

Johnson Pacific Pte Ltd v Hogberg Fred Rickard Robin William and Others
[2004] SGHC 163

Case Number : Suit 1154/2003, RA 15/2004, 17/2004, 18/2004, 19/2004
Decision Date : 04 August 2004
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Vijay Kumar Rai (V K Rai and Partners) for plaintiff; Wendy Leong (AsiaLegal LLC) for first defendant; Desmond Lee (Haridass Ho and Partners) for second and third defendants
Parties : Johnson Pacific Pte Ltd — Hogberg Fred Rickard Robin William; Hydromaster Pte Ltd; Pipe Care Pte Ltd formerly known as Veltrup Asia Pacific Pte Ltd

Civil Procedure – Costs – Plaintiff's appeal against assistant registrar's decision that there be no order as to costs for defendants' applications – Whether appeal should be allowed

Civil Procedure – Pleadings – Further and better particulars – Whether requests by defendants relevant and valid

4 August 2004

MPH Rubin J:

Introduction

1 A clutch of four registrar's appeals was heard by me on 2 and 23 July 2004. Two of them, Registrar's Appeals Nos 17 and 18 of 2004, were filed by the plaintiff against the assistant registrar's decision that there be no order as to costs in relation to Summonses in Chambers Nos 7880 and 7992 of 2004. Registrar's Appeal No 15 of 2004 was filed by the first defendant and was initially against the order disallowing some 184 out of 221 fragmented requests ("requests") contained in the first defendant's SIC 7880/2004. Finally, Registrar's Appeal No 19 of 2004, filed by the second and third defendants, was initially against the order disallowing 217 out of 256 requests contained in the second and third defendant's SIC 7992/2004. However, on 12 April 2004 (a day before the first scheduled hearing of these appeals), the first defendant's solicitor abandoned 58 requests, leaving 126 requests for determination. Similarly, the second and third defendants' solicitor also abandoned 144 requests, leaving 73 requests for determination presently.

Brief outline of background facts

2 The plaintiff is a company incorporated in Singapore and is said to be in the business of trading, supplying and installing fluid handling products, and providing engineering services.

3 The first defendant was the plaintiff's managing director and was reportedly in control of the operations of the plaintiff until 24 March 2003.

4 The second defendant is another Singapore incorporated company and is alleged to be engaged in business (including rendering engineering services) that is in direct competition with the plaintiff. The third defendant, yet another Singapore company, is alleged by the plaintiff to be the owners of assets for the use of the second defendant. The plaintiff alleges that the beneficial owners of the second and third defendants are the first defendant and three others, namely, Wong Yeng Foong, Peter Moe and Ng Siew Hoong.

5 The plaintiff's action against the first defendant is for account, damages for breach of contract, breach of fiduciary duties, breach of trust, fraud, conspiracy, knowing receipt of moneys arising from the said breaches, breach of director's duties under s 157 of the Companies Act (Cap 50, 1994 Rev Ed) and enticement of the plaintiff's employees. As against the second and third defendants, the plaintiff's action is for unlawful conspiracy with the predominant purpose to cause injury to the plaintiff by unlawful means. The statement of claim, which has since been amended and amplified by further and better particulars, is somewhat extensive and detailed.

6 The first defendant's defence is a vehement denial. In sum, his defence is that he is not guilty of any of the breaches alleged against him; he acted at all times in good faith and in the best interests of the plaintiff; the second and third defendants were not in a business in competition with the plaintiff; and he never allowed the second and third defendants to usurp the plaintiff's opportunities, deals and contracts at any time. He also denies the plaintiff's allegations that he had manipulated, misrepresented or falsified any records of the plaintiff. He further denies enticing employees away from the plaintiff or procuring them to leave the plaintiff's employ without notice or to bring with them documents or copies of documents belonging to the plaintiff.

7 The defence of the second and third defendants is unremarkable. It is one of bare denial and encapsulated in no more than two very short sentences.

Request for further and better particulars

8 The defendants requested from the plaintiff further and better particulars. The applications, which were heard by the assistant registrar, met with only limited success for the defendants. As stated earlier, the assistant registrar allowed only 37 out of the 221 requests from the first defendant and 39 out of the 256 requests from the second and third defendants. As a result of the developments prior to the hearing described in [1] above, the court had to deal with some 126 requests from the first defendant and 73 from the second and third defendants. It should also be mentioned here that the requests of the second and third defendants are substantially the same as that of the first defendant, so much so, counsel for the second and third defendants conceded during the hearing of these appeals that the requests of his clients are in most respects subsumed in the requests of the first defendant.

