

**LCL ENTERPRISES LIMITED AND KWOK WAI MUN -v-  
CONCRETE INDUSTRIES LIMITED**

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

Civil Case No.125 of 2002.

Date of Hearing: 18<sup>th</sup> January 2005

Date of Ruling: 20<sup>th</sup> January 2005

*C. Solosaia for the Plaintiffs.*

*T. Kama for the Defendant.*

**RULING**

**Kabui, J:** By summons filed on 30<sup>th</sup> November 2004, the Defendant sought orders for directions as to the further conduct of this case and an order that the Plaintiffs pay the cost of the application. The Plaintiffs filed a Writ of Summons on 9<sup>th</sup> May 2002 together with a Statement of Claim alleging fraud against the Defendant and thereby claiming certain relief against the Defendant. The Defendant entered appearance on 18<sup>th</sup> June 2002. The Defendant later made a request to the Plaintiffs for further and better particulars on 1<sup>st</sup> October 2002. The Plaintiffs have never responded to this request for further and better particulars to date despite a reminder from the Defendant in a letter dated 21<sup>st</sup> October 2004. After a lapse of two years, the Defendant decided to file an amended Statement of Claim and asked for the consent of the Defendant to do so in a letter dated 27<sup>th</sup> July 2004. The Solicitor for the Plaintiffs also expressed in that same letter the view that the amended Statement of Claim should be able to provide the answers sought in the Defendant's request for further and better particulars made on 1<sup>st</sup> October 2002. By letter dated 21<sup>st</sup> October 2004, the Solicitor for the Defendant continued to press the need for the Plaintiffs to provide answers to the request for further and better particulars, and in any case, the Plaintiffs would need leave of the Court to file an amended Statement of Claim. Also stated in that letter was the view that the Plaintiffs should have invoked Order 64, rule 9 of the High Court (Civil Procedure) Rules 1964 "the High Court Rules". By letter dated 26<sup>th</sup> October 2004, the Solicitor for the Plaintiffs responded by expressing the view that no leave of the Court was needed for the amended Statement of Claim, and in any case, the Defendant should file a defence to the amended Statement of Claim or else judgment would be applied for in default of defence. By letter dated 9<sup>th</sup> November 2004, the Solicitor for the Defendant opposed the amended Statement of Claim and stated that it did not answer the request for further and better particulars as requested on 1<sup>st</sup> October 2002. The Solicitor further stated that the Defendant was entitled to apply to the Court for an order for further and

better particulars. A stalemate situation has therefore arisen in the pleading process.

### **Losing sight of the rules of practice.**

Order 21, rule 7 of the High Court Rules does allow further and better particulars to be sought and may be ordered by the Court in the interest of justice. Rule 8 explains this to mean that further and better particulars can be requested by letter in the first place and then by summons if an order of the Court is necessary for the supply of further and better particulars in the event the requested party refused to supply them voluntarily. Counsel for the Defendant relied on Order 32, rule 2 (f) of the High Court Rules as being the authority for the application. I do not agree because the rules in Order 32 of the High Court Rules do come into play only after the pleadings are closed. In this case, no defence has yet been delivered after appearance. In fact, the request for further and better particulars was, I take it, to better the position of the Defendant before a defence was delivered. So the pleading process was still incomplete. The correct step to take was to apply by summons for a Court order for further and better particulars under rule 7 of Order 32 of the High Court Rules. If the application succeeds, the Defendant will get the answers sought and then deliver the defence as the case may be. If the Plaintiffs default on the order, the Defendant may take action to penalize the Plaintiffs. If the Defendant does not succeed in obtaining an order, the Defendant must deliver the defence to avoid any application for judgment in default of defence. Counsel for the Defendant also cited Order 64, rule 9 of the High Court Rules in that the Plaintiffs should have given one month's notice of intention to proceed. I do not think this can be of help either because the rules of practice seem to suggest that rule 9 is of limited application only in that it applies mostly to interlocutory proceedings etc. The Plaintiffs likewise have behaved the same way as the Defendant. The refusal by the Defendant to consent to the amended Statement of Claim was an obvious signal for the Plaintiffs to invoke Order 30, rule 1 of the High Court Rules in order to move its case forward. The Plaintiffs have not done this. The Defendant, in coming to the Court to break the deadlock in the pleading process, is an abuse of the Court process. The Court does not engage in the pleading process by substituting itself for the parties; its duty is to facilitate steps in the pleading process in order to achieve the orderly and smooth path to the trial stage of a case at the request of any of the parties by making orders for directions or interlocutory orders as the case may be. Asking the Court point blank for directions at an early stage of the pleading process to break the deadlock between the parties as it is in this case is inappropriate. I refuse to make the orders sought in the summons. The application is dismissed. Cost will be in the cause.

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