

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION
2017/CLE/gen/00967

BETWEEN

DONALD URGO AND ASSOCIATES LLC

First Plaintiff

AND

UH NASSAU LIMITED

Second Plaintiff

AND

SUNSET EQUITIES LIMITED

Defendant

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Ms. Margaret Gonsalves-Sabola for the Plaintiffs
Mrs. Gail Lockhart-Charles KC and Ms. Lisa Esfakis for the
Defendant

Ruling Date: 24th March, 2023

Civil – Interlocutory Application – Order for Further and Better Particulars

RULING

1. By a Summons filed the 1st June 2021, the Plaintiffs seek an order for further and better particulars of the Defendant’s Re-Amended Defence and Re-Amended Counterclaim filed on 31st May 2021 (**the “Re-Amended Defence and Counterclaim”**), pursuant to Order 18 rule 12 of the Rules of the Supreme Court (“**RSC**”). The Plaintiffs also seek liberty to file a Re-Amended Reply and Re-Re-Amended Defence to Re-Amended Counterclaim.
2. By the Plaintiffs’ Affidavit of Christine Sweeting filed the 30th June 2021, they exhibit their written efforts to obtain the further and better particulars from the Defendant prior to the filing of the application. Their efforts however, went unanswered.
3. Order 18 rule 12 of the RSC states,

“12. (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words —

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent

intention of other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party —

(a) where he alleges knowledge, particulars of the facts on which he relies; and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.”

PLAINTIFFS' SUBMISSIONS

4. The Plaintiffs' submit that the purpose of **Order 18 rule 12 of the RSC** is to ensure that particulars are given of every material allegation contained in a pleading in order for the litigation between the parties and the trial to be conducted fairly, openly, without surprises and to reduce costs. Whether and what particulars should be ordered is in the discretion of the Court.
5. Where misrepresentation is pleaded, the pleading must show the nature and extent of each alleged misrepresentation, by whom and to whom it was made, and whether verbally or in writing. If in writing the document must be identified. They relied on this principle for requests 3 (2), 4(1) & 2) and 11 (1) & (2). See **New Point v Paynter 34 Ch.D 88**
6. In terms of other material facts, where the information asked for is clearly necessary to enable a party to properly prepare for trial, or in other respects the application is a proper one for the information must be given. They rely on this submission for requests 1(1) & (2); 2(1)-3(1); (3) & (4); 5(1)-(3); 6(1); 7(1)&(2); 8(1); 9(1) & (2); 10 – all requests; 12 (1) & (2); 13 (1) & (2); 14(1).
7. Where requests disclose names of witnesses, the information must be given even though it discloses some portion of the evidence on which the other party proposes to rely at the trial. They relied on this submission for requests 3(2); 4(1) & (2); 11(1)(b); 13(1). See **Bishop v Bishop (1901) P. 325** and **Wooton v Sievier [1913] 3KB 499**.

DEFENDANT'S SUBMISSIONS

8. The Defendant in opposition to the application submits that the court's jurisdiction to order a party to serve particulars of pleadings is found specifically in **Order 18 rule 12 (3) of the RSC**, as set out above, which states that the court may order a party to serve particulars on another party with respect to a pleading or an affidavit on such terms as the Court thinks just.
9. In **Burke v Associated Newspapers (Ireland) Ltd [2010] IEHC 447**, Hogan J provided guidance upon which the Defendant relies:-

[9] As Henchy J explained in that case, the entire object of particulars is to secure a fair hearing so as to ensure that the litigants will know the case that they have to meet. The requirements of Ord 19, r 7 may thus be seen as a specific application in the context of litigation of the constitutional guarantee of fair procedures and the general premise of art 34.1 of the Constitution that the administration of justice will be fair and even handed.

[10] Henchy J ([1985] IR 185 at 191) then articulated the general test to be applied in cases of this kind, namely, that:

“ . . . where the pleading in question is so general or so imprecise that the other side cannot know what case he will have to meet at the trial, he should be entitled to such particulars as will inform him of the range of evidence (as distinct from any particular item of evidence) which he will have to deal with at the trial.”

