

**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC(I) 16

Originating Application No 15 of 2023 (Summons No 58 of 2023)

Between

- (1) Hii Yii Ann
- (2) Alliance Lumber (PNG)
Limited

...Claimants

And

Tiong Thai King

...Defendant

In the matter of Originating Application No 15 of 2023

Between

- (1) Hii Yii Ann
- (2) Alliance Lumber (PNG)
Limited

...Claimants

And

- (1) Tiong Thai King
- (2) Everrise Cooperation Pte Ltd

...Defendants

JUDGMENT

[Civil Procedure — Pleadings — Further and better particulars]

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Hii Yii Ann and another
v
Tiong Thai King and another and another matter

[2024] SGHC(I) 16

Singapore International Commercial Court — Originating Application No 15 of 2023 (Summons No 58 of 2023)
Thomas Bathurst IJ
18 March 2024

7 June 2024

Judgment reserved.

Thomas Bathurst IJ:

Introduction

1 SIC/SUM 58/2023 (“SUM 58”) is an application by Mr Hii Yii Ann and Alliance Lumber (PNG) Limited (the “Claimants”) for further and better particulars of the Defence and Counterclaim (Amendment No 1) dated 15 June 2023 of the First Defendant (the “Defence”), Mr Tiong Thai King, in SIC/OA 15/2023 (“OA 15”).

2 The First Claimant is a businessman resident in Singapore. He controls and operates companies which hold timber concessions in Papua New Guinea, one of which is the Second Claimant. The First Defendant is a businessman resident in Malaysia. The Second Defendant, Everrise Cooperation Pte Ltd

(“Everrise”), is a company incorporated in Singapore for the sole purpose of managing the operational and financial aspects of the business collaboration between the First Claimant and First Defendant. The First Claimant and his nominees hold 60% of the shares in Everrise, with the remaining 40% held by the First Defendant and his nominees.

3 The claim made by the Claimants in OA 15 arises out of an alleged breach of a logging agreement between the Claimants and the First Defendant and what were described as “Ancillary Contracts”. According to the Claimants, the logging agreement provided for the First Defendant to fell and extract logs from various areas in the West Sepik Province of Papua New Guinea, pursuant to a Timber Permit (“TP 10-01”) which the Second Claimant had allegedly obtained from the Papua New Guinea Forest Authority (“PNGFA”). Under the agreement, the First Defendant was obliged to extract and sell at least 100,000 cubic metres of timber or such other volume of timber as permitted by the PNGFA (the “Guaranteed Annual Minimum Volume”).

4 The agreement also provided in effect that the proceeds would be applied first to pay a contractor’s fee to the First Defendant of USD 70 per cubic metre of logs extracted and after the payment of various other expenses, the balance was to be allocated by the joint venture company set up pursuant to the agreement, Everrise, in the proportion of 60% to the Second Claimant and 40% to the First Defendant.

5 The Claimants allege the first and second shipment of logs took place pursuant to the agreement and the proceeds were distributed.

6 However, the Claimants allege the First Defendant breached the logging agreement by failing to extract the Guaranteed Annual Minimum Volume of timber required pursuant to the agreement.

7 The First Defendant has raised a number of defences to the claim, and it is unnecessary to set them out in detail at this stage, save where they are the subject of the requests for particulars in this application.

8 The Claimants sought further particulars on the First Defendant's Defence. The particulars were supplied on 25 August 2023 but were said by the Claimants to be inadequate. The Claimants sought further and better particulars. The First Defendant declined to give further particulars and the Claimants have brought this application seeking them. This is my ruling on the application.

9 The parties very helpfully have provided a document entitled "Summary Table for Claimant's Application for Further & Better Particulars" filed on 18 January 2024 ("Summary Table") setting out the particulars sought and their competing contentions. It is unnecessary for me to set out the contents of the Summary Table but the ruling should be read in conjunction with it.

The relevant principles

10 The relevant principles which are to be applied in the determination of the application generally speaking were not in dispute. Fundamentally, particulars are required to enable a party to know the case it has to meet. It has been stated that particulars perform the following functions. First, to inform the other side of the nature of the case that they have to meet as distinct from the mode in which the case is to be proved. Second, to prevent the other side being taken by surprise at the trial. Third, to enable the other side to know what evidence they ought to prepare and how to prepare for trial. Fourth, to limit the

generality of the pleadings. Fifth, to limit and define the issues to be tried and to which discovery is required and, sixth, to tie the hands of the party so they cannot at trial without leave go into any matters not included: *Johnson Pacific Pte Ltd v Hogberg Fred Rickard Robin William and others* [2004] 4 SLR(R) 200 at [11]; *Sharikat Logistics Pte Ltd v Ong Boon Chuan* [2011] SGHC 196 at [8]; and *Element Six Technologies Ltd v ILA Technologies Pte Ltd* [2016] SGHCR 16 at [12].

