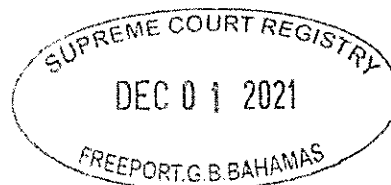


**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2019/CLE/gen/FP/00224**



**BETWEEN
(1) MARVIN DAMES
(2) LATALIA DAMES
Plaintiff**

**AND
FIRST CARIBBEAN INTERNATIONAL BANK (Bahamas) Ltd**

**AND
INSURANCE MANAGEMENT (BAHAMAS) LTD
Defendants**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Beryn Duncanson for the Plaintiffs

Mrs. Michelle Deveaux and Ms. Deandra Johnson for the First Defendant

Mrs. Viola Major for the Second Defendants

HEARING DATES: July 22 and 28, 2021

RULING

Hanna-Adderley, J

Introduction

1. This is an application by way of a Summons filed by the First Defendant on July 7, 2021 whereby it seeks an Order pursuant to Order 18, Rule 12 of the Rules of the Supreme Court ("**RSC**") and the inherent jurisdiction of the Court that (i) the Plaintiffs serve on the First Defendant within 14 days particulars in writing of the Amended Writ of Summons and Statement of Claim filed on June 7, 2021 specified in items 1 to 10 of the First Defendant's letter dated June 14, 2021 requesting particulars; (ii) the time for service of the First Defendant's Defence herein be extended to 14 days after the service of the said particulars; (iii) all further proceedings be stayed until service of the said particulars; (iv) the costs of and occasioned by this application be the First Defendant's.

2. On June 1, 2021 the Court granted leave to the Plaintiffs to amend their Writ of Summons and Statement of Claim. The Plaintiffs were to file and serve their Amended Writ of Summons and Statement of Claim on the First and Second Defendants within 7 days. The First Defendant was given liberty to make a request by letter to the Plaintiffs for further and better particulars within 7 days following the receipt of the Amended Writ of Summons and Statement of Claim. Following the receipt of the First Defendant's request for further and better particulars, the Plaintiffs were given 7 days following the same to then serve their response to the First Defendant's request for further and better particulars. The Court indicated that should the parties fail to adhere to those directions, a date would be determined for case management in this action.
3. By letter dated June 14, 2021 (attached to the First Defendant's Summons) the First Defendant wrote to Counsel for the Plaintiffs in compliance with the Court's Order and requested that the Plaintiffs provide further and better particulars in relation to the following paragraphs in the Amended Writ of Summons and Statement of Claim:-

“

- a. Under Paragraph 4:

Of the words: "The Plaintiffs made monthly payments to the First Defendant at a total amount of \$[____]..."

- b. Under paragraph 5:

Of the words: "The Plaintiffs were under the belief..."

Please state the basis for the Plaintiffs' belief.

- c. Under paragraph 7:

Of the words: "The Plaintiffs sought to make a claim against their insurance policy. They were subsequently advised by both the Defendant that no such policy for the subject property had been renewed or effected."

Please state specifically:

When, by what method, and to whom did the Plaintiffs seek to make a claim against their insurance policy?

The precise and relevant clause of the Insurance policy under which the Plaintiffs "sought to claim against their insurance policy."

- d. Under Paragraph 12:

Of the words: "The Plaintiffs made clear instructions to the First Defendant to ensure that an adequate homeowners insurance policy was in place."

Please state specifically when and by what means did the Plaintiffs give or make "clear instructions" instructions to the First Defendant.

e. Under Paragraph 12 (a)

Of the words: "By virtue of the aforesaid failure, by either Defendant, to effect an insurance policy, the immediate discovery in September 2019 of that fact caused the Plaintiffs substantial Emotional Distress in that they have psychologically suffered additional anxiety, loss of sleep and appetite, and overall mental stress;"

Please state specifically:

(i) When and by what means did the Plaintiffs make "immediate discovery in September 2019".

(ii) Who and by what means does the Plaintiff allege to have been "caused the Plaintiffs substantial Emotional Distress"?

f. Under Paragraph 12 (b)

Of the words: "That in addition the aforesaid Emotional Distress has been much exacerbated to the Plaintiffs in that they have had to ensure the additional stresses of daily life the past year and yet continuing in a completely dilapidated house which is barely functional."