[11] Henchy J went on to conclude ([1985] IR 185 at 192):

“It would, of course, be unfair to require the Defendants to make a detailed disclosure of their evidence in advance, but all they are asked to do is to identify the matters in the article which they claim to be matters of fact and to state the facts which they intend to prove at the trial for the purposes of supporting those factual statements in the article. Such disclosure is, in my view, not unfair and, indeed, is highly desirable, if not necessary, in the interests of a fair trial.”

[12] Indeed, FitzGerald J had earlier spoken to similar effect in *Mahon v Celbridge Spinning Co Ltd* [1967] IR 1 when he stated that the object of pleadings (of which particulars form part) was to ensure that a party “should know in advance, in broad outline, the case he will have to meet at the trial”. This principle – namely, that particulars must convey the “in broad outline” the nature of the case which the litigant must meet, as distinct from the nature of the evidence which the other party may lead in support of that case – has been consistently endorsed in the subsequent case law.

[13] Thus, for example, in *McGee v O'Reilly* [1996] 2 IR 229 the Plaintiff sued a medical practitioner for professional negligence in respect of the treatment of a young child. In his defence the medical practitioner had contended that he had examined the child following a house call and recommended that the child be brought immediately to hospital. Arising from this the Plaintiff sought further and better particulars of the examination which the medical practitioner claimed to have undertaken, including the details of the observations and symptoms and the diagnosis made, and, in particular, the terms in which he had allegedly advised the parents to take the child to hospital.

[14] The Supreme Court refused to order the particulars sought. As Keane J noted, the Plaintiff already knew from the defence “in broad outline” what was going to be said at the trial by the Defendant regarding the house call. Keane J further added ([1996] 2 IR 229 at 234):

“In our system of civil litigation, the case is ultimately decided having regard to the oral evidence adduced at the trial. The machinery of pleadings and particulars, while of critical evidence in ensuring that the parties know the case that is being advanced against them and that matters extraneous to the issues as thus defined will not be introduced at the trial, is not a substitute for the oral evidence of witnesses and their cross-examination before the judge.”

[15] This is further illustrated by *Doyle v Independent Newspapers (Ireland) Ltd* [2001] 4 IR 594. Here the Plaintiff, who was a former coach of the Irish rugby team, sued for defamation in respect of a newspaper article which alleged that he had “become ostracised by the decision-making core among the players”. In response to a plea of justification, the Plaintiff raised particulars in respect of the manner in which it was contended that he had been ostracised by senior players of that team and the High Court ultimately directed the Defendant to furnish these details.

[16] The Plaintiff had, however, also sought the actual names of the members of the team who were said to have ostracised him. Although this court (Quirke J) directed that these names be furnished, an appeal against this specific aspect of the order was allowed by the Supreme Court. Keane CJ concluded that it could not be said that the pleading of justification was so “general or imprecise” that the Plaintiff did not know the nature of the case he had to meet at the trial. While the Plaintiff did not know the actual names of the players concerned, Keane CJ further noted ([2001] 4 IR 594 at 598) that the cases “in which a court will actually order a Defendant to say what witnesses he is going to produce at the trial are extremely rare and unusual”.

[17] In general, therefore, while a litigant is entitled to know from the pleadings the nature of the case he has to meet, he is not entitled to learn in advance the evidence which his opponent will lead in support of that contention. The distinction between what is a matter for pleadings on the one hand and what is a matter for evidence on the other is often a fine one and it is also one which is sometimes difficult to apply consistently in practice. Nevertheless, it seems clear that a Plaintiff (or a Defendant, as the case may be) is not entitled to further particulars once the essence of the case which he has to meet is clear from the pleadings.”

10. The Defendant also rely on McPhilemy v Times Newspapers Ltd. and others (1999) 3AER 775 where Master of the Rolls Lord Woolf stated:-

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which party relies, together with the 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. This does not mean that the pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case the pleader.”

