

ROYAL COURT  
(Samedi Division)

106.

25th May, 1994

Before: The Judicial Greffier

<b>BETWEEN</b>	<b>Anagram (Bermuda) Limited</b>	<b>FIRST PLAINTIFF</b>
<b>AND</b>	<b>Robert John Young</b>	<b>SECOND PLAINTIFF</b>
<b>AND</b>	<b>Maureen Young</b>	<b>THIRD PLAINTIFF</b>
<b>AND</b>	<b>Mayo Associates S.A.</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>Troy Associates Limited</b>	<b>SECOND DEFENDANT</b>
<b>AND</b>	<b>T. T. S. International S.A.</b>	<b>THIRD DEFENDANT</b>

Application by the Defendants (who have not yet been formally served with the proceedings) for Further and Better Particulars of the Order of Justice In order to assist them in the preparation of an application for the lifting of interim injunctions.

**Advocate D.F. Le Quesne for the Plaintiffs.**  
**Advocate J.D. Melia for the Defendants.**

**JUDGMENT**

**JUDICIAL GREFFIER:** The Order of Justice in this action was signed by the Bailiff on 31st March, 1994. Paragraph 9 of the Order of Justice included a provision that service of the Order of Justice upon the Defendants' lawyer in Jersey, Messrs. Philip Sinel & Co., shall operate as an immediate interim injunction upon the Defendants in the terms of paragraphs 8.A (i) and (ii). The Order of Justice was so served on Messrs. Philip Sinel & Company, and as a result of this the interim injunctions came into force.

However, when the Plaintiffs tabled the action against the Defendants and it came before the Court on 15th April, 1994, the Court held that the Order of Justice had not been properly served on the Defendants and that an application for service out of the jurisdiction was required.

Notwithstanding the fact that they had not yet been properly served, the Defendants issued a summons seeking Further and Better Particulars of the Order of Justice and the summons came before me on 12th May, 1994.

Advocate Melia urged me to grant the request for Further and Better Particulars both under the terms of Rule 6/14 (1) of the Royal Court Rules, 1992, as amended; and under the inherent jurisdiction of the Court. Rule 6/14 (1) reads as follows -

**"(1) In any proceedings, the Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just."**

The first question which I had to determine was whether the Defendants were a party for the purposes of Rule 6/14 (1). Clearly the Defendants are parties named on the Order of Justice, but in the normal course of events one would not consider a party so named as having become a party until they had been served with the proceedings. However, in this particular case, although the Court has ruled that they have not been properly served, it is clear that they have been affected by the service of the Order of Justice upon Messrs. Philip Sinel & Company, inasmuch as that has brought into effect interim injunctions which are binding on the Defendants. I was, therefore, satisfied that for the purposes of Rule 6/14 (1) they were a party to the proceedings.

Furthermore, this appears to me to be a case in which the inherent jurisdiction of the Court can properly be used in order to do justice between the parties. Thus, even if I am wrong on the interpretation of Rule 6/14 (1) then the inherent jurisdiction of the Court would allow me nevertheless to order Further and Better Particulars in an appropriate case.

Rule 6/14 (3) of the Royal Court Rules, 1992, as amended, reads as follows -

**"(3) Particulars of a claim shall not be ordered under paragraph (1) of this Rule to be delivered before defence unless the Court is of the opinion that they are necessary or desirable to enable the defendant to plead or ought for any other special reason to be so delivered."**

Rule 6/14 (1) is very similar to R.S.C. (1993 Ed'n) Order 18 Rule 12 (3) and Rule 6/14 (3) is very similar to Order 18 Rule 12 (5). Accordingly, the White Book is a helpful authority in relation to the principles which govern applications for Further and Better Particulars. The most relevant section of the R.S.C.

