IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC(I) 09

Suit No 5 of 2018 (Summons No 32 of 2018)

Between

(1) Arovin Ltd
(2) Vijay Goradia

… *Plaintiffs*

And

Hadiran Sridjaja

… *Defendant*

JUDGMENT

[Civil Procedure] — [Pleadings] — [Further and better particulars]

TABLE OF CONTENTS

Arovin Ltd and another
v
Hadiran Sridjaja

[2018] SGHC(I) 09

Singapore International Commercial Court — Suit No 5 of 2018 (Summons No 32 of 2018)
Vivian Ramsey IJ
7, 21, 28 September 2018

12 November 2018 Judgment reserved.

Vivian Ramsey IJ:

Introduction

1 The plaintiffs seek various further and better particulars which have been put into three categories in the parties' submissions:

(a) Requests 1, 2, 4, 5(b)(i), 7(b)(i), 8 and 14: These relate to pleaded understandings or agreements where the plaintiffs seek particulars of the manner in which the understanding or agreement arose and, if orally, for the defendant to state what was stated by the relevant parties in giving rise to the understanding or agreement.

(b) Requests 5(b)(iii), 7(b)(iii) and 9: These relate to pleaded understandings or a refusal where the plaintiffs seek particulars of the manner in which the understandings or refusal arose and, if in writing,

for the defendant to identify the relevant document. The defendant has provided particulars in response to these Requests.

(c) Request 3: This relates to particulars of allegations concerning a settlement. The defendant has provided particulars response to these Requests.

2 As a result, it is only necessary to consider the first category relating to understandings or, for Request 14, an agreement, where the plaintiffs seek particulars of what was stated by the relevant parties, in relation to the oral understandings or agreement.

The law

3 The parties agree on the principles to be applied in deciding whether or not to order further and better particulars. The general purpose of particulars is not in dispute. Given the scope of the remaining requests, I consider that the appropriate principles are these:

(a) As set out in *Singapore Court Practice 2018* (Jeffrey Pinsler gen ed) (LexisNexis, 2018) at para 18/12/10:

> [A party] may ask, if the term is oral, for particulars as to the circumstances in which the verbal communication was made and the persons between whom the contract was made… To ensure that the response to the request for particulars is comprehensive, the party usually frames his specific requests in the alternative. For example, it might be phrased in the following way: (i) if oral, state the persons between whom the oral communication was made and the names of those persons as well as the date on which and the time and place at which the said communication was made;…
>
> …

> The court will not allow this procedure to be used to obtain evidence. See *Wright Norman v Overseas-Chinese Banking* [1992] 2 SLR(R) 452; *Wright v Times Business Publications* [1991] 1 SLR(R) 196 [1991] 3 MLJ 12; *Temperton v Russell* (1893) 9 TLR 318, at 321; *General Electric v Simplex* [1971] RPC 351. Such an objective may be apparent when sufficient particulars have been given and the objecting party seeks the facts on which those particulars are based…
>
> '... Particulars will be ordered whenever the master is satisfied that without them the applicant cannot tell what is going to be proved against him at the trial. But how his opponent will prove it is a matter of evidence of which particulars will not be ordered.' (*In the matter of Surge Electrical Engineering and Powertec Engineers* [2002] SGHC 280).

(b) As stated in *Singapore Civil Procedure 2018* (Foo Chee Hock editor-in-chief) (Sweet & Maxwell, 2018) ("*Singapore Civil Procedure 2018*") at para 18/12/2:

> Finally, it should be emphasised that particulars would not generally be ordered in respect of matters of evidence or inference drawn or substitute interrogatories…

(c) As also stated in *Singapore Civil Procedure 2018* at para 18/12/5:

> 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 (*Turquand v. Fearon* (1879) 48 L.J.Q.B. 703). If the agreement is not under seal, the consideration must also be stated. The precise words used in the making of an oral agreement need not be stated…

The understandings or agreement

4 The defendant has pleaded in the defence:

(a) In paragraph 8(b) that "[b]ased on a plain reading of Clause 2.1.1 of the alleged Agreement and the understanding between the 2nd Plaintiff and the Defendant…"

(b) In paragraph 8(f) that "[b]ased on a plain reading of Clause 3.1.1 of the alleged Agreement and the understanding between the 2nd Plaintiff and the Defendant…."