11. Further in Quinn Insurance Ltd. and others v Tribune Newspapers plc and others [2009] IEHC 229 Dunn J. stated:-

“There is no doubt whatsoever that a party is entitled to know the nature of the case being made against them. However, the role of particulars is not to require a party to furnish detailed particulars of specific aspects of the case. It is sufficient that the

issues between the parties should be adequately defined and that the parties should know in broad outline what is going to be said at the trial of the action.”

12. The Defendant submits that the requests are not appropriate and that there is unclear inter alia about the paragraphs from which the particulars are requested. Further when witness statements ordered, full details of the Defendant's case will be provided. The Defendant also submits that the requests are an attempt to obtain evidence which as the authorities provide, is an inappropriate means of obtaining this. Many of the requests are interrogatories.

DECISION

13. The court must determine whether it should accede to the Plaintiffs' application to order that the Defendant provide the further and better particulars as requested.
14. Any party to an action has an obligation to state all of the necessary particulars in a claim, defence or other pleadings or evidence. The proper provision of particulars is fundamental to the proper disposal of litigation as they provide for litigation to be conducted fairly, openly and without surprises.
15. If it appears to one party that another's particulars are insufficient or inadequate, provisions have been made by the rules of the Supreme Court for that party to apply to the court to request further or better particulars. Both parties have acknowledged that Order 18 rule 12 of the RSC is the applicable rule.
16. Counsel for the Plaintiffs wrote to counsel for the Defendant requesting further and better particulars in compliance with Order 18 Rule 12 of the Rules of the Supreme Court. Due to the refusal to provide the requested particulars, the summons was filed with the attached request for particulars of the Defendant's Re- Amended Counterclaim.
17. The summons was supported by the affidavit of Christine Sweeting sworn on the 30th June, 2021.
18. By virtue of Order 18, Rule 12(5) the application for further and better particulars should not be made before the filing of a Defence unless an order is necessary or desirable to enable the Defendant to plead. The Defendant has filed the Re-Amended Defence but the Plaintiff has not filed their Re-Amended Defence to the Re-Amended Counterclaim. They submit that it is necessary in order to prevent further applications to amend their defence. and accordingly the application is in compliance with the rules.
19. Pleadings must contain material allegations in order to ensure that the trial can be conducted fairly, and without surprises and to reduce costs.
20. In **Bolingbroke Limited v Summit Insurance Limited and another [2020] 1 BHS J. No. 107**, Winder J, after considering Edmund-Davis L.J.'s findings on the subject, also made additional observations in relation to the party's request for further and better particulars.

"11 In *Astrovlanis Compania Naviera SA v Linard [1972] 2 QB 611*, Lord Justice Edmund-Davis had this to say:

The requirement to give particulars reflects the overriding principle that the litigation between the parties, and particularly at trial, should be conducted fairly, openly, without surprises and, as far possible, so as to minimise costs.

21. The request for further and better particulars should therefore be seen to be reasonable and necessary for the proper understanding of a case. Moreover, an application for further and better particulars should be made as early in the proceedings as possible and should only seek to clarify the issues which the court must determine and to prevent surprises.
22. The Defendant filed its Re-Amended Counterclaim on the 31st May 2021, after being given leave to do so by order of this court made 25th May 2021. Having had sight of the Re-Amended Counterclaim as a result of the Defendant's application for leave to file the same, the Plaintiffs made a formal written request on the 31st May 2021.
23. With no response from the Defendant, they filed their summons the following day. In the circumstances, there was no delay on the making of an application for further and better particulars.
24. The Plaintiff's requests are set out as follows: -

The Plaintiffs' Requests

1. Under Paragraph 6

Of: *"The Franchise Agreement and the Management Company Acknowledgment require the engagement of a Marriott approved hotel operator and its exclusive control over the day to day operation of the hotel."*

Requests

- (1) Please state whether it is the Defendant's case that the Franchise Agreement and the Management Company Acknowledgement require the engagement of any Marriott approved hotel operator or whether those agreements specifically require the engagement of the First or Second Plaintiffs.
- (2) Please state whether it is the Defendant's case that notwithstanding the terms of the Franchise Agreement and the Management Company Acknowledgement that the Defendant was entitled to refuse to give exclusive control over the day-to-day operation of the Hotel to the Plaintiffs or either of them.