The law

9 Order 18 r 12(1)(a) and (b) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) prescribe that:

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

10 The function of particulars of pleading is described by the editors of *Singapore Civil Procedure*

2003 (Sweet & Maxwell Asia, 2003) ("SCP") at para 18/12/2 as follows:

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

11 The functions of particulars is accordingly:

- (a) to inform the other side of the nature of the case that they have to meet as distinct from the mode in which that case is to be proved;
- (b) to prevent the other side from being taken by surprise at the trial;
- (c) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial;
- (d) to limit the generality of the pleadings or of the claim or the evidence;
- (e) to limit and define the issues to be tried, and as to which discovery is required;
- (f) to tie the hands of the party so that he cannot without leave go into any matters not included. But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings.

12 What ought to be stated and what particulars are to be provided in one's pleadings are set out by way of examples in the SCP and in this regard the following extracts appear relevant:

(a) Agreement:

The pleading should state the date of the alleged agreement, the names of all parties to it, and whether it was made orally or in writing, in the former case stating by whom it was made and in the latter case identifying the document, and in all cases setting out the relevant terms relied on. If the agreement be not under seal, the consideration also must be stated. [See para 18/12/5 of the SCP]

(b) Breach of confidence:

The plaintiffs must provide all the particulars sought of the allegations of breach of confidence in their statement of claim. It is only fair for the defendants to know the information they are attacked for using. [See para 18/12/6 of the SCP]

(c) Conspiracy:

In an action for conspiring to induce certain persons by threats to break their contracts with the plaintiffs, the defendant is entitled to particulars, stating the name of each such contractor, the kind of threat used in each case, and when and by which defendant each such threat was made, and whether verbally or in writing; if in writing, identifying the document; but he is not entitled to the names of the workmen in the employ of those contractors whom it is alleged the defendant threatened to "call out". [See para 18/12/11 of the SCP]

(d) Dishonesty – bad faith:

An allegation that a party has been guilty of bad faith or lack of good faith is the equivalent of an allegation of dishonesty, though not necessarily for a financial motive, and proper particulars of such an allegation must be pleaded, otherwise the allegation will be struck out.

In order to claim that a person is liable as a constructive trustee, it is necessary to plead clearly and unequivocally that he had known that the breach of trust in respect of which it was sought to make him liable was fraudulent or dishonest. It is not enough merely to plead that the defendant was aware or ought to have been aware of the facts necessary to show a dishonest breach of the trust. [See para 18/12/14 of the SCP]

(e) Duty – fiduciary duty:

Wherever a breach of duty arising from any given relation is alleged, particulars will be ordered of the precise relation from which the duty is alleged to arise. [See para 18/12/15 of the SCP]

(f) Fraud:

Fraudulent conduct must be distinctly alleged and proved, and it is not allowable to leave fraud to be inferred from the facts. [See para 18/12/19 of the SCP]

(g) Intention:

If an allegation is made that a person, including a party, had or did not have a particular intention, particulars will be ordered of any overt acts and any other facts relied on to support the allegation. [See para 18/12/21 of the SCP]

(h) Knowledge:

Where knowledge is pleaded as a fact, particulars of the facts on which a party relies in support of such allegation may, but need not, be contained in the pleading itself, but such particulars should be given on request or the court may order them to be given. The usual form would be particulars of specific facts, documents or overt acts on which a party intends to rely in support of the allegation that the other party had knowledge of some fact, matter or thing. [See para 18/12/24 of the SCP]

(i) Secret process:

Particulars may be ordered as to what features of the process are alleged to be secret. ... An order for the inspection of the process by an expert is a substitute for such particulars, so that there is a duty to explain to him what elements are claimed to be secret and why.

Cases of alleged breach of confidence ought to be clearly and precisely pleaded, and particulars of the confidential information must be given. Moreover some particularity of what is alleged to have been taken is required.

In an action for misuse of trade secrets, it will often be necessary, even before defence, for the plaintiff to specify precisely what it is he alleges are the trade secrets relied upon. For this purpose, the court may impose safeguards, *e.g.* a condition that the particulars be not filed with the pleadings and that the defendants

shall undertake not to make or permit use of them, save such use as may be necessary for the purpose of the proceedings. [See para 18/12/42 of the SCP]

(j) Breach of trust:

It is not enough for the plaintiff to allege that the defendant has committed breaches of trust; he must give particulars of the alleged breaches of trust and wilful default, or the allegation will be struck out. ...