Please state specifically what are "the additional stresses of daily life".

g. Under Paragraph 12 (c)

Of the words: "In addition to all the above the aforesaid Emotional Distress has been further exacerbated by the Defendants' joint conduct in colluding to present a fake insurance policy, which policy by their own admission was arranged 'after the event 'of Hurricane Dorian, which was done so as to frustrate and undermine the Plaintiffs' court claim to any legal remedy over and above the face value of said policy. That this aforementioned Emotional Distress continues to current date right up to the date of this amended filing in this litigation in which the Defendants continue to cause additional Emotional Distress to these Plaintiffs. to wit:-

i. no good faith ,insurance interim pavements or otherwise of any kind has been made to the Plaintiffs under any policy or at all;

ii. the Plaintiffs have been made to suffer the further anxiety of another hurricane season without any known coverage for what remains of their house;

iii. the Plaintiffs have been made to suffer the further anxiety of a growing mountain of debt in arrears and interest piled onto a mortgage held by them on the subject property, and for which the 1st Defendant is entitled to continue to deduct directly from the Plaintiffs' modest employment income.

Please state specifically:

i. How when and by what means does the Plaintiff allege that the First Defendant collude?

ii. What is the date of the "Fake insurance policy" with which the Plaintiffs presented and who presented it to the Plaintiffs?

iii. What is the nature of, and how have the Plaintiffs suffered, "this aforementioned Emotional Distress"?

iv. Who Defendant has frustrated and undermined the Plaintiffs' court claim?

v. How and by what means has the Plaintiffs' court claim been frustrated and undermined?

vi. From whom and pursuant to which clause of the insurance policy does the Plaintiff allege to be entitled to good faith interim payments?

h. Under Paragraph 12 (d)

Of the words: "That by virtue of the aforementioned negligence and subsequent misconduct of the Defendants, especially with regard to the collusion in presenting a fake insurance policy, the Defendants have caused aggravation of the Plaintiffs' loss, hence Aggravated Damages."

Please state specifically:

(i) Who committed and what are the alleged negligent acts which the Plaintiffs claim have "caused aggravation of the Plaintiffs' loss"?

(ii) Who committed and what are the alleged acts of misconduct which the Plaintiffs claim have "caused aggravation of the Plaintiffs' loss"?

i. Under Paragraph 13 (a) (i)

Of the words: "...unreasonably claimed for a strike-out of the Plaintiffs' Writ on the basis that the Plaintiffs suffered no legal loss because the 2nd Defendant had ex post facto agreed to effect a policy of insurance after the event"

Please state specifically:

- (i) What is meant by "unreasonably claimed for a strike-out"?
- (ii) How and in what terms does the Plaintiff allege there was "ex post facto" agreement to effect an insurance policy?

j. Under Paragraph 13:

Of the words: "In or about September and October 2019 the Defendants conspired and combined together wrongfully and with the sole or predominant intention of injuring the Plaintiffs and/or of causing loss to the Plaintiffs by damaging or defeating the Plaintiffs' above particularized claim for negligence by concocting a scheme of presentation of a fake or contrived insurance purportedly effected only well after Hurricane Dorian so as to enable a legal defence that the Plaintiffs suffered no loss requiring a legal suit. The motivation of the Defendants was a wholly unreasonable and unjustified basis"

Please state specifically:

- (i) How and by what means did the Defendants allegedly conspire and combine together wrongfully?
- (ii) When and by what means was the "scheme of presentation of a fake or contrived insurance?"

k. Under Paragraph 13 (b)

Of the words: "As a result of the Defendants' conspiracy as set out herein in this paragraph 13 the Plaintiffs have suffered loss and damage in that their court claim has been seriously delayed by at least a year and it has extended and exacerbated all the aforementioned Emotional Stress, and anxieties particularized above as to Negligence to wit"

Please state specifically:

- (i) How and by what means does the Plaintiffs allege that their court claim has been "seriously delayed"?"

4. It is the First Defendant's position that the Plaintiffs have failed to comply with the Court's Order resulting in the filing of the instant Summons by the First Defendant. The matter was scheduled to be heard on July 22, 2021 and the First Defendant laid over its Skeleton

Arguments dated July 21, 2021 in support of its application. The matter was adjourned to July 28, 2021.

5. The Plaintiffs by a document titled "Plaintiffs' Answer to 1st Defendants' Request for Further & Better Particulars" dated July 27, 2021 sought to provide the requested information as contained in the letter dated June 14, 2021 on behalf of the First Defendant. The Plaintiffs rely on their Skeleton Arguments dated July 28, 2021 in opposition of the First Defendant's application.