2. Under Paragraph 7

Of: *"It was a condition precedent to the Agreement that the Manager obtain and maintain the necessary licenses and permits to lawfully operate the hotel."*

Requests

- (1) Please state what licenses and permits the Defendant alleges were required to lawfully operate the Hotel.
- (2) Please state whether it is the Defendant's case that the possession of the necessary licenses and permits to lawfully operate the hotel was a condition precedent to the Management Agreement coming into existence or whether it was a condition precedent to the lawful performance of the Management Agreement by the Plaintiffs.
- (3) Please state whether the alleged condition precedent was an express or an implied term of the Management Agreement. If an express condition, please state which clause of the Management Agreement the Defendant relies on in support of the alleged condition precedent. If an implied condition, please state the facts and matters from which it is alleged that the condition is implied.

3. Under Paragraph 8.

Of: *"The First Plaintiff misrepresented that it was qualified to carry out the contractual duties required of the Manager under the Agreement and in breach of the conditions precedent of the Agreement failed to obtain the necessary permits and licenses for the Manager to lawfully operate the hotel."*

Requests

- (1) Please state what are the conditions precedent referred to in paragraph 8.
- (2) Please provide full particulars of the First Plaintiff's alleged misrepresentation stating whether the misrepresentation was made orally or in writing. If made orally, please state the name of the individual(s) who it is alleged made the statement, the place at, and date and event on which the statement was allegedly made, and the name of the individual(s) to whom the statement was allegedly made. If made in writing, please provide a copy or copies of the said writing.
- (3) Please state whether it is the Defendant's case that the possession of the necessary licenses and permits to lawfully operate the Hotel was a condition precedent to the Management Agreement coming into existence or whether it was a condition precedent to the lawful performance of the Management Agreement by the Plaintiffs.
- (4) Please state whether the alleged condition precedent was an express or an implied term of the Management Agreement and if an express term, on which clause of the Management Agreement the Defendant relies in support of the alleged condition precedent.

4. Under Paragraph 8(b).

Of: *"Contrary to the express representation as to qualifications cited above,...the First Plaintiff was not qualified to operate direct and supervise the Hotel as it represented and held itself out to the Defendant to be."*

Requests

- (1) Please state whether the statement cited in paragraph 8(a) of the Re-Amended Counterclaim is the only express representation as to qualifications relied on by the Defendant or whether there are other express or implied representations relied on by the Defendant. If the Defendant does rely on other alleged representations by the Plaintiffs or either of them, please state whether the alleged representation(s) was or were made orally or in writing. If made orally, please state the name of the individual(s) who it is alleged made the representation(s), the place at, and date and event on which the representation(s) was or were allegedly made, and the name of the individual(s) to whom the representation(s) was or were allegedly made. If made in writing, please provide a copy or copies of the said writing.
- (2) Please provide full particulars of the First Plaintiff's alleged representation(s) stating when and where the First Plaintiff is alleged to have held itself out to the Defendant as possessing the qualifications to direct operate and supervise the Hotel, whether such representation(s) was or were made orally or in writing. If made orally, please state the name of the individual(s) who it is alleged made the representation(s), the place at, and date and event on which the representation(s) was or were allegedly made, and the name of the individual(s) to whom the representation(s) was or were allegedly made. If made in writing, please provide a copy or copies of the said writing.

5. Under Paragraph 8(c).

Of: *"Clause 4.01C of the Agreement provides:
Permits and Licenses.*

Manager shall maintain the various permits and licenses required to be held in its name that are necessary to enable Manager to operate the Hotel in accordance with the terms of this Agreement and the License Agreement."