Moreover, it is not enough to plead all the facts necessary to show a dishonest breach of trust on the part of the defendant or to plead that the defendant was aware or ought to have been aware of those facts. It is necessary to clearly and unequivocally plead knowledge on the part of the defendant of the dishonesty of that breach of trust. [See para 18/12/48 of the SCP]

Issues and conclusion

13 The issues in this appeal, as stated earlier, revolve around some 126 requests (grouped under 36 broad categories). They are too long to be entered upon here and can be found in the summary prepared by the plaintiff's counsel as an appendix to plaintiff's submissions (D), filed on 29 June 2004 ("appendix"). Having gone through the summary with reference to the amended statement of claim, the defences filed by the respective defendants, the documents provided by the plaintiff by way of discovery and further particulars provided by the plaintiff subsequently, it is plain that, except for a few items which I shall refer to shortly, almost the entirety of the requests by the defendants is redolent of harassment and oppressiveness.

14 For example, para 2 of the amended statement of claim reads:

At all material times till 24th March 2003, the 1st defendant was in total control of the Plaintiff company, and oversaw the day to day operations and businesses of the Plaintiff and had acted as the Plaintiff's Managing Director and despite his appointment as 1 of the directors and as the Managing Director of the Plaintiff, being terminated on 9th October 2002.

In this regard, the very first request at p 2 of the appendix, under the said para 2 of the amended statement of claim, is for "each and every act and the full particulars thereof by which the 1st Defendant was allegedly in total control of the Plaintiff company on all material times ... [limited to 9/10/02 - 24/3/03]".

15 In my view, the first defendant's request is substantially frivolous, having regard to the fact that he himself admits in para 15 of his defence that he remained in the employ of the plaintiff "in some capacity after 9 October 2002 and to, *inter alia*, assist the board of the Plaintiffs in their operations and business ...". Similar comments apply to the next request in relation to para 3 of the amended statement of claim. Despite further particulars added to the pleadings by way of amendments by the plaintiff, and despite the extremely skimpy and bare defence by the second and third defendants, the defendants are seeking particulars from the plaintiff as to their own shareholdings in their own companies.

16 In my view, overall, the particulars provided by the plaintiff from time to time and incorporated subsequently in the amended statement of claim, as well as what was disclosed in the

documents by way of discovery on 17 March 2004, are more than adequate and it would be for the defendants to state their position whether the averments by the plaintiff are to be admitted or denied. As it stands, the second and third defendants, having denied every averment of the plaintiff in its entirety, cannot be allowed to embark on a fishing expedition.

17 Let me now deal with those requests which I consider to be relevant and valid. They are:

(a) Paragraph 5 of the amended statement of claim contains an allegation by the plaintiff that “[t]he 2nd Defendant was in the business of rendering engineering services, in direct competition with the Plaintiff.” The request in relation to the said paragraph appears at p 4 of the appendix. I consider this request to be valid and the plaintiff ought to provide best particulars as to which aspect of the second defendant’s business is in direct competition with that of the plaintiff.

(b) Paragraph 6 of the amended statement of claim contains an averment that “[t]he 3rd Defendant was in the business of owning assets for the use of the 2nd Defendant.” In this regard, I find the request at p 5 of the appendix also to be valid and the plaintiff ought to provide best particulars as to what assets are being owned by the third defendants for the use of the second defendants.

(c) Paragraph 15(b) of the amended statement of claim avers that the “services supplied by the 2nd Defendant to Swee Hong for the \$4,197,300.90 had been supplied to the 2nd Defendant by equipment, resources and labour of the Plaintiff [*sic*]”. In relation to this paragraph, I find the request set out at p 7 of the appendix, as regards resources and equipment, valid. Consequently, the plaintiff is required to provide best particulars in relation to the said request.

(d) Paragraph 15(c) of the amended statement of claim mentions that the first defendant made or arranged for the plaintiff to bear certain burdens and for the second defendant to enjoy certain benefits in relation to two contracts. The request as concerns this allegation is set out at p 8 of the appendix. I find this request also to be valid and the plaintiff is required to provide best particulars on the request.

(e) Paragraph 15(g) of the amended statement of claim alleges that the first defendant revealed to the second and third defendants trade secrets and confidential information in relation to business, suppliers, processes, pricing and customers. The request in relation to the said allegations is set out at p 12 of the appendix. I find some of the aspects of the request to be valid and the plaintiff is required to provide best particulars of the alleged trade secrets and confidential information disclosed by the first defendant to the second and third defendants.