The Plaintiffs Answer to the First Defendant's Request

6. The Plaintiffs in response to the First Defendant's request state the following:-
 - a. Under Paragraph 4- Answer:- This has been already detailed into the Record as long shown in the Plaintiffs' first joint filed affidavit of 4th February 2020, and also in the sworn affidavit, filed 24th June 2020, of Mrs Pamela Hanna, the Plaintiffs' family accountant. In the months leading up to Hurricane Dorian in September 2019, \$1,156.38 was routinely for years being deducted from the Plaintiffs' current account (whereas \$1,125.31 was the stipulated payment). And 1st Defendants have already long posted in their own bank statements those substantial 'Escrowed funds' deducted therefrom to be paid for insurance cover, for instance the entry posted for \$2,700 November 15, 2019 to "Insurance Management", but which we now know such insurance payments they failed to make for 7 years. [At current date the 1st Defendants continue to deduct monthly now \$1,193.32 from Plaintiffs' current account].
 - b. Under paragraph 5 - Answer:- This has been already detailed into the Record as long shown in the Plaintiffs' first joint filed affidavit of 4th February 2020. Beyond that this is matter of law and evidence in the case, not an issue in pleading.
 - c. Under paragraph 7 – Answer:- This has been already detailed into the Record as long shown in the Plaintiffs' first joint filed affidavit of 4th February 2020 and the subsequent filed affidavits of Latalia Dames and of Pamela Hanna of June 2020 (as to their attendance upon the offices of Insurance Management and of the Dames' lawyer's own subsequent written enquires). Beyond that this is matter of law and evidence in the case, not an issue in pleading.

- d. Under paragraph 12 – Answer:- This has been already detailed into the Record as long shown in the Plaintiffs’ first joint filed affidavit of 4th February 2020. Beyond that this is matter of law and evidence in the case, not an issue in pleading.
- e. Under paragraph 12 (a) – Answer:- This has been already detailed into the Record as long shown in the Plaintiffs’ first joint filed affidavit of 4th February 2020. Beyond that this is matter of law and evidence in the case, not an issue in pleading.
- f. Under paragraph 12 (b) – Answer:- This has been already detailed into the Record as long shown in the Plaintiffs’ first joint filed affidavit of 4th February 2020. Beyond that this is matter of law and evidence in the case, not an issue in pleading.
- g. Under paragraph 12 (c) – Answer:- Generally, these matters have been already detailed into the Record as long ago shown in the Plaintiffs’ first joint filed affidavit of February 2020 and the subsequent filed affidavits of Latalia Dames and of Pamela Hanna of June 2020 {but is in fact actually detailed in the affidavits filed by both Defendants in which the fake insurance policy is exhibited, being backdated to before the actual Hurricane loss, indeed only after the Plaintiffs’ filing their Writ. Beyond that this is matter of law and evidence in the case, not an issue in pleading, but in particular:-
 - i. As to Collusion, see the critical and hotly contested recording evidence already in the Record, and the Defendants’ own supporting affidavits, namely that for the 2nd Defendant, admitting presenting the fake policy after the fact after tacit indication of arrangements being agreed between themselves.
 - ii. As to date of the fake insurance policy see that document exhibited to Defendants own supporting affidavits [but see namely the exhibit of it to Mrs Latalia Dames affidavit filed 24th June 2020 of that policy, bearing “PREVIEW ONLY” in big, bright red letters across every single page thereof, and bearing effective date of cover from 30th September 2018 to 30th September 2019)].
 - iii. As to nature and suffering the aforementioned Emotional Distress, the facts averred speak for themselves as to these damages as claimed in that discovering one has no insurance cover after a major hurricane and total devastation to one’s house, after years of paying the bank for said cover,

and furthermore of having to go through protracted litigation over 2 years therefore, and all the while continuing under the yoke of monthly mortgage payments and the further stress of continuing to inhabit a dilapidated house, and to suffer the other stresses detailed, all rather speak for themselves.

