

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H. C. A. No. Cv. 2818 of 2000

BETWEEN

1. DULCIE SAITH (also called Diane Saith)  
2. PHILLIP MEDFORD  
3. HARRY MEDFORD

PLAINTIFFS

AND

1. ROOKMIN MEDFORD  
(as Administratrix of the Estate of Carl Medford,  
deceased and in her personal capacity)  
2. JAMES CHRIS MEDFORD  
3. SURENDRANATH CAPILDEO

DEFENDANTS

**BEFORE THE HONOURABLE MR. JUSTICE P. JAMADAR**

**APPEARANCES**

Mr. Johnatty for the Plaintiffs

Mr. Martineau S.C. & Mr. A. Sinanan for the Third Defendant

**JUDGMENT**

The Third Defendant seeks to have the Plaintiffs Claim against him and the particulars supplied on the 22<sup>nd</sup> July, 2002 (pursuant to an order of the Court of Appeal made on the 15<sup>th</sup> July, 2002) struck out.

A short history of this matter is necessary to place the instant application in context.

By an earlier summons of 24<sup>th</sup> November, 2000, the Third Defendant sought to have several parts of the Plaintiff's Statement of Claim struck out. On the 26<sup>th</sup> September, 2001, in a written decision, Ventour J. ruled that the

Statement of Claim disclosed no reasonable cause of action against the Third Defendant and struck out all references to the Third Defendant that appeared in same (thereby preserving the action against the other Defendants).

The Plaintiffs appealed this decision of Ventour J. On the 15<sup>th</sup> July, 2002, the Court of Appeal (Hamel-Smith, Lucky and Kangaloo J.J.A.) in an oral judgment allowed the appeal and ordered the Plaintiffs to: “Give further and better particulars of specific facts, documents or overt acts on which the Plaintiff intends to rely in support of the allegations that the Third Defendant had knowledge of the existence of the other beneficiaries.” And, the Court of Appeal also directed that: “These particulars must be given within ten (10) days. In default, the Statement of Claim against the Third Defendant will be struck out.” [Quoting from the CAT reporters note of the oral judgment delivered by Hamel-Smith J.A.].

The subject particulars, filed on the 22<sup>nd</sup> July, 2002, were supplied purportedly in compliance with this order of the Court of Appeal.

Counsel for the Plaintiffs has brought to this Court’s attention the fact that the formal order of the Court of Appeal was only entered on the 24<sup>th</sup> July, 2002, one day before the expiration to the ten (10) day time limit, and is different from that expressed in Court on the 15<sup>th</sup> July, 2002. The material part of the formal order states: “The Plaintiffs/Appellants do give further and better particulars on or before the 21<sup>st</sup> day of July, 2002. In default, matter to be struck out against the Third Defendant.”

Counsel for the Plaintiffs has also brought to the attention of the Court the fact that the official copy of the judgment of Hamel-Smith J.A., though dated the 15<sup>th</sup> July, 2002, was not available until after the 25<sup>th</sup> July, 2002. And, that in this written judgment the words “at the material time” were added after the

word “beneficiaries” to the order declared orally on the 15<sup>th</sup> July, 2002 (see, page 4 of the written judgment).

Counsel for the Plaintiffs attempted to rely on these variations as being relevant to this Court’s assessment of the particulars supplied on the 22<sup>nd</sup>. However I find that they are irrelevant. This because, it is quite clear that Counsel for the Plaintiffs knew on the 15<sup>th</sup> July, 2002 what particulars were in fact ordered. That this is unequivocally so is demonstrated by the caption preceding the actual particulars supplied, which reads: “Further and Better Particulars of the facts, documents or overt acts on which the Plaintiffs rely in support of the allegation that the Third Defendant had knowledge that the deceased had left other beneficiaries including the Plaintiffs.” Further, in my opinion, the omission of the words “at the material time” is of no material consequence. These particulars could only have relevance to this case in relation to the material time, which (as was agreed by Counsel for the Plaintiffs) was the 12<sup>th</sup> September, 1975 (the date of execution of the subject Deed of Assent).