11 Contrary to what seems to be suggested by the First Defendant in their submissions, I do not think that the fact that the particulars sought are voluminous necessarily prevents them from being ordered. However, it must be remembered that it is not the function of particulars to supply the evidence sought to be relied upon in respect of the claim and that the parties will have the advantage of discovery and witness statements to enable them to respond to the respective claims made against them.

12 It is undesirable that cases get bogged down by arguments concerning particulars.

13 I turn to the particulars sought by reference to the four categories identified by the parties in the Summary Table.

Category 1 – Implied terms

14 Paragraph 30 of the Defence pleads that it was an implied term of the logging agreement that the timber permit TP 10-01 was lawful and valid and would allow the First Defendant to freely extract timber without interruption (the “Permit Validity Requirement”) and that the Guaranteed Annual Minimum Volume was subject to that condition being satisfied.

15 The Claimants sought, among others, further particulars of each fact or circumstances that the First Defendants wishes to rely on in support of the implication of the terms pleaded. In the particulars supplied on 25 August 2023 the First Defendant took the position that the Claimants were not entitled to this request, and stated that the implied term was necessary to give business efficacy to the agreement and that the facts known to both the First Claimant and the First Defendant included that (a) the timber permit must be valid and allow the First Defendant to freely extract timber to enable it to perform its obligations under the agreement and; (b) if the permit was not valid it would be impossible for the First Defendant to meet the annual quota.

16 On the face of it, the particulars, in my view, adequately disclose the case the Claimants have to meet on the implied term. However, the Claimants contend the matters which were described as the “four requirements of civil proceedings” relevant to the issue of the construction of a contract referred to in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [73] (“*Sembcorp*”) were not met and thus entitled them to particulars in respect of this category. The requirements set out in *Sembcorp* at [73] are requirements of particularisation necessary when a party is relying on context or in support of its contention as to the correct construction of a contractual term or perhaps as an aid to implication of a term. However, there is no such context relied on in the present case. The basis of the implication is that a valid permit was a necessary prerequisite for the First Defendant to perform its obligations. No further particularisation is required, and I so order.

Category 2 – Mistake

17 Paragraph 50 of the Defence pleads that prior to the logging agreement being executed it was discovered that the timber permit TP 10-01 was invalid.

It is the First Defendant's case that the logging agreement was intended by the parties to be performed in respect of timber permit TP 10-09 instead, as pleaded in paragraph 51 of the Defence which states:

Notwithstanding this, in good faith, the 1st Defendant signed and executed the Logging Agreement ... believing that the parties' agreement was that the correct reference should be to TP 10-09 instead, and that the Logging Agreement embodied the parties' agreement.

The First Defendant contended that the parties signed the logging agreement on this basis, labouring under a common mistake.

18 Paragraph 52 pleads that the First Defendant discovered the mistake after the logging agreement had been executed and requested the logging agreement to be rectified to reflect the agreed common understanding and intention of the parties. It alleges the First Claimant's agent told the First Defendant's representative to "[not] worry" and that "those issues will be resolved". Paragraph 53 of the Defence pleads that the parties proceeded on the common understanding that the agreement was to be performed in respect of TP 10-09.

19 The Claimants sought further particulars of, among others, the identity of the person or entity who allegedly discovered the alleged invalidity of TP 10-01 as well as the alleged common mistake, along with the particulars of the circumstances surrounding the discovery of the same. The First Defendant declined to provide further particulars of these allegations, primarily on the basis that these particulars requested are evidence of material facts.

20 It seems to me that the identity of the person who discovered the mistake and the means by which it was discovered are not evidence, but are material facts which should be particularised. Without knowing the identity of the person

who made the discovery and means by which it was said to have been made, the Claimants are not, in my view, properly informed of the case they have to meet. The particulars in paragraphs 2.1 to 2.3 of the Summary Table should be provided.

21 The Claimants also sought further particulars of the allegation in the particulars to paragraph 50 of the Defence to the effect that whilst TP 10-01 sought to cover the “Bewani”, “Sossi” and “Musu Saberín” areas, these areas were the subject of a different “timber project” LFA 10-01. It is contended by the First Defendant that the existence of LFA 10-01 was one of the reasons that TP 10-01 was invalid. It seems to me the Claimants are entitled to the particulars of that “timber project”. The particulars in paragraphs 3.1 and 3.2 of the Summary Table should be provided.