- iv. The two Defendants in concert, by their various actions and omissions complained of as detailed, have acted to undermine the Plaintiffs court claim.
- v. The said two Defendants aforesaid actions and omissions sought, amongst other things, to cover up the fact that Plaintiffs had no insurance cover in place and to create a scheme for adducing a fake policy so as to cover themselves, namely the 1st Defendant, from any claim in negligence. The Amended Writ as pleaded amply describes this.
- vi. The 'custom of the trade' within the region and internationally is to make good faith interim payments in hurricane property damage claims. In this case whilst the Defendants posit that there is an actual policy now in place to cover the loss, not one dollar has been paid in good faith thereunder the whole time were it an actual policy in the usual way, which rather speaks for itself.

h. Under paragraph 12 (d) – Answer:-

- i. (i) The two Defendants in concert, by their various actions and omissions complained of as detailed, have acted to undermine the Plaintiffs court claim and, also to frustrate the disputed settlement with 2nd Defendants.
- ii. Again, the said two Defendants who by aforesaid actions and omissions sought, amongst other things, to cover up the fact that Plaintiffs had no insurance cover in place and to create a scheme for adducing a fake policy so as to cover themselves, namely the 1st Defendant, from any claim in negligence, ALSO frustrated and undermined the disputed settlement with 2nd Defendants. The Amended Writ as pleaded amply describes this.
- iii. Beyond the above is matter of law and evidence in the case, not an issue in pleading.

i. Under paragraph 13 (a) (i) – Answer:-

- i. "unreasonably claimed for a strike-out", apart from the obvious that said strike-out application by the 1st Defendant failed and the case is now ordered to have to go to trial, the only further conclusiveness of that unreasonableness will only be further borne out upon further findings following trial and full exploration of the legal issues as well as the facts.
 - ii. Again, the said insurance policy was by open admission of the 2nd Defendants, issued only after Hurricane Dorian, after certain meetings between the Defendants, hence "ex post facto".
 - iii. Beyond the above is matter of law and evidence in the case, not an issue in pleading.
- j. Under paragraph 13 – Answer:-
 - i. The two Defendants in concert, by their various actions and omissions complained of as detailed, have acted to undermine the Plaintiffs court claim, who by aforesaid actions and omissions sought, amongst other things, to cover up the fact that Plaintiffs had no insurance cover in place and to create a scheme for adducing a fake policy so as to cover themselves, namely the 1st Defendant, from any claim in negligence. The Amended Writ as pleaded amply describe this.
 - ii. Beyond the above is a matter of law and evidence in the case, not an issue in pleading.
- k. Under paragraph 13(b) – Answer:-
 - i. The two Defendants in concert, by their various actions and omissions complained of as detailed, have acted to undermine the Plaintiffs court claim and, also to frustrate the disputed settlement with 2nd Defendants, which necessarily substantially delayed the case and exacerbated Emotional Stress, etc.
 - ii. Again, the said two Defendants who by aforesaid actions and omissions sought, amongst other things, to cover up the fact that Plaintiffs had no insurance cover in place and to create a scheme for adducing a fake policy so as to cover themselves, namely the 1st Defendant, from any claim in negligence, ALSO frustrated and undermined the disputed settlement with 2nd Defendants, which necessarily substantially delayed the case and

exacerbated Emotional Stress, etc. The Amended Writ as pleaded amply describes this.

- iii. Beyond the above is matter of law and evidence in the case, not an issue in pleading.

Submissions

7. Counsel for the First Defendant, Mrs. Michelle Deveaux submits in part that in every case the need for sufficient particulars in pleadings is paramount. Further, she submits a defendant should not be placed in a disadvantageous position of having to assume what the plaintiff's pleading means and refers the Court to the case of **Pinson v Lloyds and National Provincial Foreign Bank Limited [1941]** 2 K.B. 72 in support. It is her submission that the instant case justifies the Court's jurisdiction to compel the Plaintiffs to provide further and better particulars. Moreover, Mrs. Deveaux submits that given the nature of this matter and the seriousness of the allegations made against the First Defendant it is imperative that it is fully appraised of all of the necessary particulars to allow the First Defendant to prepare its Defence and that it would be extremely prejudicial for the First Defendant to file its Defence against the vague averments contained in the Amended Statement of Claim. As it relates to the First Defendant's requests, she acknowledges that the Plaintiffs have answered the first request under paragraph 4 of the Amended Statement of Claim, however she takes issue with the remaining answers by the Plaintiffs in response to the request. Mrs. Deveaux by way of her submissions has indicated the deficiencies in the answers provided by the Plaintiffs and for completeness her objections are stated below:-

"9.2 Request 2 – under paragraph 5 ASOC – the Plaintiffs are asked to provide the basis for their "belief" that the property was insured. Pleading as to knowledge must state the facts upon which the knowledge is based: **The Supreme Court Practice (White Book) 1979 para 18/12/17 – see Tab 2.**

