

ROYAL COURT
(Samedi Division) 173.

30th day of August, 1994

Before: The Judicial Greffier

<u>Between:</u>	Francisco Espana	<u>Plaintiff</u>
<u>And:</u>	T & D Enterprises Limited	<u>Defendant</u>

Application to strike out parts of the Defendant's Answer by reason of these failing to comply with good pleading practice.

Mr. K.R. Manning for the Plaintiff.
Advocate A.P. Begg for the Defendant.

JUDGMENT

JUDICIAL GREFFIER: Although I have given a decision in relation to this matter, counsel have urged me to produce written reasons as they believe that these will assist the legal profession.

5 The Plaintiff commenced proceedings by means of a Summons and subsequently filed a Statement of Claim. Paragraphs 2, 3, 4, 5 and 6 of the Statement of Claim contained allegations of two contracts, allegations of express or alternatively implied terms of the contracts, allegations of breach of contract and
10 particulars of claims arising from the alleged breaches of contract. Paragraph 2 of the Answer read as follows -

"That each and every allegation contained in paragraphs 2, 3, 4 and 5 of the particulars of claim are denied."

15 Paragraph 3 of the Answer after a brief admission contained a plea that, "each and every allegation set out in paragraph 6 of the particulars of claim is denied".

20 Arguments in this case ranged around interpretation of the Melva House Limited -v- Bowshot Limited & Anor. (5th February, 1991) Jersey Unreported; (1991) JLR N.4 in which I endeavoured to set out correct pleading principles by virtue of quotations both

from the White Book and from Bullen and Leake and Jacob's "Precedents of Pleadings".

5 Advocate Begg submitted that the above-mentioned paragraphs from his pleadings did not contravene the principles set out in the Melva House Judgment because by denying each and every allegation he had made it absolutely clear as to what was admitted and what was denied. He therefore submitted that his pleading was sufficient.

10 In my view, the Melva House Judgment is dealing with at least two principles as follows -

- 15 (a) the principle that if multiple allegations are denied by a simple denial, the other party will not know which of the allegations are being admitted and which denied; and
- 20 (b) the principle that essential allegations cannot be dealt with by a general traverse either in the form set out in the defence in this action or in the form of a general traverse at the end of the pleading.

25 The Defendant's pleading in this case, by denying each and every allegation, passes the first test. However, it does not pass the second test. The Rules in England, as set out in detail in the Melva House Judgment, indicate that essential allegations must be specifically traversed. That Judgment goes on to give detailed examples as to how to specifically traverse pleadings containing multiple allegations in one paragraph. In my view, as

30 is reflected in various paragraphs in that Judgment, there is no difference, in relation to responding to essential allegations, between a general traverse to each paragraph which contains essential allegations or a general traverse at the end of the pleading.

35 Accordingly, I struck out the offending paragraphs of the Answer and gave leave for the Defendant to file an amended Answer in which paragraphs 2, 3, 4, 5, and 6 of the Statement of Claim would be answered in proper pleading form with those paragraphs of

40 the Statement of Claim being treated as entirely and wholly containing essential allegations. I also made an Order for costs against the Defendants both in relation to the Summons and also in relation to costs thrown away by reason of the striking out and amendment of the Answer.

45 Finally, I would like to emphasise that although the pleading practice followed here is objectionable in relation to a response to essential allegations, it is not objectionable in relation to paragraphs of a pleading which do not contain essential

50 allegations.

Authorities

Melva House -v- Bowshot & Anor. (5th February, 1991) Jersey
Unreported; (1991) JLR N.4.

R.S.C. (1993 Ed'n): O.18 rr. 18 & 19.