

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 16 of 2020

BETWEEN: HASMUKH LAL
PLAINTIFF

AND: THE UNIVERSITY OF THE SOUTH PACIFIC
DEFENDANT

Appearances: Mr. S. Nandan for the Plaintiff.

Mr. F. Haniff for the Defendant.

Date/Place of Judgment: Wednesday 20 October 2021 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

(Application for Further and Better Particulars)

Cause

1. The plaintiff's claim concerns his termination from the position of the Chief Executive Officer on 22 May 2020. The pleadings have closed and the defendant has applied to the court seeking further and better particulars from the plaintiff on various parts and aspects of the claim.

2. The plaintiff refuses to provide any further particulars than that stated in the claim on various grounds. A letter was written to the defendant and the position of the plaintiff was clearly explained. The letter is dated 20 July 2020. I will refer to the precise contents of the letter later.

Parties Position on the Application

3. Let me identify the nature of the request by the defendant and the plaintiff's position.

1. Paragraph 7

4. Paragraph 7 of the claim reads:

"Sometimes in December 2018, The VCP had attempted to blackmail and or coerce the Plaintiff to consent to the Plaintiff's removal from the Senior Management Team and only then would the VCP support the renewal of the Plaintiff's employment contract despite the matters stated in the paragraphs 5 and 6 hereinabove however the Plaintiff had not consented to this".

5. The defendant wants to know the words that were used by the VCP to blackmail and/or coerce the Plaintiff.
6. It is the position of the plaintiff that he has advised the defendant that there were no minutes kept of the meeting. There is therefore no record of the exact words used by the VCP. However, the plaintiff says that the meaning and effect of the words were very clear and that is outlined in the paragraph. The plaintiff says that the request for particulars is not a test for memory.

2. Paragraph 8

7. Paragraph 8 of the claim states:

“Sometimes in early 2019, VCP had prepared a report which among other things had cast aspersions on the Plaintiff’s reputation. Despite express instructions from the Council of the Plaintiff that the report was to be confidential, the same was leaked to the social media while in the possession and custody of the VCP”.

8. The defendant has sought several particulars in respect of this paragraph. First it wants to know the details of the aspersions on the plaintiff’s reputation. The defendant also asks whether it is alleged that the VCP leaked the report to the social media, the date on which the report was leaked and the medium used by the VCP to leak the report.
9. The plaintiff says that the report has been identified and the VCP is the author of the same. The title of the report is *“Issues, Concerns and Breaches of Past Management and Financial Decisions”*. There is no date in the report. The VCP should be able to indicate the date of the report as he authored it. It is now for the court to decide whether the report contains aspersions or not.
10. The plaintiff says that it has already identified to the defendant that the plaintiff does not know who leaked the report to the social media.

3. Paragraph 9

11. Paragraph 9 states:

“The Plaintiff had after matters stated in the preceding paragraph had transpired sought protection against victimization by the VCP from the Defendant”.

12. In respect of paragraph 9 the defendant seeks from the plaintiff to particularize two matters. The first is from whom did the plaintiff seek protection from and the second is the details of the victimization by the VCP.

13. The plaintiff says that the request by the defendant is frivolous. According to the plaintiff, in its letter of 20 July 2020, the plaintiff informed the defendant as follows:

"We do not understand this question. In this paragraph it is not pleaded that the plaintiff was victimized, so you are seeking particulars of something which has not been pleaded in this paragraph. We think it is obvious that the VC had threatened not to support the renewal of the plaintiff's employment contract unless the plaintiff agreed to have himself removed from the Senior Management Team. In these circumstances, it was reasonable and prudent for the plaintiff to seek protection from Defendant against victimization by the VCP. We might add that the VCP did victimize the Defendant by being the architect of the plaintiff's unlawful dismissal by the defendant".

14. The plaintiff also says that this is not a matter for interrogatories which the defendant is seeking in the disguise of further and better particulars.