Requests

- (1) Please state which permits and licenses the Defendant alleges were required to be held in the Manager's name under Clause 4.01C of the Management Agreement to enable the Manager to operate the Hotel in accordance with the terms of the Management Agreement.
- (2) Please state which agreement is being referred to as "the License Agreement" and whether the Plaintiffs or either of them is a party to "the License Agreement".
- (3) Please state which permits and licenses the Defendant alleges were required to be held in the Manager's name under Clause 4.01C of the Management Agreement to enable the Manager to operate the Hotel in accordance with the terms of the License Agreement.

6. Under Paragraph 8(d).

Of: *"In breach of the requirement of Clause 4.01C the First Plaintiff neither had nor obtained the requisite permits and licenses necessary to enable it to operate the Hotel in accordance with the terms of the Agreement."*

Request

(1) Please state which permits and licenses the Defendant alleges that the Manager failed to obtain that were required under Clause 4.01C of the Management Agreement.

7. Under Paragraph 9.

Of: *"The First Plaintiff's failure to take control of the management of the Hotel was solely caused by the First Plaintiff's lack of the qualifications required to operate the Hotel and failure to obtain the requisite permits and approvals under Bahamian law to lawfully operate the Hotel as required by the Management Agreement."*

Requests

(1) Please state which qualifications the Defendant alleges that the First Plaintiff lacked to enable it to take control of the management of the Hotel.

(2) Please state which permits and approvals under Bahamian law the Defendant alleges that the First Plaintiff required but failed to obtain.

8. Under Paragraph 10.

Of: *"The Plaintiffs failed to put themselves in a position to establish any such bank accounts or to operate any bank accounts relating to the business of managing the Hotel."*

Requests

(1) Please state what steps the Defendant alleges that the First Plaintiff failed to take to establish bank accounts for the purpose of operating the Hotel. State whether the Defendant took any steps to assist the Plaintiffs in that process.

9. Under Paragraph 11.

Of: *"Any activities that the Plaintiffs conducted with regard to the management of the Hotel were illegally conducted and, as such, exposed the Defendant to the risk of loss of its Franchise Agreement, loss of its Hotel License, reputational damage and default in connection with its loan obligations."*

Requests

(1) Please state whether it is the Defendant's case that activities conducted by the Plaintiffs with regard to the management of the Hotel that were performed

outside The Bahamas were illegally conducted by the Plaintiffs or any of them. If yes, please provide details of the alleged illegality.

- (2) Please provide full particulars of how it is alleged that the Plaintiffs activities exposed the Defendant to the risk of loss of its Franchise Agreement, loss of its hotel license, reputational damage and default in connection with the Defendant's loan obligations.

10. Under Particulars of Illegality.

- Of: *"The Plaintiffs alleged activities or attempted activities were in contravention of:*
a. Companies Act
172(1) subject to subsection (2), no foreign company may begin to carry on any undertaking in The Bahamas until it is registered under this Act."

Requests

- (1) Please state whether it is the Defendant's case that both Plaintiffs illegally performed activities or attempted to illegally perform activities in contravention of subsection 172(1) of the Companies Act. If not, please state which Plaintiff is alleged to have illegally performed activities or to have attempted to illegally perform activities in contravention of this subsection.
- (2) If both Plaintiffs or each of them are alleged to have illegally performed activities or attempted to illegally perform activities in contravention of subsection 172 of the Companies Act, please state what activities were illegally performed or were attempted to be illegally performed by each Plaintiff in contravention of subsection 172(1) of the Companies Act.

- Of: *"b. Business License Act*
3. License required to carry on business.
(1) No person shall carry on a business within The Bahamas without the grant of a license duly issued to him in accordance with the requirements of this Act."