9.3 Request 3 – under paragraph 7 ASOC – the Plaintiffs are asked to provide particulars of the fact averred that they "sought to make a claim against the insurance policy". The specific date and method of the claim against the insurance policy is material to the issues in dispute. It is material whether the Plaintiff relies on written or oral communication to establish a contractual basis for such a claim. When the claim was made and in fact whether a claim was made at all against the

insurance is also material to the loss and damage arising in establishing the alleged causes of action pleaded and the relief being sought in the Action: **Odgers on Civil Court Actions 1997 at page 213 [TAB 4];**

9.4 Request 4 – under paragraph 12(a) ASOC – the Plaintiffs are asked to give particulars of the fact averred as “immediate discovery” of the alleged “failure by either Defendant to effect an insurance policy”. When and how the Plaintiffs “immediately discovered” such alleged failure is material to the question of causation of emotional distress. Additionally, because discovery of this fact is pleaded to be the cause of the “substantial emotional distress” the nature of such immediate discovery must be pleaded and particularised as an element necessary to establish the tort: **see O v A (2015) 2 WLR 1312 at 1400 (UKSC per Baroness Hale at para.88) [TAB 5]**

9.6 Request 6 – under paragraph 12(c) ASOC – the Plaintiffs are asked inter alia to provide specifics of the allegations of collusion. 9.6 Request 7 – under paragraph 12 (d) ASOC – the Plaintiffs are asked to supply particulars relating the claim for aggravated damages. Particulars relating to a plea of aggravated damages must be properly pleaded. This is one of 2 categories of damages for which the matters which go directly to the proof of damages must be specified. The Plaintiffs’ ASOC gives no particulars of the matters relied on in aggravation of damages. To the extent that the ASOC alleges misconduct, the Plaintiffs also give no particulars of what facts are relied on as a basis for the alleged misconduct: **Odgers Principles of Pleading and Practice 21st ed at pages 96 and 113 [TAB 6].**

9.7 Specifically, in cases such as this where negligence is pleaded, “the statement of claim ought to state the facts, upon which the supposed duty is founded, and the duty to the plaintiff with the breach of which the defendant is charged”: **The Supreme Court Practice (White Book) 1979 para 18/12/22 [295] (elec. page 13) [see Tab 2].** This position has been approved by **Lord Alverstone CJ in West Rand Central Gold Mining Co. v R., [1905] 2 KB at p. 400 [TAB 7].**

9.8 Request 9 – under paragraph 13 ASOC – the Plaintiff is essentially being asked to provide particulars as to the alleged acts to “conspire and combine together wrongfully”. The pleading is deficient in providing the facts relevant to the alleged

agreement or combination as an element of the cause of action of unlawful means conspiracy: **see Bullen and Leake 15th ed. Para 50-01.1 (page 809) [TAB 8].**

9.9 Several of the remaining requests were made having regard to the vague nature of the pleaded case. As to Request 5 – under paragraph 12(b) ASOC as to “the additional stresses of daily life”; Request 8 – under paragraph 13(a) ASOC as to “unreasonably claimed for strike out” an “ex post facto agreement to effect an insurance policy”; and in relation to Request 10 under paragraph 13(b) ASOC as to “seriously delayed” the First Defendant submits that the abovementioned pleaded phrases are vague and do not provide sufficient specificity in order for the Defendants to understand the case to be met. As discussed in Odgers on Civil Court Actions supra at 213 – see Tab 4, the Plaintiffs cannot be allowed to word pleadings vaguely such that without particulars the Plaintiffs can later rely on any version of facts to substantiate the claim.”

8. She further contends that the Plaintiffs have not given the Court any acceptable rationale as to why the particulars should not be ordered to be provided and refers the Court to pages 215-216 of Odgers on Civil Court Actions 1997. The relevant passage is noted below:-

“It is no objection to an application for particulars that the applicant must know the true facts of the case better than his opponent. He is entitled to know the outline of the case that his adversary will try to make against him, which may be something very different from the true facts of the case. His opponent may know more than he does; in any event it is well to bind him down to a definite story. Particulars will be ordered whenever the court is satisfied that without them the applicant cannot tell what is going to be proved against him at the trial. Again, where the party applying is in other respects entitled to the particulars for which he asks, it is not a valid objection to his application that if the order be made it will compel the party giving them to name his witnesses, or otherwise to disclose or give some clue to his evidence. If the only object of the summons is to obtain particulars of the evidence on the other side, it should, of course, be dismissed as an improper application. But where the information asked for is clearly necessary to enable the applicant properly to

prepare for trial, or where 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, and even where the plaintiff is privileged from producing documents which would disclose such evidence.”