22 So far as paragraph 4 of the Summary Table is concerned, the Claimants, in my view, are entitled to the particulars sought in paragraph 4.2. The nature of the operation of the other contractors and the areas in which they are operating is, in my view, a matter of evidence which the Claimants can obtain in the discovery process. I therefore decline to order that the First Defendant provide the particulars sought in paragraph 4.1.

23 Paragraph 5 of the Summary Table seeks particulars of paragraph 52 which I have summarised above. The Claimants are entitled to proper particulars of any agreement, common intention or understanding alleged. The particulars sought in paragraph 5.1 should be provided.

Category 3 – Breach of obligations/delay/prevention

24 Paragraph 71 of the Defence pleads that the First Defendant was prevented by the First and Second Claimants’ breaches of the logging agreement

from meeting the obligation to extract and sell the Guaranteed Annual Minimum Volume. The particulars plead first a breach of the Permit Validity Requirement being the implied term referred to in paragraph 30 of the Defence (see [14]-[15] above). The difficulty with this is that the alleged term is not expressed to impose any obligations on the parties but rather is expressed as a precondition to the obligation of the First Defendant to meet the annual quota obligation.

25 My preliminary view is that having regard to the manner in which paragraph 30 is pleaded, the matters referred to in paragraphs 71(1)(a)–71(1)(f) did not flow from any breach of the logging agreement by the Claimants as they are all to be based on a breach of paragraph 30. It is a matter for the First Defendant whether it wishes to apply to amend the defence or for the Claimants to strike out the whole or part of paragraph 71.

26 Paragraph 71(2) also pleads a breach of clause 7 of the logging agreement, which required the Claimants to evict existing contractors from the relevant forest area, and that the Claimants’ breach of clause 7 prevented the First Defendant from meeting its annual quota obligation. It seems to me that the allegation which sets out the breach and the effect includes all necessary material facts. I would not order further particulars.

27 I would order the particulars sought in paragraphs 14 and 15 of the Summary Table. The timing and the extent of the alleged “onset of COVID-19 in Papua New Guinea and the restrictions implemented by the government [which] adversely affected the logging operations on TP 10-09” as pleaded by the First Defendant in para 72(4) of the Defence, in my opinion, are material facts which should be particularised.

28 In paragraph 73(3) of the Defence alleges that many of the logs found in TP 10-09 were not of merchantable quality. The First Defendant served further particulars on 25 August 2023, stating that:

Among other issues, the logs extracted from the TP 10-09 area contained logs of an extremely large and various numbers of species of logs, which affected their merchantability.

29 It seems to me that these particulars are adequate. The issue will no doubt be fleshed out through witness statements and possibly expert evidence. Although had it been requested, I would have ordered further particulars of the “other issues” referred to in the First Claimant’s further particulars, but this has not been sought.

30 The particulars sought in relation to paragraph 74(4) of the Defence seek in effect the extent to which the annual quota should be adjusted to take into account the difficulties faced in extracting the timber caused by permit TP10-09 not being a valid permit. It seems to me the particulars sought in paragraph 17 of the Summary Table are particulars of material facts and they should be ordered.

31 I do not think that the particulars sought in relation to paragraph 93 of the Defence are necessary for the Claimants to meet the allegation they failed to pay the First Defendant his entitlement to the share of profits under the second shipment.

32 However, in my opinion, the particulars sought in paragraph 19 of the Summary Table are in fact particulars of material facts and I would order that they be provided.

33 Similarly, the particulars sought in paragraphs 20 and 21 of the Summary Table are particulars of material facts which also should be provided.

Category 4 – Damages

34 As I had indicated at the hearing, it seems to me sufficient for a party to plead heads of damage without descending to precise quantification. The latter matter can be dealt with in the evidence. I thus decline to order particulars in relation to Category 4.

Costs

35 As each party has had partial success, I would reserve all questions of costs to the determination of OA 15.

Order

36 In the circumstances I order that:

- (a) the First Defendant provide the Claimants with the particulars sought in paragraphs 2.1 to 2.3, 3.1, 3.2, 4.2, 5.1, 14, 15, 17, 19, 20 and 21 of the Summary Table; and
- (b) the questions of costs is reserved.

Thomas Bathurst KC
International Judge

Choy Chee Yean (Trenchant Law LLC) for the Claimants;
Ong Boon Hwee William, Xu Jiaxiong, Daryl, Su Jin Chandran,
Nicholas Kam Xuan Wei and Matthew Soo Yee (Allen & Gledhill
LLP) for the 1st Defendant.