(c) In paragraph 17 that "in return for the financial commitments which Shefford, the Defendant and the Plaintiffs made to EDBI pursuant to the Initial PCOA, it was understood that they or their nominees would be allocated certain volumes of various offtake products from JAC once production began…."

(d) In paragraph 18(a) that "the Plaintiffs, Vinmar, and the Defendant shared the common understanding that the entity…"

(e) In paragraph 18(b) that "[t]he common understanding between the Plaintiffs, Vinmar, and the Defendant was that…"

(f) In paragraph 18(c) of the Defence that "the Plaintiffs, Vinmar, and the Defendant shared the common understanding that the allocation of the Multi-Products Offtake Volumes… would first be parked with Vinmar as a temporary bridging measure"

(g) In paragraph 42 that "the Plaintiffs had already assumed responsibility for payment of the EDBI Shareholder Support Amount and the EDBI SBLC fees when Vinmar agreed to accept the following offtake volumes as consideration".

Decision

5 The defendant has provided particulars stating that the understandings were reached and the agreement was made, at least in part, orally. In paragraph 14 of his affidavit dated 21 September 2018, the defendant has now stated that the understandings pleaded in the defence were express understandings or an express agreement. The fact that they were express understandings reached orally means that the defendant can properly be asked for particulars of "between whom the oral communication was made and the names of those persons as well as the date on which and the time and place at which the said communication was made". Those matters have been dealt with in the answers already given to the Requests and no issue has been raised.

6 The issue is whether I should order the defendant to provide answers to the plaintiffs' requests for particulars of what was stated by the relevant parties in giving rise to the alleged understandings or agreement.

7 Whilst the *Singapore Civil Procedure 2018* states that in giving particulars "[t]he precise words used in the making of an oral agreement need not be stated", in my judgment, the emphasis is on the word "precise". The precise words need not be stated.

8 As the plaintiffs point out, O 18 r 7(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) provides:

> **Facts, not evidence, to be pleaded (O. 18, r. 7)**
>
> (2) … the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the…conversation shall not be stated, except in so far as those words are themselves material.

9 This follows O 18 r 7(1) which provides:

> **Facts, not evidence, to be pleaded (O. 18, r. 7)**
>
> 7.—(1) Subject to this Rule and Rules 10, 11 and 12, every 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.

10 I consider that, as the defendant relies upon an express understanding or agreement, the defendant must provide particulars of the gist of what was stated as this is material to the allegation. As Thesiger LJ said in *Turquand v Fearon* (1879) 40 LT 543, the case cited in the *Singapore Civil Procedure 2018*, in relation to the equivalent of O 18 r 7(1):

> The matter becomes clear when that 4th rule [of Order XIX] is looked at, which states that "every pleading shall contain, as concisely as may be, a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved," &c. Now, an agreement is not, strictly speaking, a fact; it is an inference of law from facts. What the rule requires to be stated are the "material facts".

11 The gist of what was said contains the material facts from which an understanding or agreement, being an inference from those facts, can be derived. It is necessary for the plaintiffs to know sufficient about the relevant material facts on which the oral understanding or agreement is based, to be able to put forward any evidence to dispute such an understanding or agreement. That is not a request for evidence but a request for facts and matters which are necessary for a proper pleading. For instance, it is important to know the gist of what one person said to see whether the terms of the understanding or agreement are made out, as a matter of inference of law from those facts. That will only be apparent from particulars of the gist of what was said.