Requests

- (1) Please state whether it is the Defendant's case that both Plaintiffs or either of them were carrying on a business within The Bahamas and if so, please state the nature of the business that each Plaintiff is alleged to have been conducting and during what period of time.
- (2) Please state whether it is the Defendant's case that both Plaintiffs or either of them required a business license in order to manage the Hotel and if so, from what date were the Plaintiffs or either of them required to obtain any such license.

- Of: *"c. Exchange Control Regulations Ch. 360-*
Payments

5. Except with the permission of the Controller, no person shall do any of the following things in The Bahamas that is to say -

(a) make any payment to or for the credit of a person resident outside the scheduled territories; or

(b) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside of the scheduled territories; or

(c) place any sum to the credit of any person resident outside the scheduled territories; provided that where a person resident outside the scheduled territories has paid a sum in or towards the Payments in The Bahamas, satisfaction of a debt due from him, paragraph (c) of this regulation shall not prohibit the acknowledgment or recording of the payment.

6(1) Except with the permission of the Controller, no person in The Bahamas shall, subject to the provisions of this regulation, make any payment outside The Bahamas to or for the benefit of a person resident outside the scheduled territories, and no person resident in the scheduled territories shall in The Bahamas do any act which involves, is in association with or is preparatory to the making of any such payment.

(2) Nothing in this regulation shall prohibit the doing of anything otherwise lawful by any person with any foreign currency obtained by him in accordance with the provisions of Part 1 of these Regulations or retained by him in pursuance of the consent of the Controller.

Contracts, legal proceedings, etc.

31(1) It shall be an implied condition in any contract that, where, by virtue of these Regulations, the permission or consent of the Controller is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required; provided that this paragraph shall not apply in so far as it is shown to be inconsistent with the intention of the parties that it should apply, whether by reason of their having contemplated the performance of that term in spite of the provisions of these Regulations or for any other reason."

Requests

- (1) Please provide full particulars with respect to how the Defendant alleges that the Plaintiffs or either of them illegally performed activities or attempted to illegally perform activities with respect to Regulation 5 of the Exchange Control Regulations.
- (2) Please provide full particulars of how the Defendant alleges that the Plaintiffs or either of them illegally performed activities or attempted to illegally perform activities with respect to Regulation 6 of the Exchange Control Regulations.
- (3) Please provide particulars of how the Defendant alleges that the Plaintiffs or either of them illegally performed activities or attempted to illegally perform activities with respect to Regulation 31(1) of the Exchange Control Regulations.

Of: "d. Immigration Act Chapter 191

PART VI RESIDENCE AND EMPLOYMENT IN THE BAHAMAS

29(1) No person shall engage in any gainful occupation in the Bahamas unless -

(a) he is a citizen of The Bahamas;

(b) he is a permanent resident whose certificate of permanent residence permits him to engage in gainful occupation;

(c) he is within either of the categories specified in paragraph (c) or (d) of subsection (1) of section 20;

(d) he is in possession of a valid permit issued in accordance with the provisions of section 30 permitting him to engage in such occupation;

(e) he is a person or within the category of persons whom the Minister has by order specified as entitled to engage in gainful occupation.

(2) Any person who engages in any gainful occupation in contravention of the provisions of this section shall be guilty of an offense against this Act.

(3) Any person who, whether on his own behalf or on behalf of another, employs any person who, under the provisions of subsection (1) of this section, is prohibited from engaging in any gainful occupation, shall be guilty of an offense against this Act."

Requests

- (1) If it is the Defendant's case that the Plaintiffs or either of them illegally performed activities under subsections 29(1), (2) and (3) of the Immigration Act cited above, please provide full particulars of the following matters:
- (a) What activities it is alleged that the Plaintiffs or either of them are alleged to have conducted in contravention of subsection 29(1) of the Immigration Act;
 - (b) What activities it is alleged that the Plaintiffs or either of them are alleged to have conducted in contravention of subsection 29(2) of the Immigration Act, including the names of any individuals who the Defendant alleges contravened subsection 29(2), stating the dates on which such contravention occurred;
 - (c) What activities it is alleged that the Plaintiffs or either of them are alleged to have conducted in contravention of subsection 29(3) of the Immigration Act;