The single question therefore for this Court to determine, is whether, accepting the truth of the facts pleaded in the particulars, at this interlocutory stage this Court can conclude that it is plain and obvious that the Plaintiffs action against the Third Defendant cannot succeed (see, paragraph 18/19/7, Supreme Court Practice, 1997, Vol. 1.). Thus, if the allegations in the Statement of Claim as particularized plead a case that has some chance of success or disclose some question fit to be decided at trial, the mere fact that the case may be weak and may be unlikely to succeed, is no ground for striking it out (see, paragraph 18/19/11, Supreme Court Practice, 1997, Vol. 1).

In the argument before this Court, the paragraph in the Statement of Claim that was challenged was paragraph 8.

By paragraph 8, the Plaintiffs alleged that the Third Defendant assisted the First Defendant in committing a breach of trust and in perpetrating a fraud as against the interests of the Plaintiffs. This because, though on the 20<sup>th</sup> November, 1959, the Third Defendant's father had acted for the First Defendant and obtained in her name a Grant of Letters of Administration of the Estate of Carl Medford, in or about September, 1975, the Third Defendant performed certain acts with particular knowledge.

The specific acts of the Third Defendant that it is alleged resulted to the above contentions were:

- i. his preparation of a vesting deed,
- ii. his witnessing of its execution, and
- iii. the steps he took to cause it to be registered, which deed conveyed certain lands of the Estate of Carl Medford to the First Defendant absolutely (as if she was the sole beneficiary of the said estate).

The particular knowledge attributed to the Third Defendant was his knowledge that:

- i. the deceased Carl Medford had left other beneficiaries (including the Plaintiffs), and
- ii. the Third Defendant held the subject lands in trust for all the beneficiaries of the Estate of Carl Medford.

In the earlier challenge to the Statement of Claim by the Third Defendant, the Court of Appeal by a majority determined the following:

- i. that in this case it was not mandatory to plead the basis of knowledge in the Statement of Claim (citing paragraph 18/12/9 of the Supreme Court Practice, 1997, Vol.1);
- ii. that the pleading in this case (paragraph 8 of the Statement of Claim) was sufficient, but if requested the Plaintiffs would be required to give particulars of the basis of that knowledge; and

- iii. that ‘in this case the Third Defendant is an attorney and his preparation of the deed of assent in favour of the mother only, with knowledge of the existence of the next of kin (who were equally entitled by law to the property), regardless of how he came by that knowledge, could result in a fraud on the next of kin.’”

It was as a result of these conclusions that the Court of Appeal ordered the particulars stated above, which order was in the usual form suggested at paragraph 18/12/9 of the Supreme Court Practice, 1997, Vol. 1.

It is against this background that the particulars of the 27<sup>th</sup> July, 2002 were supplied and this challenge brought.

The purpose of particulars is to ensure fairness, openness and maximum disclosure prior to trial. The Supreme Court Practice, 1997, Vol. 1, states the functions of particulars as follows (paragraph 18/12/1):

- i. to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved;
- ii. to prevent the other side from being taken by surprise at the trial;
- iii. to enable the other side to know with what evidence they ought to be prepared and to prepare for trial;
- iv. to limit the generality of the pleadings;
- v. to limit and define the issues to be tried; and
- vi. to tie the hands of the party so that he cannot without leave go into any matters not included.

Thus, it “is not the function of particulars to take the place of necessary averments in the pleading” (paragraph 18/12/1, Supreme Court Practice *supra*).