9. Counsel for the Plaintiffs, Mr. Beryn Duncanson submits, in part, that the exercise of further and better particulars is to identify the case the Defendants have to meet at trial and no amount of further and better particulars can supplant an actual trial of the issues, facts and law. He submits that the entirety of the Plaintiffs case is amply made out in the Amended Writ and Statement of Claim filed on June 7, 2021. Further, he contends that there is nothing barring the First Defendant from filing their defence as the Second Defendant was able to do so. Mr. Duncanson refers the Court to the **Note at page 338 of the Supreme Court Practice, Volume 1, 1999**, that provides **“Where pleadings arise with sufficient particularity issues which ought to be investigated by the Court, neither further particulars nor discovery will be ordered before defence.** (*Commission for Racial equality v Ealing London Borough Council* [1978] 1WLR 112 sub nom, *Race Relations Board v London Borough of Ealing (No. 2)* [1978] 1 All E.R. 497, CA). He also refers the Court to the case of *Astrovlanis Compania Naviera SA vs Harry Oliver Linard*; 1972, 2 All ER 647, CA in support of his submission. Lastly, he submits that the parties are long past the point and as such the First Defendant ought to file their defence and discovery should begin.
10. In response to the Plaintiffs submission, Mrs. Deveaux submits, in part, that the First Defendant does not accept the remaining answers by the Plaintiffs in their response. Further, she submits that the remaining answers (reference to the Affidavits filed during interlocutory proceedings) show an admission of the deficiencies in the Plaintiffs pleadings and that material facts are being requested. As it relates to the Plaintiffs pleadings she contends that the question is whether it is sufficient to plead just mere distress or emotional distress for the tort of unlawful means conspiracy. She refers the Court to the case of **Mbsago and another v Logo Ltd and other [2006]** EWCA Civ 1370 in support of her submission that the Plaintiffs should be ordered to offer the particulars for the constitutive elements of the tort (unlawful means conspiracy) and that the loss arising for this tort cannot be mere mental distress or emotional stress, the pleadings must include

some physical or psychological illness. On that basis, she submits that this cause of action/claim should be struck out. In respect to the Plaintiffs claim for negligence Mrs. Deveaux submits that the loss and damage as pleaded is deficient as the Plaintiffs fail to state what loss and damage is to be relied upon. Lastly, she submits that the Plaintiffs' reliance on **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)** is not helpful to the Plaintiffs' submission as that was an authority in relation to a refusal to order particulars of a Defence as the application was made late and after the Summons for Directions.

11. Mr. Duncanson by way of response to Mrs. Deveaux submits, in part, that the **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)** case provides guidance for the Court. Mr. Duncanson refers the Court to the finding of Pearson, J in **Compania Naviera Santi S.A. v. Indemnity Marine Assurance Co. Ltd. (The Tropaioforos)** [1960] 2 Lloyd's Rep. 469 which was referred to in **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)** and submits that Pearson, J's finding and the Court in **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)** at page 1419 (Lord Denning) that the Court recognizes "...that a party who alleges conspiracy cannot be expected to give particulars of it. All that the court requires of him is that he should give particulars of the overt acts; that is, of the acts done in pursuance of the conspiracy....All the rest is evidence." Therefore he submits that the Plaintiffs have given an answer to each of the First Defendant's request and the answers to which the First Defendant seeks amount to evidence which is better suited for trial. He also refers the Court to **Note 18/12/61 on page 338 of the Supreme Court Practice, Volume 1** and highlights where it says "But no hard or fast rule can be laid down to determine where particulars should precede discovery or discovery should precede particulars. The latter course is most frequently adopted in cases where a fiduciary relation exists between the parties (*Zierenberg v Labourchere* [1893] 2 Q.B. 183)."
12. Mr. Duncanson was also given an opportunity to respond to the two authorities laid over by Mrs. Deveaux during the hearing by way of Plaintiffs Additional Skeleton dated August 17, 2021. He submits that the cases **Mbsaogo v Logo Ltd (supra)** and (2007) 2 WLR 1062 (CA) at 1094 [para 97 – 98] and **Humberclyde Finance v Hicks (2001 WL 1346978) Page 17** as summarized by Mrs. Deveaux were misleading.