11. Under Paragraph 12.

Of: *"The First Plaintiff by misrepresenting its qualifications to do business in The Bahamas and by attempting to illegally operate in The Bahamas exposed the Defendant to potential liability and risk. All of the duties owed to the Manager and powers and entitlements of the Manager under the Agreement were predicated on the condition precedent that the Manager would be qualified to conduct the hotel operations in The Bahamas and would be in possession of and maintain all of the permits and approvals required to enable the Manager to lawfully do so. The First Plaintiff misrepresented that it was qualified to perform the functions of Manager, failed to comply with the condition precedent which required it to*

possess and maintain the necessary permits and approvals under the Agreement and attempted to conduct the activities as a Manager illegally in The Bahamas.”

Requests

- (1) Please provide full particulars of the misrepresentations as to the Plaintiffs qualifications to manage the Hotel that the Defendant alleges the Plaintiffs or either of them made to the Defendant, stating:
 - (a) What statements are alleged to have been made by the Plaintiffs or either of them that are alleged to have been false;
 - (b) Whether the alleged misrepresentations were made orally or in writing. If made orally, please state the name of the individual(s) who it is alleged to have made the representation(s), the place at, and date and event on which the representation(s) was or were allegedly made, and the name of the individual(s) to whom the representation(s) was or were allegedly made. If made in writing, please provide a copy or copies of the said writing.
- (2) Please state whether the alleged condition precedent was an express or an implied condition of the Management Agreement. If an express condition, on which clause of the Management Agreement does the Defendant rely in support of the alleged condition precedent. If an implied condition, please state the facts and matters from which it is alleged that the condition is to be implied.

12. Under Paragraph 13.

Of: *“The Plaintiffs failed to obtain the necessary licenses, permits, decrees, acts, orders or other approvals necessary for the operation of the Hotel under the Agreement and consequently the Plaintiffs would not have been in the position to obtain a tax certificate which would have qualified them to attract business for the Hotel from the Government of The Bahamas and be paid for the same.”*

Requests

- (1) Please state which licenses, permits, decrees, acts, orders or other approvals the Defendant alleges that the Plaintiffs required for the operation of the Hotel under the Management Agreement.
- (2) Please state whether it is the Defendant’s case that the Hotel failed to attract business from the Government of The Bahamas because the Plaintiffs were not in a position to obtain a tax certificate in their name(s).

13. Under Paragraph 14.

Of: *“The First Plaintiff was at no time qualified or in possession of the requisite permits and approvals to lawfully provide services under the Agreement and the Defendant was therefore obliged to seek the services of a provider who could lawfully carry out the services of managing and operating the Hotel. In addition to failing to put themselves in a position to lawfully manage and operate the Hotel, the Plaintiffs obstructed and interfered with the Defendant’s efforts to enter into a*

contract with the service provider who could lawfully carry out the services of managing and operating the Hotel.”

Requests

- (1) Please state the name of the provider who could lawfully carry out the services of managing and operating the Hotel that was selected by the Defendant.
- (2) Please state whether the provider required, and had obtained, all of the licenses, permits, decrees, acts, orders or other approvals that the Defendant alleges were required by the Plaintiffs to lawfully manage and operate the Hotel, and if so, please provide copies of same.

