

TROPICAL RESOURCES DEVELOPMENT CO. LIMITED -v-  
TROPICAL FORESTRY LIMITED AND DALGRO (SI)  
LIMITED

HIGH COURT OF SOLOMON ISLANDS.  
(KABUI, J.).

Civil Case No. 366 of 2004.

Date of Hearing: 17<sup>th</sup> November 2004.

Date of Ruling: 22<sup>nd</sup> November 2004.

*G. Suri for the Plaintiff.*

*T. Kama for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.*

RULING

**Kabui, J.** The Plaintiff filed a Writ of Summons and a Statement of Claim on 4<sup>th</sup> August 2004, claiming certain orders, and damages as relief being sought and costs against the Defendants. A defence and counter-claim were filed by the Defendants on 18<sup>th</sup> August 2004. By order of the Court dated 25<sup>th</sup> August 2004, the Plaintiff was required to file and serve any Amended Statement of Claim on or before 3<sup>rd</sup> September 2004. The terms of the order were mutually agreed by the parties. The Plaintiff filed the Amended Statement of Claim on 3<sup>rd</sup> September 2004. By letter dated 6<sup>th</sup> September 2004, Mr. Kama, requested that Mr. Suri supply him with further and better particulars to which Mr. Suri objected. Further exchange of correspondence then followed but without success as Mr. Suri stood his ground and still objected to supplying further and better particulars as being requested by Mr. Kama. The Defendants then decided to ask the Court to make an order that the Plaintiff deliver further and better particulars as requested on or before 15<sup>th</sup> September 2004 September, 2004. The summons was listed for hearing on 24<sup>th</sup> September 2004 but had to be adjourned for the return of Mr. Kama who was then away from Honiara. The summons was then re-listed for hearing this morning before me.

**The Plaintiff's case.**

Mr. Suri argued that the course taken by Mr. Kama in requesting further and better particulars by requesting the production of documents was an abuse of the proper procedure in civil litigation. Furthermore, Mr. Suri argued that the matters being requested had already been pleaded in the original Statement of Claim, particularly paragraphs 4 and 8 which had been countered by the Defence filed in the first place, followed by a counter-claim. Mr. Suri argued that it was unfair pleading to request further and better particulars after a defence had been filed like in this case.

He argued that had the request for further and better particulars been made earlier, the result would have been an improved Amended Statement of Claim.

### **The Defendants' case.**

Mr. Kama argued that nothing was wrong with seeking further and better particulars even after the filing of a defence. Furthermore, he argued, the Defendants were not in the position to anticipate what deletions or additions were to be made in the Amended Statement of Claim until filed and served on them, adding that it was normal practice to seek further and better particulars as and when necessary.

### **The issues to be determined by the Court.**

The issues raised by Mr. Suri appear to be these. The first is whether it is permissible to seek further and better particulars after defence has been filed and served on the Plaintiff. The second is whether it is permissible to seek further and better particulars on an Amended Statement of Claim when the same paragraphs in the original Statement of Claim are reproduced word for word in the Amended Statement of Claim upon which the further and better particulars are being sought. The third is whether the Defendants can prematurely request for discovery in defiance of the orders for directions made on 25<sup>th</sup> August 2004 by seeking further and better particulars in the guise of commencing the discovery process in this case.

### **The practice under the High Court (Civil Procedure) Rules, 1964 "the High Court Rules".**

Order 21, rules 7, 8 and 9 of the High Court Rules are the basis for the practice of seeking further and better particulars and providing the particulars being sought. There is nothing to be said about these rules. It is their application to arising circumstances that calls for the attention of the courts from time to time. In this case, the defence and counter-claim were delivered on 18<sup>th</sup> August 2004 well before the request for further and better particulars was made by the Defendants. This defence was delivered in response to the original Statement of Claim filed on 4<sup>th</sup> August 2004. In a letter dated 6<sup>th</sup> September 2004, addressed to Mr. Suri, Mr. Kama said that the negotiation for the acquisition of timber rights and the grant of licences were highly contentious matters and must be properly pleaded to assist in the discovery process. The view expressed in the above letter was the basis for the request for further and better particulars from the Plaintiff. The effect of the particulars being requested by the Defendants is to open up the contents of paragraphs 4, 5 and 8 of the Amended Statement of Claim for answers to be provided about them. The Defendants do back up their request for further and better particulars by citing Order 33, rule 15 of the High Court Rules which allows