(f) Paragraph 11(b) and (c) of the amended statement of claim states that the first defendant did not make any disclosure to the accountants, auditors, directors and shareholders of the plaintiff and kept secret, matters relating to the plaintiff’s claim for \$1,458,649.80 against United Engineers (Singapore) Pte Ltd, which had been compromised and settled for only \$375,617.43 on or around 22 April 2002. In this regard, I find item (b) of the request, as appears at p 18 of the appendix to be valid. Consequently, the plaintiff is required to provide best particulars of the alleged acts of the plaintiff adverted to.

(g) Paragraph 12 of the amended statement of claim alleges that the first defendant had manipulated, misrepresented, falsified and/or caused the appearance and contents of the

financial reports, records and accounts of the plaintiff to be such that it caused the plaintiff to suffer and/or led the plaintiff to believe that the plaintiff was suffering from poor cash flow. The request in relation to this paragraph appears at p 22 of the appendix. Although the said request is couched in extremely wide terms, the request concerning particulars of the period when the alleged poor cash flow happened appears to be valid. The plaintiff is therefore required to provide particulars of the period when the alleged cash flow appeared.

(h) Paragraph 14(d) of the amended statement of claim states that "on divers[e] dates from about 25th March 2003, the 1st Defendant has falsely and maliciously stated to customers and suppliers that the Plaintiff was not financially viable, closing down or were no longer able to honour the Plaintiff's business commitments or execute orders in time or at all." The request, as concerns this paragraph appears at p 30 of the appendix. I find the request to be valid and the plaintiff is therefore required to provide best particulars on the request.

(i) Paragraph 20 of the amended statement of claim bespeaks of the defendants having knowingly participated in fraudulent and dishonest designs against the plaintiff and each of the defendants becoming constructive trustees for the plaintiff in respect of all moneys received by them. I find the request, in respect of this paragraph, as appears at p 33 of the appendix, to be valid. The plaintiff is consequently required to provide best particulars of the averments.

18 There is a passage in the SCP (para 18/12/63) which states that:

It is sometimes urged as an objection to application for particulars that the applicant must know the true facts of the case better than the opponent ... But this objection is misconceived: each party is entitled to know the outline of the case that his adversary is going to make against him, and to bind him down to a definite story."

However, in the pleadings before me, there is much more than an outline provided in the plaintiff's amended statement of claim, amplified by the particulars provided thus far.

19 The editors of *The Supreme Court Practice 1999* (Sweet & Maxwell, 1998), more commonly referred to as *The White Book*, comment at para 18/12/2:

The purpose of pleadings is not to play a game at the expense of the litigants but to enable the opposing party to know the case against him. There is a tendency to forget this basic purpose and to seek particulars which are not necessary when in truth each party knows the others' case (*Trust Securities Holdings v. Sir Robert McAlpine & Sons Ltd* (1994) *The Times*, December 21, CA).

20 The foregoing principles are reiterated in *Tan Hoe Kock v Ali Akarbara bin Mangudin* [1997] 4 MLJ 311 at 320 where the court warned:

[There may be] instances when a defendant requests for particulars purely as a matter of harassment of the plaintiff or as a fishing expedition. Particulars ought not to be given in every case as of right. It is a discretionary right vested with the court to be exercised upon a study of the pleadings and the averments in the affidavit in support of the application for particulars.

21 As respects the comment in *Tan Hoe Kock* that "particulars ought not to be given in every case as of right", I would like to add, however, that particulars ought to be provided as a matter of course in relation to averments such as fraud, conspiracy, dishonesty, misrepresentation and the like.

22 Returning to the issues at hand, save for the limited items on which the plaintiff is required to provide best particulars, the remainder of the particulars requested by the defendants is to a large extent excessive. It is an exercise in dilatoriness and any further indulgence is to promote prolixity and gamesmanship with regard to the proceedings at hand. In the result, I disallow the defendants' appeal save as to the items specifically mentioned. My orders herein however, do not preclude the defendants from seeking further orders from the court hearing this action.

23 As regards the appeals of the plaintiff in RA 17/2004 and RA 18/2004 on the question of costs, I am of the view that the decision by the assistant registrar cannot be faulted and her order that there be no order as to costs is to remain. As regards RA 15/2004 and RA 19/2004, having regard to the manner in which the said appeals have been pursued and argued, I order that the defendants shall pay to the plaintiff three-quarters of the costs in any event. I should mention presently that in relation to the costs order, I did bear in mind the principles re-stated in *Tullio v Maoro* [1994] 2 SLR 489 at [22] to [24] adopting *Re Elgindata Ltd (No 2)* [1993] 1 All ER 232.

Order accordingly.

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