answers." Under these formulations, he might have more chance of success in his application, but they are not the relevant test which is a stringent test of necessity. Request 4 which I have just cited is a typical example of an unnecessary request for details which are going to be at best of minor importance when it comes to the trial of the matter.

[24] In respect of other requests, I note that they are requesting further information in respect of further information already provided. This harkens back to the old request for further and better particulars of the further and better particulars. I regret to say that retro is never a good look for a lawyer. It would require an extreme case for the Court to order that further information be given of further information. The current case is not exceptional. If the original further information

is unsatisfactory and does not provide a satisfactory answer to the request made for that further information, the appropriate course is to apply for the original request to be answered fully, not to serve a request for further information of the further information.

[25] The delay, in any event, shows that these requests are in my judgment not necessary. The original further information was served in March 2017. The delay of some 10 months before service of the current requests shows that the further information now requested is not necessary. Other requests are similarly unnecessary.

[26] Request 7 in the Sixth Request for Further Information says, for example:

> "7.1: State whether it is admitted or denied (and, if denied, the basis for the denial) by each of the Abyzov Parties:
> 7.1.1 Whether Mr. Abyzov's appointment as Minister for Open Government Affairs caused or contributed to Mr. Abyzov not wanting to be seen to have an ownership interest in IES, and
> 7.1.2 Whether that appointment operated as a factor in causing Mr. Abyzov not to complete the process of formally acquiring shares in IES."

[27] These are matters of detail and will no doubt be the subject of submissions at trial but answering this request is wholly unnecessary.

[28] Some of the requests seem to arise out of an inability properly to read the pleadings. Request 16, which admittedly is one of the Schedule 4 requests, refers to paragraph 31.5 of Schedule 4, and reads:

> "Please confirm whether the phrase 'this period' is intended to mean April to September 2011 (as appears to be suggested by the opening words of each of paragraph 31 and subparagraph 31.5)."

A glance at page 117 of the relevant pleading will show that this pleading comes in a section which is headed "(i) Representations made between 26th April and September 2011." The answer to Request 16 is self-evident.

[29] Other requests seek details of misrepresentations allegedly made by Mr. Vekselberg, but the Abyzov Parties' case is fully set out in the witness statements served in support of their case.

[30] Further information at this stage is otiose, in my judgment. The fact that the Vekselberg Parties do not meet the necessity threshold means I have no discretion. I must refuse the application.

[31] Even if I had some discretion, I would exercise that discretion against ordering that the further information be provided. This case has already generated somewhere between 70 and 80 pleadings. This is a case where the court can properly give the time-honoured response 'sufficiently pleaded'.

[32] I therefore refuse the application.

Adrian Jack [Ag.]
Commercial Court Judge

By the Court

Registrar