Senior Counsel for the Third Defendant in a careful analysis of the particulars of the 22<sup>nd</sup> July, 2002 ably demonstrated their equivocal nature. For example:

- a. With respect to particular (1), he pointed out that the Third Defendant having been born on the 19<sup>th</sup> December, 1940 and admitted to practice on the 6<sup>th</sup> August, 1968, these alleged events would have occurred some forty (40) years ago.
- b. Then, with respect to particulars (2) and (3), he pointed out that the facts pleaded do not aver that the First Plaintiff was introduced or known as the deceased's daughter.
- c. Then, with respect to particular (4), he pointed out that with respect to this event in 1975 it is not clear whether it occurred prior to the 12<sup>th</sup> September, 1975, which on the Plaintiffs case is the material time. In his submission it was therefore useless.
- d. Then, with respect to particulars (5) and (6), he pointed out that these events occurred after the material time and were therefore irrelevant.

Thus, in his opinion, these particulars cannot be considered sufficient because one cannot conclude from them that immediately prior to or on the 12<sup>th</sup> September, 1975, the Third Defendant had knowledge that the Plaintiffs were the children of the deceased and beneficiaries under his estate.

The force of Senior Counsel for the Third Defendant's contentions was supported by the decision by the Plaintiffs' attorney, first orally and then by notice of the 5<sup>th</sup> November, 2003, during the hearing of this application, to serve voluntary particulars.

It is appropriate at this point to deal with this application to serve voluntary particulars. When the attempt was first made objection was taken, hence the formal application by Notice. As paragraph 8 of the affidavit in support of the First Plaintiff states, it was principally because of the submissions made by Senior Counsel for the Third Defendant (noted above) that these voluntary

particulars were drafted and being sought to be supplied. They seek to cure in main the 'defect' that the original particulars do not state when the events in 1975 occurred.

Though these voluntary particulars purport to be with respect to paragraph 10 of the Statement of Claim, they were in fact given and treated as being in relation to paragraph 8 of the Statement of Claim. Of significance is that of particular (4) it is now pleaded that the stated occasion was "when Rookmin Medford signed the Deed of Assent in the Third Defendant's office."

Senior Counsel for the Third Defendant objected to leave being granted to serve or use these voluntary particulars on several grounds. He argued that they were an abuse of process because they were given during a challenge to existing particulars and after specific deficiencies were pointed out. Also, that because of the serious nature of the allegations made against the Third Defendant it must be that the Plaintiffs either have the evidence or do not, and they cannot be allowed 'to make it up as they go along.' Finally, that given the intention of the Court of Appeal and the default provision in its order for particulars, to allow these voluntary particulars would make nonsense of that order.

While there is force in all of what Senior Counsel for the Third Defendant submits, I am of the opinion that at this stage in the proceedings it is a proper exercise of the Court's discretion to allow the Plaintiffs to serve and use these voluntary particulars. And I so order. The veracity of these assertions are best tested at a trial. Whatever prejudice may be caused to the Third Defendant can be compensated for in costs. It is to be noted that the pleadings in this case are not as yet closed.

This being the Court's approach to the voluntary particulars supplied on the 5<sup>th</sup> November, 2003, the resolution of the instant application becomes less problematic.

I am of the opinion, that given the three determinations of the Court of Appeal and the proper function of particulars (both listed above), it cannot be concluded at this stage that it is plain and obvious that the Plaintiffs claim against the Third Defendant cannot succeed.

In my opinion this Court is bound by the determinations of the Court of Appeal on the sufficiency of the primary pleadings in this case and in particular by the determination listed as (iii) above. The particulars supplied (including the voluntary particulars) now make clear the nature of the case that the Third Defendant has to meet in so far as the basis of his knowledge that the Plaintiffs were the children of and beneficiaries under the Estate of the deceased is concerned.

Though I may think that the Plaintiffs case is weak or even unlikely to succeed, given the standards of proof required to establish fraud and breach of trust, that is not enough in my opinion to accede to the Third Defendant's application to strike out the claims against him. His application is therefore refused.

However, on the question of costs, because of the nature and timing of the Plaintiff's application for leave to serve the voluntary particulars of the 5<sup>th</sup> November, 2003, this Court's order to allow same and the influence those have had on the outcome of this application, I think the appropriate order for costs, is to order that costs be costs in the cause.

Dated this 12<sup>th</sup> day of December, 2003.

P. Jamadar  
Judge