4. Paragraph 20

15. Paragraph 20 reads as follows:

"On or about the 22nd day of May 2020, the Plaintiff's solicitors also sent an email in which they raised the following:

- a) *VCP had on numerous occasions victimized the Plaintiff which included making a report and leaking the same on social media to cast aspersions on the Plaintiff's reputation.*
- b) *VCP had refused and or had been unwilling to give to the Plaintiff, his renewed contract for more than a year even though the same had been approved by the Senior Management Review Committee and had been executed by the previous Vice Chancellor.*

- c) *VCP had changed the title of the Plaintiff's position with the Defendant without due process.*
- d) *The Plaintiff has sought protection against victimization by the VCP.*
- e) *The allegations levelled against the Plaintiff in this instance, was the VCP's attempt to invoke a section of the Ordinance to dismiss the Plaintiff summarily without going through Staff Disciplinary Committee.*
- f) *That once the Plaintiff's response had been provided the matter could not proceed any further as the position of Vice President Administration (VPA) was vacant and consultation with the VPA was required after the receipt of the said response.*
- g) *A confirmation was sought that no steps would be taken after the receipt of the response".*

16. The particulars sought are in respect of various sub-paragraphs. In respect of sub-paragraph (a), the defendant wants the plaintiff to particularize:

- (i). details of each of the 'occasions' referred to that the VCP victimized the Plaintiff.
- (ii). details of the aspersions on the plaintiff's reputation.
- (iii). whether it is alleged that the VCP leaked the report to the social media. If yes, then the plaintiff should provide the particulars including the date on which the report was leaked to the social media and the medium used by the VCP to leak the report.

18. In respect of sub-paragraph (d), the defendant seeks:

- (i). details of whom the plaintiff sought protection from.
- (ii). details of the victimization by the VCP.

19. In respect of sub-paragraph (e) the particulars sought are:

- (i). details of the allegations levelled against the plaintiff.
- (ii). whether the plaintiff alleges that the VCP summarily dismissed the plaintiff and not the defendant?

20. The particulars sought from sub-paragraph (f) are:

- (i). whether it is an allegation of fact or is a submission made by the plaintiff.
- (ii). what is the relevance of this paragraph to the claim.

21. The plaintiff says that this request makes no sense. What the plaintiff pleads in this paragraph is that he sent an email to the defendant. The contents of the email is reproduced. The email contains the full particulars. The relevance of the email is to point out the defects in the procedure for terminating the plaintiff. Despite such defects being pointed out, the defendant proceeded to dismiss the plaintiff which shows malice and disregard by the plaintiff of its own procedures.

5. Paragraph 22

22. This paragraph reads:

"In the response, the Plaintiff's solicitors pointed out among other things:

- a) The Plaintiff denies the allegations against the Plaintiff and pointed out the lack of reasonable time to respond to the same.*
- b) That the allegations stated that the Plaintiff had breached the paragraph 4.1 of the Code of Professional Conduct for Academic Staff and that the Plaintiff was not an academic staff therefore the procedure elected by the Defendant was fundamentally and fatally flawed.*

- c) *Further the absence of the Vice President Administration meant that the process initiated against the Plaintiff ought to cease after the receipt of the response.*
- d) *The Plaintiff's solicitors sought confirmation that the process will cease after the receipt of the response".*
23. The defendant wants to know whether paragraph 22 is an allegation of fact or submissions made by the plaintiff.
24. The plaintiff's response is that the paragraph pleads a letter and its contents so the request for particulars is frivolous.

6. Paragraph 25

25. Paragraph 25 in its entirety reads:

"1st cause of action: breach of contract

The Defendant breached the Agreement.

PARTICULARS

- a) *It is an implied and or express term of the Agreement that when dealing with its employees, the Defendant would afford them due process, natural justice and procedural fairness and the Defendant failed to afford to the Plaintiff due process, natural justice and procedural fairness by reason of matters stated in paragraphs 5 to 24 hereinabove;*
- b) *Furthermore for the Plaintiff should have ensured that the VCP of the Defendant had no involvement in the disciplinary process for the reasons stated in paragraphs 5 to 9 hereinabove;*

- c) *The Defendant breached the Agreement by alleging that the Plaintiff breached paragraph 4.1 of the Code of Professional Conduct for Academic Staff when the Defendant was well aware and or ought to have been aware that the Defendant was not an academic staff therefore the said paragraph 4.1 did not apply to him;*
- d) *The manner in which the Plaintiff's employment was terminated breached the agreement in that it breached the Ordinance and in particular subsection 6 (b) and 6 (c) as follows:*
 - (i) *The Plaintiff was not given two (2) working days to respond in writing.*
 - (ii) *After the receipt of the response, the Executive Director Human Resources did not consult with the Vice - President Administration.*
- e) *The Plaintiff repeats matters stated in paragraphs 5 to 24 hereinabove".*

26. There are several particulars sought in respect of various sub-paragraphs. In respect of sub -paragraph (a) the defendant wants the plaintiff to:

- (i). provide the date of the agreement.
- (ii). provide the details of where the "express terms" as alleged is to be found in the Plaintiff's contract of employment or the Agreement that is being referred to.
- (iii). indicate how did the defendant failed to "afford the Plaintiff due process, natural justice and procedural fairness by reason of matters stated in paragraphs 5 to 24" of the statement of claim.