13. Mr. Duncanson submits that the Plaintiffs have not pleaded 'unlawful means conspiracy' as contended by Mrs. Deveaux and asserts that one can be liable for a conspiracy enacted by otherwise completely lawful means, where the intention was clearly primarily designed to damage the Plaintiff. Therefore, he submits that the Plaintiffs 'Under the Prayer' in their Amended Writ with ample particularity describe a claim for damages, special and general damages, emotional distress, aggravated damages, and commercial interest and costs. More so, at 13b of the Amended Writ of Summons the Plaintiffs plead with sufficient particularity the damages resulting from the serious delay of their court case, the exacerbation of additional stress of living in a dilapidated house, and anxiety.
14. It is his submission that paragraphs 97 and 98 of the **Mbsaago v Logo Ltd (supra)** case simply underlines the fundamental premise that no case can be sustained at common law purely for "mental suffering by which is meant distress falling short of bodily or mental injury".
15. Mr. Duncanson also submits that the obiter in **Humberclyde Finance v Hicks (supra)** to which Mrs. Deveaux seeks to rely on in support of her submission flies in the face of the principles stated in **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)**. He submits that **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)** laid down the fundamental principle that in conspiracy cases one simply cannot be expected to go too far in particulars of how the defendants carried out their conspiracy, because it is of the very essence of the claim that the methods and manner employed of effecting the conspiracy and injury will become better known after discovery and the trial itself. That of itself cannot logically exempt any claim for aggravated damages arising from the conspiracy. Moreover, he further contends that taken at its highest **Humberclyde Finance v Hicks (supra)** recognizes that:- i. mental distress does not first require a case for aggravated damages to be made out, and; ii. if the Plaintiffs fail to prove emotional distress by the Conspiracy they cannot then have aggravated damages *in lieu*. He further submits that the Plaintiffs have pleaded expressly by the use of the word "plus" next to Aggravated Damages in its prayer for relief.

Issues

16. The Court must determine whether the answers as provided by the Plaintiffs in their Answer are sufficiently particularized to adequately meet the request made by the First Defendant.

Discussion and Conclusion

The Law

17. 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.”

18. The general requirement to give particulars reflects the overriding principle that the litigation between the parties, particularly the trial should be conducted fairly, openly, without surprises and as far as possible in an effort to minimize costs (a view approved by Edmund-Davies L.J. in **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)**). The function of particulars essentially is:-
 - a. To inform the other side of the nature of the case they have to meet;
 - 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;
 - e. To limit and define the issues to be tried, and as to which discovery is required; and
 - f. To tie the hands of the party so that he cannot without leave go into any matters not included. [**Note 18/12/2 under rubric “General” at page 327 in the Supreme Court Practice, 1999, Volume 1**].
19. More so, the request for further and better particulars should only be made to help in the preparation of the case and not as a means to cure bad drafting. **Astrovlanis Compania Naviera SA vs Harry Oliver Linard (supra)** sets out the applicable principles but, as argued by Mrs. Deveaux, *Astrovlanis* is distinguishable on its facts from the case at hand.
20. This matter has been before the Court since the filing of the Plaintiffs’ Writ of Summons in November 2019 and to date there have been numerous applications by all parties which has caused this matter to progress at a slow pace. The Plaintiffs were given leave by the Court to amend their Writ of Summons and Statement of Claim to remedy and/or cure the deficiencies in their initial pleaded case. The request for further and better particulars by the First Defendant highlights that, although the Plaintiffs amendments were made to cure the initial deficiencies, it is the view of the First Defendant that the amendments ultimately resulted in new deficiencies.
21. The issue that arises before the Court now is, bearing in mind the purpose of a request for further and better particulars, whether the Plaintiffs have satisfied the Court with their subsequent answers to the request. Reviewing the said answers, I find that the Plaintiffs

have not adequately answered the questions as provided by the First Defendant, in particular the answers provided to which the Plaintiffs' response was to refer to Affidavits that had been used during the numerous interlocutory hearings in this matter. To my mind, this cannot stand as a proper answer to such a request. The usual format for the answer upon a request for Further and Better particulars is to set out the request, then the answer to the request, dealing with each separate point raised and giving the correct amount of detail in the answer. This was not done by the Plaintiffs. Additionally, I find it curious that the Plaintiffs have resiled from providing and/or now claim that the First Defendant is not entitled to the same information to which they claim can be found in the various Affidavits. I find that by simply referring the First Defendant to the various Affidavits the Plaintiffs have conceded that the information contained in the Affidavits are material facts to which the First Defendant is entitled to.

