

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 45/92

COR: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

LEYMON STRACHAN

V

WALTER BIGGIE

Hector Robinson for appellant

Garth McBean for respondent

November 24 and December 8, 1992

CAREY P. (AG.):

The short question in this appeal is whether Reid J. was right to order certain further and better particulars requested by the respondent in an action claiming to recover moneys paid on a consideration which has failed. The particulars requested were these:

- "(1) Details of the purpose or purposes for which the sum of \$1,019,500.86 was paid by the Plaintiff to the Defendant.
- (2) The nature of the consideration and the reason or reasons why it is being alleged that it has failed."

Mr. Robinson argued with commendable lucidity and economy that applications for further and better particulars should not ordinarily be made before summons for direction. He referred to section 171B of the Civil Procedure Code Law which states:

"171B. Particulars of a claim shall not be ordered under section 171 to be delivered before defence unless the Court or a Judge be of opinion that they are necessary or desirable to enable the defendant to plead or ought for any other special reason to be so delivered."

He contended that the burden was on the defendant to show that the particulars are necessary or desirable to enable him to plead, or that the respondent was in any way embarrassed or prejudiced or that there was any difficulty on the part of the respondent in preparing his defence.

Mr. McBean's position was that under section 171B of the Code, there were three considerations, as follows:

- (a) whether particulars sought are necessary to enable a party to plea;
- (b) whether without particulars the defendant would be prejudiced;
- (c) other special reason.

The particulars in the instant case, he said, were necessary to enable the respondent to plea as the appellant's pleadings were wholly inadequate.

In the instant case, the statement of claim was (so far as material) in the following form:

"The Plaintiff's claim is against the Defendant to recover the sum of \$1,019,500.86 being the monies paid by the Plaintiff to the Defendant between March, 1988 and November, 1988 for a consideration which has failed.

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March 1988 -	US\$43,000.00	
October 1988	@ \$22.	\$ 946,000.00
November 1988	Jamaican	<u>73,500.86</u>
	TOTAL	<u><u>\$1,019,500.86"</u></u>

This was therefore a claim for money had and received. The learned authors of Bullen and Leake (12th Ed.) p. 666 state:

"Money paid by the plaintiff for a consideration that has wholly failed may be recovered as money had and received to his use."

The precedent suggested at Form 386 at p. 672 is worded in this way:

"The plaintiff's claim is for £ _____, being money payable by the defendant to the plaintiff for money had and received by the defendant for the use of the plaintiff."

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[State particulars showing when and how the money was received by the defendant, and the facts which are alleged to make such receipt a receipt to the use of the plaintiff]"

The particulars thereafter required, include when and how the money was received by the defendant and the facts which are alleged to make such receipt a receipt to the use of the plaintiff.

The present statement of claim, in my view, conforms to these requirements because the date and manner in which the money was received by the defendant are stated and the allegation of fact which make the receipt a receipt to the use of the plaintiff also appear. It seems to me that money paid to the defendant on a consideration which has failed qualifies as particulars showing that the receipt is a receipt to the use of the plaintiff.

The purpose of pleadings, it has been said is "to enable the opposite party to know what is being alleged against him so that the parties are aware of what the contest is all about": see Sandra Atlass Bass & Ors. v. Avalon Investments [unreported] dated 24th October 1989 at p. 4. Where further and better particulars are sought before defence, there is an onus on the defendant to show that "they are necessary or desirable to enable the defence to plead or ought for any other special reason to be so delivered": section 171B

Civil Procedure Code. On the affidavit filed in support of the summons for further and better particulars, no special reason was given.

The question which arises is whether it has been shown that the particulars sought are necessary or desirable to enable the defendant to plead. The further and better particulars which were sought, have previously been detailed. The particulars requested in my view, fall within the suggested particulars necessary in a claim of this kind, viz. particulars showing when and how the money was received by the defendant and the facts which are alleged to make such receipt a receipt to the use of the plaintiff. Enough particulars are stated which would allow the defendant to plead to the claim. The particulars which are being sought seek to obtain evidence by which the claim may be proven but that is forbidden by section 168 (1) of the Code:

"Every pleading shall contain, and contain only, a statement, in a summary form, of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers, shall be expressed in figures, and not in words."

For these reasons, I was of opinion that the submissions of Mr. Robinson were to be preferred to those of Mr. McBean, and that the appeal should be allowed.

FORTE J.A.:

I concur.

GORDON J.A.:

I agree.