27. In respect of sub-paragraph (b) the defendant wants the plaintiff to provide the terms of the agreement and/or the plaintiff's contract of employment relied on for the

allegation that the defendant should have ensured that the VCP of the defendant has no involvement in the disciplinary process relating to the plaintiff.

28. In respect of sub-paragraph (c) the defendant asks for the following particulars:
- (i). details of the agreement referred to.
 - (ii). the terms of the agreement and/ or the plaintiff's contract of employment relied on for the allegation.
29. The plaintiff's response in respect to paragraph 25(a) is that the term of the agreement is defined in paragraph 3 of the Statement of Claim. This was notified to the defendant through the letter of 20 July 2020. The relevant part of the letter reads *"refer to paragraph 3 of the claim clearly defines the term of "the Agreement" in the claim, again a more diligent perusal of the claim would have revealed this."*
30. In respect of where the details of the alleged "express terms' can be found, the plaintiff says that the construction of the terms of the contract are matters for trial.
31. The plaintiff's response on how the defendant failed to afford the plaintiff due process, natural justice and procedural fairness, the plaintiff says that these are enshrined in paragraphs 5 to 24.
32. In respect of paragraph 25(b), the plaintiff says that in its letter of 20 July 2020, the defendant was informed that reference is made to its claim which provides the reasons why the VCP should have recused himself from this process given his history with the plaintiff. Whether this requirement for recusal is implied or expressed is a matter for the court for construction of the contract.

33. In respect of paragraph 25 (c), the plaintiff says that the agreement is defined in paragraph 3 of the claim and that the paragraph is fully particularized.

7. Paragraph 28

34. For completeness I would outline both paragraphs 27 and 28 of the Statement of Claim:

"2nd Cause of Action – Negligence/Breach of Duty of Care

27. The defendant owed a duty of care to the Plaintiff to ensure that the Plaintiff during the course of his employment was protected from victimization, loss of dignity and humiliation and injury to his feelings and to ensure that the Plaintiff was afforded due process, natural justice and procedural fairness.

28. The Defendant breached the said duty of care. For particulars the Plaintiff reiterates the matters stated in paragraphs 5 to 25 hereinabove."

35. The defendant wants the plaintiff to state how the duty of care referred to in paragraph 27 of the statement of claim was breached. The plaintiff says that paragraphs 5 to 25 identifies how the duty of care was breached.

Determination

36. I will deal with each request in turn. The request in paragraph 7 for the words used by the VCP is irrelevant to the claim. The rules of pleading do not require a party to plead the exact words giving rise to a claim.

37. Further, the plaintiff's position is clear that since there is no minutes of the meeting, the exact words spoken cannot be identified. What the plaintiff can say is the meaning

and effect of what the VCP said. The paragraph already indicates the meaning and effect of the VCP's utterances.

38. I do not think it is possible for anyone to remember the exact words of every communication or conversation unless there is an audio or other form of accurate recording. This case is no different. Why is there a need for the exact words spoken? I do not see that it will make a difference to the defendant's ability to present its defence. All that is necessary is what the plaintiff has identified in the said paragraph.
39. The request made under paragraph 8 for details of the aspersions in the report is frivolous. If the VCP is the author of the report, which is not denied by the defendant, then it is for the Defendant to see whether any matters stated therein is an aspersion on the plaintiff's character. It is not necessary for the plaintiff to point out what contains aspersions and what does not. Further, the matter is largely for the Court to decide on whether any comments in the report casts aspersions on the plaintiff.
40. I find that the plaintiff is not able to answer whether the VCP leaked the report as has no knowledge of who did it. All that he knows is that the report was leaked. The VCP should know how it was leaked as he was the person who had the report. He has the authority to call for that investigation as to who leaked the report. It is his responsibility to make that information known to the plaintiff. All the other information about the date and the medium through which the report was leaked is for the VCP to find out.
41. On paragraph 9, the request is adequately answered by the plaintiff's letter of 20 July 2020. I have identified the full form of the response and I do not think that there is anything further that is required to be addressed.
42. The essence of paragraph 20 is to indicate that an email was sent to the Defendant. The contents of the emails are repeated. The purpose of further and better particulars

is not to give particulars on the evidence. That is left for the trial. The particulars of the email has been fully pleaded and no further particulars are essential for filing of the defence.