22. Mrs. Deveaux in her submissions relative to the Plaintiffs claim for unlawful means conspiracy contends that the Plaintiffs failure to plead the constitutive elements of the said tort should amount to that claim/cause of action being struck out. The Amended Writ of Summons and Statement of Claim was exhibited to the Plaintiffs Amended Summons for Leave to amend their Statement of Claim filed December 1, 2020. During the Plaintiffs application for leave to amend, the First Defendant had an opportunity to object to the proposed amendments however, the First Defendant's only objection was to the issue of costs relative to that application. Additionally, while Mrs. Deveaux has submitted that the Plaintiffs failure to plead the constitutive elements of unlawful means conspiracy should result in that claim/cause of action being struck out, there is no formal application by the First Defendant before the Court now to do so. Moreover, while the Court can strike out on its own initiative I am of the view that if the Court was to consider the First Defendant's submission on the point and strike out the claim/cause of action at this juncture it would amount to the First Defendant having another "bite of the cherry" when such a submission or objection should have been made when the Plaintiffs sought to amend their Writ of Summons and Statement of Claim. Therefore, in the circumstances the Court will not address its mind to such an remedy at this juncture.
23. The provisions of Order 18, Rule 12(1)(a) and (b) of the RSC are clear in that particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence or allegations of any condition of the mind of any person, any disorder or disability of mind

or any malice, fraudulent intention of other condition of mind except knowledge particulars of the facts the party relies on should be contained in the pleadings.

24. Counsel for the First Defendant has relied on the case of **Mbsaago v Logo Ltd (supra)** in relation to the Plaintiffs pleadings or lack thereof as to their claim of emotional distress and submitted that the particulars for the constitutive elements of the tort (unlawful means conspiracy) and that the loss arising for this tort cannot be mere mental distress or emotional stress, the pleadings must include some physical or psychological illness. Mr. Duncanson in response submitted that the Plaintiffs pleaded with sufficient particularity and referred to paragraph 13b of their Amended Writ of Summons and Statement of Claim. Mrs. Deveaux also relied on the case of **Humberclyde Finance v Hicks (supra)** in relation to the Plaintiffs pleadings or lack thereof as to an item of relief sought in their prayer for Aggravated damages. Mr. Duncanson in response further submitted that the Amended Writ of Summons and Statement of Claim makes provision for the Plaintiffs to claim aggravated damages additionally to their claim for damages for emotional distress.
25. Considering these authorities above and the provisions of Order 18, Rule 12 of the RSC, I am satisfied that the facts upon which the Plaintiffs intend to rely are embodied in part in the Amended Writ of Summons and Statement of Claim, in part in the Affidavit evidence and in part in their Answer dated July 27, 2021. All that is required now is for the Plaintiffs to extract this information from the Affidavits which they referred to in their Answer and provide it to the First Defendant in the accepted format. Once provided the First Defendant should have sufficient information in my view to address the claim in its Defence and these facts and the issues arising therefrom will be ventilated at trial.
26. I would however remind Counsel that the request for particulars is an exercise in finding out the other side's case when the pleading fails to do so and not simply because the other side's pleadings may have been badly drafted.

Disposition


27. Therefore (bearing in mind paragraph 21 as to the format of answers), I make the following orders:-
- a. The Plaintiffs are to provide the answers to the First Defendant's requests as found in the respective Affidavits submitted in its Answer. In particular to the requests made in:-

- i. Paragraph 5;
 - ii. Paragraph 7;
 - iii. Paragraph 12;
 - iv. Paragraph 12 (a);
 - v. Paragraph 12 (b);
 - vi. Paragraph 12 (c);
 - vii. Paragraph 12 (d)
- b. That the Plaintiffs are to provide the said answers within 7 days from the date of this Ruling and failing which the matter will be stayed until such time as the Plaintiffs comply.
 - c. That following receipt of the Plaintiffs answers the First Defendant is to file and serve its Defence within 14 days from the date of receipt of the answers.

Costs

28. The First Defendant seeks the costs of and occasioned by this application to be the First Defendant's. Mr. Duncanson has submitted that costs should be ordered as costs in the cause as the Plaintiffs have answered the requests of the First Defendant in full.
29. Costs are always in the discretion of the Court. Having found that the Plaintiffs failed to comply with the Court's first order to produce their answers within the time frame ordered resulting in the hearing before the Court and the Plaintiffs not answering the First Defendant's request "in full" I see no reason to depart from the usual costs order.
30. Therefore, the costs of this application is to be paid by the Plaintiffs to the First Defendant to be taxed if not agreed.
31. The Plaintiffs are given leave to appeal this decision.

Dated the 30th day November A.D. 2021


Petra M. Hanna-Adderley
Justice