inspection of documents cited in the pleading or affidavits. The question to be asked is why do the Defendants want to inspect documents now under Order 33, rule 15 of the High Court Rules and not wait first for the production of documents under the same Order, rule 10 of the High Court Rules and then proceed to inspection? Clearly, the decision to seek further and better particulars was an afterthought after defence and a counter-claim had been filed and served. There appears to be no rule of practice that any request for further and better particulars must be made before the delivery of defence. In fact, Order 33, rule 9 of the High Court Rules discourages such practice because it can be abused as a means of delaying time for the delivery of the defence though the court does have discretion to allow particulars before defence, if the party applying can justify the case for it. In *Waynes Merthyr Company v. D. Radford & Co.* [1896] 1 Ch. 29, Chitty, J. in explaining the dictum by Kay, J. in *Zierenberg v. Laouchere* [1893] 2 Q.B. 183 said that there was no general rule of practice that particulars must precede discovery or that discovery be ordered first before particulars. The judge decides the position in view of all the facts of the case, taking into account any special circumstances prevailing. Discovery entails the administration of interrogatories, discovery of documents and inspection of documents. Request for further and better particulars is a different step being part of pleading the facts in statement of claim. Obviously, there had been cases in the past where for good reason parties were not agreed upon whether discovery should precede particulars or the other way round. The courts had to step in and decide the dispute.

### The request for further and better particulars in this case.

By citing Order 33, rule 15 of the High Court Rules in the request for further and better particulars, the Defendants are already delving into the discovery process ahead of particulars. Questions 1(a) and 2(a) for particulars are discovery questions in terms of production and inspection of documents. Questions 1(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) and questions 2 (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) all do have the hallmarks of interrogatories which are also part of the discovery process in civil litigation. These questions are not seeking further and better particulars of facts pleaded in the statement of claim to ensure fair trial and guard against surprises from the Plaintiff's case. They are in reality questions and issues that usually arise in the process of discovery stage in the form of interrogatories, production and inspection of documents. **"The court will not sanction an attempt to deliver interrogatories under the guise of seeking particulars"**. (See page 461 of *The Annual Practice 1961, Volume 1*). To make them appear as particulars being sought is misleading. This does not strictly make this case fall, it seems, within the category of cases cited above where the dispute is one of permitting discovery first or particulars first because clearly the Defendants by the nature of the questions for further and better particulars are not seeking particulars but rather delving into discovery prematurely in defiance of the orders of the Court made on 25<sup>th</sup> August 2004. Therefore the first two issues I posed

above do not now arise or are now irrelevant because of the nature of the request for further and better particulars appearing to be particulars but disguised as discovery. Because of this, the real issue being the third one is whether or not the Defendants should depart from the orders for directions made by the Court on 25<sup>th</sup> August 2004. The Defendants have not shown any good reason to prematurely justify departing from the orders for directions referred to above. I think they should follow the orders made by the Court on 25<sup>th</sup> August 2004 as agreed by the parties.

### **Approval of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants certified costs of operation.**

The certified operational expenses incurred by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from February to July, 2004 had been certified by Yam & Company, Chartered Accountants, P.O. Box 730, Honiara on 19<sup>th</sup> August 2004. The details of the log shipment per MV Fu Xing under order 6 of the Court orders dated 6<sup>th</sup> August 2004 and the calculations of expenses from the sale proceeds of 1,043 pieces or 3,451.202 cubic metres of logs exported were sent by letter dated 2<sup>nd</sup> September 2004 from Mr. Kama of SOL-LAW to Mr. Suri seeking acceptance of the certified operational expenses. Mr. Suri never responded to that letter. Obviously, Mr. Suri did not agree. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have therefore come to Court under order 7 of the orders made on 6<sup>th</sup> August 2004 to seek approval of the certified operational expenses and to be paid from the joint solicitors trust account the amounts due to the 2<sup>nd</sup> Defendants under the Technology Transfer Agreement dated 5<sup>th</sup> December 2003. The 2<sup>nd</sup> Defendant is entitled to SBD760, 241.03 representing 60% of the sale proceeds though the full entitlement should have been SBD907,842.51 but for high up-front costs. Mr. Suri opposed the certification of operational expenses and the payment of the 2<sup>nd</sup> Defendant's share of SBD760, 241.03 on the ground of lack of credibility of the certification and the discrepancy in the calculation of the period of operation which suggested that the period of operation was less than six months. The 2<sup>nd</sup> Defendant is the contractor and is entitled under the Technology and Transfer Agreement referred to above to be paid its due under that Agreement. I think it is not right for the Court to cause a breach of that Agreement by taking no cognizance of the certified operational expenses and hold back the release of the 2<sup>nd</sup> Defendant's share. The validity of that Agreement is not being attacked in any way and so the obligations under its terms are alive and enforceable. The Plaintiffs' interest lies in the royalties. Mr. Kama did not press for the granting of order 4 of the 2<sup>nd</sup> Defendant's summons to pay royalties due to landowners. For that reason, I have not granted that order for payment of royalties.

### **The orders of the Court.**

The application is partly unsuccessful to the extent that I refuse to make the order sought in paragraph 2 of the summons but is successful to the extent that I grant

the order in paragraph 3 of the summons. I make no order on paragraphs 4 and 5 but order that costs be in the cause. I order accordingly.

**F.O. Kabui**  
**Puisne Judge**