43. The defendant has also questioned on the relevance of pointing out the contents of the email. I find that the plaintiff's email states why his dismissal was substantially and procedurally unjustified. That is material information as it is important to establish that the defendant was informed of the allegation on which he is now basing his claim. Even if the information is not relevant, there is no prejudice caused to the defendant.
44. In respect of paragraph 22, the defendant wants to know whether the paragraph pleads a fact or submission. The defendant ought to read the pleadings carefully. This paragraph is simply an indication of what the plaintiff responded by a letter and the contents of the letter. It is a fact in regards a letter.
45. I now refer to the request in paragraph 25(a). The first is for the date of the Agreement. The Agreement that is pleaded is an employment contract which the defendant has access to. It should find the date of the agreement from the document itself. Why is there a need for particulars on that?
46. On the question of where the express terms can be found, I must say that the request is preposterous. What the plaintiff has pleaded is that it is an implied or express term of the contract that the plaintiff would be afforded due process, natural justice and procedural fairness in dismissing him. The question before the Court is whether the plaintiff was entitled to the fundamental protection of due process, natural justice and procedural fairness and whether the contract impliedly or expressly provided that benefit. It is for the parties to establish their positions on the existing contract. Why should a particular provision in the contract be pointed out? Why is it necessary for the plaintiff to be tied down to a particular express provision? The contract as a whole has been pleaded for the protection which the plaintiff says has been breached. There

is no need for outlining specific provisions. It could be very well that the term is implied in the contract.

47. The manner in which the defendant failed to provide the plaintiff with due process, natural justice and procedural fairness is clearly outlined in the claim. The defendant needs to read the claim wholly to find answers to its questions. Every particular need not be pleaded in each paragraph. If that was the requirement, there would be no end to the pleadings.
48. In respect of the claim sought in paragraph 25(b), I am alarmed that the defendant wants the plaintiff to identify the terms of the agreement which is relied upon to say that the defendant should have ensured that the VCP has no involvement in the disciplinary process. This is a matter that concerns construction of a contract and the fundamental principles of law on conflict of interest, unbiased and fair investigation and proper consideration of matters. No particulars can be provided on this. It is for the defendant to read the contract and refute that no such implied or express principles exist.
49. The details of the agreement requested for in paragraph 25 (c) is in the possession of the defendant and no further detail is necessary. The defendant also seeks the terms of the agreement relied on for the allegation that the defendant breached the same. Paragraph 25 (c) identifies that the breach was in applying clause 4.1 of the Professional Conduct for Academic Staff when the Defendant was well aware and ought to have been aware that the plaintiff was not an academic staff therefore the said paragraph 4.1 did not apply to him. That is as much as the plaintiff can identify and whether the agreement was breached or not is now for the Court to decide.
50. Finally on the defendant's request on how the duty of care was breached, it must read the entire statement of claim which largely identifies what the defendant failed to do in its capacity as an employer.

Orders

51. In the final analysis I find that the statement of claim is very well pleaded and that there is no need for further and better particulars as requested by the defendant. The application for further and better particulars is dismissed. The application was an exercise in futility leading to consumption of time of the plaintiff in arguing an irrelevant and unnecessary application.
52. The defendant's application has contributed towards the delay in the progress of the matter. The next course of action is discovery of documents and I shall make an order in regards that when I have consulted the parties and/or their counsel.
53. The defendant shall pay to the plaintiff costs of this application in the sum of \$1,500 within 7 days of the ruling.



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Hon. Madam Justice Anjala Wati

Judge

20. 10. 2021



To:

1. *Reddy & Nandan Lawyers for the Plaintiff.*
2. *Haniff Tuitoga Lawyer for the Defendant.*
3. *File: ERCC 16 of 2020.*