12 I therefore order that particulars should be given of the gist of what was stated by the relevant persons in giving rise to the understanding or the

agreement. Such particulars are necessary so that, in particular, the plaintiffs know what case they have to meet when they come to prepare their affidavits of evidence-in-chief.

13 The defendant shall give the following further and better particulars of the defence on or before 26 November 2018:

(a) Under paragraph 8(b) of the defence

Of the allegation that "[b]ased on a plain reading of Clause 2.1.1 of the alleged Agreement and the understanding between the 2nd Plaintiff and the Defendant, the costs of the Vinmar Guarantee and the Bank Guarantee would refer to administrative charges for opening and maintaining the Vinmar Guarantee and the Bank Guarantee",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to the alleged "understanding".

(b) Under paragraph 8(f) of the defence

Of the allegation that "[b]ased on a plain reading of Clause 3.1.1 of the alleged Agreement and the understanding between the 2nd Plaintiff and the Defendant, the "costs for the EDBI Put and Call Option Shares" would refer to the costs of EDBI's shares in JAC at the time of the exercise of the Put Option or the Call Option, as defined in the Amended PCOA",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to the alleged "understanding".

(c) Under paragraph 17 of the defence

Of the allegation that "in return for the financial commitments which Shefford, the Defendant and the Plaintiffs made to EDBI pursuant to the Initial PCOA, it was understood that they or their nominees would be allocated certain volumes of various offtake products from JAC once production began (the "Multi-Products Offtake Volumes"). The parties would then be able to profit from the onselling of the Multi-Products Offtake Volumes to third parties",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to this alleged understanding.

(d) Under paragraph 18(a) of the defence

Of the allegation that "the Plaintiffs, Vinmar, and the Defendant shared the common understanding that the entity that would be providing the Bank Guarantee to EDBI would receive compensation from JAC through the allocation of the Multi-Products Offtake Volumes",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to the alleged "common understanding".

(e) Under paragraph 18(b) of the defence

Of the allegation that "[t]he common understanding between the Plaintiffs, Vinmar, and the Defendant was that the 2nd Plaintiff and the Defendant would continue to seek and secure other potential investors to step in and replace Vinmar vis-à-vis the

provision of the Vinmar Guarantee and the Bank Guarantee to EDBI",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to the alleged "common understanding".

(f) Under paragraph 18(c) of the defence

Of the allegation that "[a]s the allocation of the Multi-Products Offtake Volumes is tied to the provision of the Vinmar Guarantee and the Bank Guarantee to EDBI, the Plaintiffs, Vinmar, and the Defendant shared the common understanding that the allocation of the Multi-Products Offtake Volumes (which represented the compensation for the provision of the Vinmar Guarantee and the Bank Guarantee to EDBI) would first be parked with Vinmar as a temporary bridging measure",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to the alleged "common understanding".

(g) Under paragraph 42 of the defence

Of the allegation that "the Plaintiffs had already assumed responsibility for payment of the EDBI Shareholder Support Amount and the EDBI SBLC fees when Vinmar agreed to accept the following offtake volumes as consideration",

the defendant shall state the gist of what was stated by the relevant parties in giving rise to the alleged agreement.

14 The defendant having provided further and better particulars in response to Request 3 (under paragraph 8(g) of the defence), Request 5(b)(iii) (under paragraph 18(a) of the defence), Request 7(b)(iii) (under paragraph 18(b) of the defence) and Request 9 (under paragraph 18(e) of the defence), no order is made in respect of those Requests.

15 The defendant shall pay the plaintiffs' costs of the application, assessed at S$3,000 plus reasonable disbursements.

Vivian Ramsey
International Judge

Paul Seah, Alcina Chew, Eugene Low and Pang Hui Min (Tan Kok Quan Partnership) for the plaintiffs;
Andy Leck, Michelle Lee and Kong Xie Shern (Wong & Leow LLC) for the defendant.