14. Under Paragraph 15.

Of: *“By reason of the matters aforesaid the Defendant has suffered loss and damage including loss of revenue from business that the Plaintiffs ought to have been able to generate from contracts with the Government of The Bahamas for the Hotel had they put themselves in a position to lawfully operate the Hotel as required by the Agreement.*

Request

- (1) Please provide full particulars of the loss and damage it is alleged that the Defendant suffered as a result of the Plaintiffs’ alleged inability to generate contracts for the Hotel with the Government of The Bahamas, stating the type of contracts, the average profit that could have been generated by each type of contract and the number of such contracts.
25. The Plaintiffs grouped their requests into several different headings. In relation to requests 3(2), 4(1) & (2), 11(1) & (2), the Plaintiffs’ classified them as requests for pleadings on misrepresentation.
26. **Note 18/12/21 of The Supreme Court Practice 1976 (the “White Book”)** discusses what should be set out when pleading particulars of any misrepresentation,
- “Misrepresentation – Particulars of any misrepresentation must be contained in the pleading. The statement of claim must show the nature and extent of each alleged misrepresentation. (Newport, etc., Co. v. Paynter, 34 Ch. D. 88), by whom and to whom it was made, and whether verbally or in writing-in the latter case identifying the document (Seligman v. Young, [1884] W. N. 93).....”**
27. I have reviewed the various requests at 3(2), 4(1) & (2), 11(1) & (2) and do not consider them to be unreasonable. I thereby order that the Defendant shall provide the particulars of the misrepresentation alleged so that the Plaintiffs would be able to adequately respond to the claims.
28. In order for one party to properly answer the allegations made by another, the assertions made must be specific. This much was said by Charles J in **Higgs Construction Company v Patrick Devon Roberts and another [2020] 1 BHS J. No. 9,**

“48 Time after time, our courts have stressed the necessity for proper pleadings. Not so long ago, in *Bahamas Ferries Limited v Charlene Rahming* SCCivApp & CAIS No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At para. 39 of the judgment, Sir Michael Barnett JA as he then was stated:

“The starting point must always be the pleadings. In *Loveridge and Loveridge v Healey* [2004] EWCA Civ. 173, Lord Phillips MR said at paragraph 23:

“In *Mcphilemy vs Times Newspapers Ltd. [1999] 3 ALL ER 775* Lord Woolf MR observed:

‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties.’ [Emphasis added]

49 At paragraph 40 of the Judgment, Sir Michael had this to say:

“It is on the basis of pleadings that the party’s decide what evidence they will need to place before the court and what preparations are necessary for trial.”

29. Having reviewed the Plaintiffs’ requests, I consider that the following requests are reasonable as necessary for the Plaintiffs’ to provide an adequate answer. I therefore order that the Defendant provide the particulars requested of the following: 3(2); 4(1); 1(2); 11 (1) & (2). The remainder of the requests are not allowed as they seek either to obtain evidence which will be provided when the witness statements are exchanged or in fact they are interrogatories and should be the subject of a discrete application. They do not seek clarification of an existing pleading but in essence seek evidence of the allegations contained in the pleadings.

30. The requests at 3(2); 4(1) & (2); 11(1)(b); 13(1) are also classified by the Plaintiffs as requests for the disclosure of names of witnesses.

31. **Note 18/12/38 of the White Book** addresses when an order should be made for further and better particulars with respect to the disclosure of names of witnesses.

“**Disclosing Names of Witnesses, etc – 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 (Temperton v. Russell, 9 T.L.R. p. 321; Britain Medical Association v. Britannia Fire Association, 59 L. T. 888). But where the information asked for is clearly necessary to enable the applicant properly to prepare for trial, or in other respects the application is a proper one, the information must be given, even though it discloses some portion of the evidence on which the other party proposes to rely at the trial....**”

32. I am not satisfied that the information sought in the requests which have been refused cannot be obtained upon the exchange of the evidence or considered upon a discrete application for interrogatories.

33. In conclusion, I have acceded to the specific requests set out in paragraph 27. Additionally, leave is granted to the Plaintiffs to file a Re-Amended Reply and Re-Re-Amended Defence to the counterclaim. The particulars are to be provided within 14 days of the date of this ruling. The Plaintiffs are to file their Re-Amended Reply and Re-Re-Amended Defence within 14 days thereafter.
34. The Defendant is awarded three quarters of its costs of this application and the Plaintiff is awarded one quarter of their costs.

Dated this 24th day of March 2023



Hon. Madam Justice G. Diane Stewart