

In the Commonwealth of The Bahamas
In the Supreme Court
Commercial Division
2021/CLE/gen/01279

BETWEEN:

AMANDA MICHELLE SMITH

Plaintiff

AND

TREVOR ROLLE

Defendant

Before: The Honourable Mr. Justice Loren Klein
Appearances: Bianca Rolle-Fountain for the Plaintiff
Rchetta Godet for the Defendant
Hearing Date: 8th July 2022

RULING

KLEIN, J.

Practice and Procedure—Pleadings—Request for further and better particulars—Writ action—Claim to interest in real property arising from alleged contributions to its purchase and improvement—Parties in romantic relationship—Resulting/Constructive Trust—Unjust enrichment.

INTRODUCTION AND BACKGROUND

1. These are the reasons for the court’s oral ruling delivered on 8 July 2022 dismissing the defendant’s application for further and better particulars of the plaintiff’s statement of claim.
2. The statement of claim was filed in a writ action in which the plaintiff claims an interest in real property purchased by the defendant solely in his name. However, the plaintiff alleges she made significant contributions towards the acquisition and improvement of the property, which was intended to be the site of the parties’ matrimonial home. Among other remedies, the plaintiff seeks a declaration that the defendant holds the property (or some share in it) in trust for her as a constructive trustee.

Background

3. Only a short background of the claim is necessary to understand the context in which the application before the court arises. The following factual summary is extracted from the pleadings of the parties and the affidavits filed in interlocutory proceedings. Of particular relevance is the affidavit of Scymont Fountain filed 10 November 2021 in support of the plaintiff’s application for an interlocutory injunction to prevent the defendant building on the property, which contained much of the background information to the claim. The court refused the claim for the injunction on 29 November 2021, but that is not relevant to this application.

4. According to the plaintiff's allegations (for that is all they are at this point), the parties were engaged to be married. During 2020, apparently with a view to finding property on which to build a family home, the defendant instructed the plaintiff, a real estate agent, to list his current house for sale and assist in identifying a lot in the Coral Harbour area. A plot of land was identified and purchased by the defendant in mid-December of 2020. The long and short of the claim is that the plaintiff alleges that she leveraged her position as a real estate agent to secure significant benefits, including negotiating a lower purchase price and obtaining discounts and rebates, which she says amounted to a value of \$83,000.00. The property is said to be valued \$215,000.00.
5. Sadly, the relationship broke down and apparently the defendant moved ahead with constructing on the property, in circumstances which need not trouble the court on this application. Naturally aggrieved, the plaintiff tried to have her "interest" in the property recognized and compensated and, after failing to accomplish this, filed a specially indorsed writ on 21 October 2021.
6. The defendant issued a letter of request dated 1 December 2021, seeking further and better particulars of the matters pleaded in paragraphs 5, 8, 9 and 10 the Statement of Claim, which are set out below:
 - “5. To that end, the Claimant acted on behalf of the Parties in utilising her services and expertise to identify the former property owners, to secure an appraisal and other relevant information, and also used her personal and professional discounts and rebates to negotiate a lower purchase price for the Property and also to have the Property cleared, inter alia. [...]
 8. In the circumstances, there was a common intention or an implied agreement between the Parties that the Defendant should hold the Property on trust for himself and the Claimant in equal shares or alternatively in proportion to their contribution.
 9. That in utilizing her services and expertise to act as agent for the Parties and to identify the former property owners, to secure an appraisal report and other relevant information and also in utilizing her personal and professional credits, discounts and rebates to negotiate a lower purchase price for the Property and also to have the Property cleared, inter alia, the Claimant was acting to her detriment on reliance on the common intention and /or implied agreement in the belief that she was acting to further and pursuant to her share in the property.
 10. That the value of her professional services, professional rebates, discounts and professional credits that the Claimant contributed to an invested towards the acquisition of the Property is B\$85,000.”
7. The plaintiff answered the request on 7 December 2021 in three folios, and in particular set out the sums which she claimed she contributed by way of her efforts to the acquisition and improvement of the property.
8. Dissatisfied with the answers, the defendant filed a summons on 13 December 2021 seeking the following relief in relation to the referenced paragraphs of the Statement of Claim:
 - “a. Full Particulars of all instances of inducement by the Defendant and specifically any Oral or Written inducement referred to;

- b. Full particulars of any alleged detriment caused or occasioned by the Defendant and of any monetary expenditure by the Plaintiff or monetary Loss;
 - c. Further Particulars of all sums, expended or foregone by the Plaintiff making up the claimed sum of \$83,500.00;
 - d. When and how was the plaintiff appointed to “act as agent”; and
 - e. Any contact for service signed by the Plaintiff and the Defendant.”
9. Both parties laid over skeleton submissions and a number of authorities on the application, to which the court has referred.

Relevant Law

10. The rules relating to pleadings may be found primarily in Order 18 of the *Rules of the Supreme Court 1978* (“R.S.C. 1978”), as amplified by the case law. Most relevant for the purposes of this application are the following.

11. Order 18, r. 6(1) requires a plaintiff to plead the material facts relied on for his claim, although not the evidence required to prove the alleged facts. It provides in material part as follows:

“[E]very pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.”

As to what facts are material, in *Bruce v Odhams Press Ltd.*, [1936] 1 KB 697 [at pg. 712], Scott LJ said:

“The cardinal provision in r. 4 is that the statement of claim must state the material facts. The word ‘material’ means necessary for the purpose of formulating a complete cause of action, and if any one ‘material’ fact is omitted, the statement of claim is bad; it is “demurrable” in the old phraseology, and in the new is liable to be “struck out” under Order XXV., r. 4; see *Phillips v Phillips*; or “a further and better statement of claim” maybe ordered under Order XIX., r. 7.”