(1993 Ed'n) is section 18/12/42 on page 321 and this commences as follows -

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*"Particulars before defence - Para. (5) is taken from the former O.19, r.17B, which was added in 1919 to prevent applications for particulars being employed to gain time for defence.*

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*Particulars in an action for wrongful dismissal may be ordered before defence. Where the defendant genuinely desires to consider making a payment into Court, particulars of special damage will normally be ordered before defence.*

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*Particulars before defence are desirable where the defendant would otherwise be prejudiced or embarrassed in his pleading e.g. particulars of the relation under which an alleged duty arises.*

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*Generally, a defendant can contest the issue as to whether or not he is an accounting party to the plaintiff without knowing the particulars of the sum alleged to have been paid to him.*

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*Where pleadings raise with sufficient particularity issues which ought to be investigated by the Court, neither further particulars nor discovery will be ordered before defence.*

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*Where a plaintiff should appreciate in advance the general nature of defences which will almost certainly be raised he may be ordered to give particulars and discovery before defence in order that the defendant can properly deal with those defences in his defence rather than simply raise bare denials."*

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Advocate Melia indicated that the Further and Better Particulars in this particular case were being sought at this stage in order to assist the Defendants in preparing their case for the lifting of the interim injunctions.

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Under the terms of Rule 6/14 (3), Particulars are not ordered unless they are necessary or desirable to enable the Defendant to plead, or ought for any other special reason to be so delivered. Although, strictly speaking, that wording only applies to an application under the Rule, I am satisfied that the same general principle ought to be applied to an application for Further and Better Particulars based upon the inherent jurisdiction of the Court. Clearly, Advocate Melia was not saying that the Particulars were necessary or desirable to enable the Defendants to plead. I, therefore, had to determine whether they ought for any other special reason to be delivered.

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Section 18/12/42 of the R.S.C. (1993 Ed'n) does not give an example of an application for Further and Better Particulars for the purposes of assisting in an application to lift an injunction. Advocate Le Quesne asked me to find that such an application would never be granted. I was unable to agree with him on this point because, although it would certainly be very unusual for Particulars to be granted in a case in which they were requested in order to assist with the preparation of an application to lift an injunction, I could conceive of circumstances in which that might be appropriate and would fall under the heading of any other special reason. However, the Defendant would need, in such a case, to establish that such Particulars were necessary at that stage.

I, therefore, considered in detail the specific requests that were being made.

The Order of Justice relates to information which the Defendants obtained as part of the documentation which they received when an Anton Piller order was enforced. The Plaintiffs are concerned that certain confidential information which the Defendants would have obtained may be passed on to other parties or used outside the terms of the normal implied undertaking which is given in relation to documents thus obtained.

The first paragraph of the request for Further and Better Particulars sought full details of the confidential information referred to in the Order of Justice. I came to the conclusion that such detailed information was not necessary in order for the application to lift the injunctions to proceed, inasmuch as the Court would be dealing with categories of information rather than with the specific content of the information.

The second request related to the identity of individuals to whom the Plaintiffs are alleged to have reported in relation to information obtained under the Anton Piller order. Again, this information did not appear to me to be necessary at this stage because the Court is going to have to determine, on an application to lift the injunctions, whether or not certain information is confidential and the identity of people who may already have received the information will only be relevant, in due course, to the issue of damages.

The third request related to the matter of what further undertakings should be given to the Court when an Anton Piller order was requested. This is a matter which is clearly dealt with in the White Book and again there is no necessity for Further and Better Particulars at this stage.

The fourth heading of the request clearly related to the issue of the wrong which has been suffered and the damages which

flowed therefrom and this was also not necessary information at this stage.

5           Finally, although I have already said that an application for  
the purpose of assisting in the preparation of an application to  
lift interim injunctions could be granted in appropriate  
circumstances, it appears to me that a strong case that this was  
necessary would need to be made out for this purpose, which has  
not occurred here. There is a danger otherwise of, as Advocate Le  
10       Quesne put it, "opening a Pandora's box" of procedural  
applications as Defendants who would be wishing to apply to lift  
interim injunctions would often want to obtain more information  
from the Plaintiffs and should be discouraged from applying so to  
do unless this is really necessary.

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          Accordingly I dismissed the application and ordered that the  
Defendants pay the costs of and incidental thereto.

**Authorities**

Royal Court Rules 1992: Rule 6/14.

R.S.C. (1993 Ed'n): O.18, r.12.