

**LCL ENTERPRISE LTD. AND KWOK WAI MUN -v-
CONCRETE INDUSTRIES LTD**

HIGH COURT OF SOLOMON ISLANDS
(KABUI J.).

Civil Case No. 125 of 2002

Date of Hearing: 3rd October 2005.

Date of Ruling: 5th October 2005.

C. Ashley for the Plaintiffs.

R. Kingmele for the Defendant.

RULING

Kabui, J. LCL Enterprises Limited and Kwok Wai Mun filed a Writ of Summons and a Statement of Claim on 9th May 2002 against the Concrete Industries Limited. The Statement of Claim alleges fraud against Concrete Industries Limited in that Concrete Industries Limited had commenced an action in the High Court in 1999 which resulted in Mun having to pay money into court, seizure of his passport and sale of his vehicle. Having entered an appearance, Concrete Industries Limited filed a request for further and better particulars of the Statement of Claim on 1st October 2002. LCL and Mun subsequently filed an amended Statement of Claim on 18th September 2004. LCL and Mun had never replied to the request for further and better particulars filed two years previously. Concrete Industries Limited then applied for directions by summons on 30th November 2004 and I refused to grant them on 20th November 2005.

Following my ruling, the Concrete Industries Limited filed a fresh request for further and better particulars on 15th February 2005 but no reply was forthcoming from LCL and Mun. Instead, LCL and Mun filed a summons for an "unless" order plus costs. I ordered on 11th July 2005 that unless Concrete Industries Limited should file its application for further and better particulars within seven days, LCL and Mun would be entitled to apply for a default judgment for the relief claimed in their statement of claim. Concrete Industries Limited did finally comply with the order by filing an application for orders to supply further and better particulars plus costs.

The position of Concrete Industries Limited.

The argument in paragraphs 6 and 8 of Kama's affidavit filed on 15th July 2005 is that the particulars of fraud must be clear and precise and that the amended Statement of Claim is embarrassing so that further and better particulars are necessary.

The position of LCL and Mun.

The case for LCL and Mun is that the claim for \$31, 987.60 in Civil Case No. 95 of 1999 was a fraud because no concrete had ever been delivered to LCL or Mun despite invoices being issued by Concrete Industries Limited.

The conduct of case by both parties.

LCL and Mun filed their first Statement of Claim on 9th May 2002. Concrete Industries Limited sought further and better particulars on 1st October 2002. LCL and Mun never responded to the request for further and better particulars. Concrete Industries Limited never applied to the court for orders for further and better particulars either. There was a lull of two years and four months before LCL and Mun filed an amended Statement of Claim. In response, Concrete Industries Limited filed a further request for further and better particulars on 15th February 2005. Clearly, LCL and Mun did not bother to address the request for further and better particulars and instead, applied to the court that a default judgment was due in default of defence. Concrete Industries Limited, on the other hand, did not push for a court order until forced to do so by the Court.

The problem with the request for further and better particulars.

The problem with some of the particulars being sought is that they appear to be interrogatories in disguise. It is a kind of trying to combine discovery and inspection of documents in the process of requesting further and better particulars. This practice leads to confusion and creates difficulty in separating what qualifies for being considered as necessary particulars and what is discovery and inspection of documents creeping in as well. I bear this in mind when dealing with each of the items being requested as necessary particulars and should be provided as requested.

The character of each request for further and better particulars.

I would disallow paragraph 1(a) and the whole of 1(b) as being unnecessary. LCL and Mun will certainly produce the invoices on discovery and inspection stages and the invoices will speak for themselves on the question of details

contained in them, if any. I would allow the whole of 1(c) because there is a need for the circumstances of the alleged fraud to be set out for the benefit of Concrete Industries Limited. General allegations are insufficient. I would disallow the whole of 2(a) because the questions posed therein are interrogatories in character. However, I would allow 2(b)(i) because the parts of the judgment which are fraudulent should be set out and identified because it will become an issue. I would however disallow 2(b)(ii) and (iii) as they are not relevant as particulars. For the same reasons, I would allow 2(c)(i) and disallow 2c(ii) and (iii). I would allow the whole of 3(a) because LCL and Mun must demonstrate how the losses were incurred as special damages and how they relate to the cause of action. There is no 3(b). I would allow the whole of 4 as they are necessary to show how the special damages were incurred and how they relate to the cause of action. I would also allow the whole of 5 because the basis for the claim ought to be set out for the benefit of Concrete Industries Limited.

The orders of the Court.

1. Order for further and better particulars in paragraphs 1(a), 1(b), 2(a), 2(b)(ii) and (iii), 2(c)(ii), and (iii) be provided is refused.
2. Order for further and better particulars in paragraphs 1(c), 2(b)(i), 2(c)(i), 3(a), 4 and 5 to be provided is granted.
3. The parties will meet their own costs.

I order accordingly.

Frank O. Kabui
Puisne Judge