12. Order 18, r. 12 governs what must be contained in the particulars of a claim and provides that the court may order a party to provide further and better particulars of any deficient pleadings. That Rule provides as follows:

- “(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, the 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 of 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 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 were sufficient reasons for an application by letter not having been made.”

13. I do not think there is any dispute about the applicable legal principles, and both sides cited a number of local and UK authorities in support of their arguments. It is not necessary to list or have regard to all of these, but I will mention a few: see, for example, the decision of the Court of Appeal in *Bahamas Ferries Ltd. v Charlene Rahming* (SCCivApp & CAIS No. 122 of 2018), and the judgment of Charles J. (as she then was) in *Montague Investments Ltd. v (1) Westminster College et. al.* [2015/CLE/gen/00845, and the leading decision of *McPhilemy v. Times Newspapers Ltd.* [199] 3 All ER 775, which is referenced in both local cases.

14. In *McPhilemy v Times Newspapers*, Lord Woolf made the now very familiar observation that [at 792-793]:

“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 document upon which a party relies, together with 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 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 of the pleader. This is true both under the old rules and the new rules.”

The parties’ arguments

15. The defendant’s chief complaint, as set out in their written submissions, is that “*the pleadings are very evasive and does not clearly set out a cause of action.*” This, it is claimed, not only hampers their ability to defend the action, but will also impede the court in its management of the case and when it comes to make its deliberations. More specifically, in relation to the impugned paragraphs, the complaint is that the defendant has failed to set out:

- (i) precisely what professional services, discounts and rebates were provided and the “*inter alia*” particulars referred to;
- (ii) when and how the plaintiff was appointed to “act as agent”;
- (iii) what are the particulars of the detrimental actions of the plaintiff;

- (iv) when exactly, and in what circumstances, did the defendant ever promise to give the plaintiff any “share in the property”;
 - (v) what words precisely did the defendant use in order to create the impression, as alleged, of a “common intention” or to imply any agreement that the Plaintiff should have any “share in the property”; and
 - (vi) an itemized particulars making up the claimed sum of \$83,000.
16. Not surprisingly, the plaintiff contends that the claim, by itself and especially with the plaintiff’s answers to the request for further and better particulars, are sufficient for the plaintiff to understand the case against him, the incidents and or events giving rise to the case against him, and the remedy sought, and to enable him to plead any necessary defence. In any event, it is stated that the information sought in the further particulars was information that was more appropriate to be sought via the process of discovery and adduced as evidence.
17. I should add for completeness, that following the court’s oral ruling dismissing the application, the defendant on the 15 July 2022 filed a defence.

Court’s analysis

18. I reject the defendant’s contention that the pleading does not disclose a cause of action. To my mind there is no doubt, even without regard to the further information disclosed in the request for further particulars, that the pleadings disclose what is sometimes called a common intention constructive trust claim, and specifically pleads in the alternative a claim for unjust enrichment. In fact, the nature of a common intention trust claim is that the court can infer it from the pleaded facts as to the parties’ conduct and action, and therefore the fact that the plaintiff has not specifically pleaded the words relied on “*to create the impression of a common intention*” is not an omission in pleading.
19. I also agree with the plaintiff that the information sought by the request for further and better particulars is information that is best disclosed during discovery and the marshalling of evidence. As I had occasion to remark in the case of *Alpha Aviation et. al. v. Randy Larry Butler et. al.* [2021/CLE/gen/01128 (dated), in relation to Ord. 18, r. 6 [at 24]:
- This rule imposes a general obligation on a claimant to plead to his case with sufficient clarity and particularity so that his opponent is not taken by surprise and knows exactly the case he has to meet at trial (see, e.g., *Spedding v. Fitzpatrick* (1888) 38 Ch. D. 410, CA; *Bruce v Odhams Press Ltd.* (*supra*). But it does not require him to overload his statement with exhaustive particulars or minor details. The SOC should contain a concise statement of the facts on which the claimant relies to frame his cause of action, but other details are left to be supplied at later stages in the case, such as by the submission of witness statements and through the use of the processes of discovery and disclosure.
20. If there is one minor criticism to be made of the pleadings—and it is one that the defendant does make—it relates to the use of the phrase “*inter alia*” at paragraph 5 in referring to the matters relied on as substantiating the plaintiff’s alleged contribution to the property. The phrase “*inter alia*” is clearly anathema in pleadings of any form, as the whole point of pleadings is to specify those matters that are being relied on. A general reference to “other matters” which are unstated is fundamentally contrary to the purpose of pleadings. However, this is a

minor omission, and the effect on the plaintiff's case is that unless an amendment is sought to specify those other matters, only the ones specifically stated can be relied on in her claim.

21. I am of the view that, while the plaintiff did provide, as far as was thought relevant, the information requested by the defendant, the allegations in the pleadings can stand as they are, and do not need to be fleshed out by the matters requested in the defendant's claim for further and better particulars to constitute viable pleadings. It is true that almost every pleading can benefit or be enhanced by additional details, but that would defeat the purpose of it being a concise statement of the case. But this is certainly not the kind of case where the pleadings might be said to be so vague or incoherent as to obstruct the just disposal of the matter. Whether the plaintiff is able to substantiate her claim is a different matter, but it is clear what she is claiming.

CONCLUSION AND DISPOSITION

22. For the reasons given above, I therefore dismiss the defendant's application for further and better particulars. Costs are to follow the event.



Klein, J.

30 November 2023