

Neutral Citation No: [2019] NIQB 52

Ref: COL10969

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 30/5/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**QUEEN'S BENCH DIVISION
(COMMERCIAL LIST)**

2017 No: 124122

Between:

CARL FRAMPTON

Plaintiff

and

**FINBAR PATRICK McGUIGAN AND SANDRA McGUIGAN
AND CYCLONE PROMOTIONS (UK)**

Defendants

**RULING ON ADEQUACY OF PLAINTIFF'S REPLIES TO DEFENDANTS'
NOTICE FOR FURTHER AND BETTER PARTICULARS**

COLTON J

Introduction

[1] The Statement of Claim in this action was served before the directions hearing on 10 December 2018. The defence and counterclaim was served on 22 January 2019. On 21 January 2019 the defendant served a Notice for Further and Better Particulars containing 233 requests.

[2] On 11 February 2019 the plaintiff served replies to each of the Notice for Further and Better Particulars.

[3] On 8 March 2019 the defendants issued and served a summons seeking an order for particulars pursuant to Order 18 Rule 12(3) of the Rules of the Court of Judicature 1980 ("the Rules").

[4] Prior to the contested hearing in this application the defendant's request was reduced to 133 out of the 233 requests.

[5] This application is one of a series of interlocutory applications brought in this action and a related action involving similar and related issues.

[6] In approaching the various applications the court has had regard to the overriding objective set out in Order 1 Rule 1A of the Rules. In addition the court has had regard to the provisions of Order 18 Rule 7 which provides that facts, not evidence, be pleaded and Order 18 Rule 12 which provides that pleadings must contain the necessary particulars and in particular Order 18 Rule 12(1)(b) which provides:

“Where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies ...”

[7] In considering the applications I bear in mind that an order compelling further replies is a discretionary one which must be exercised in accordance with the overriding objective and the requirement of necessity as set out in Order 18 Rule 12.

[8] In considering this application and all the other interlocutory applications the court’s primary focus has been to ensure that the trial in this and in the related action should be conducted fairly, openly and without surprises, and, so far as possible as to minimise costs.

[9] The rulings in relation to Notice for Particulars should be read in conjunction with the other interlocutory applications in relation to discovery and interrogatories.

[10] The court will keep all these matters under review to ensure that each party is in a position to meet the case being made against it.

Under Paragraph 3 of the Statement of Claim

(1) The request is refused.

I consider that the plaintiff has set out the basis for the assertion, namely the public report of court proceedings of 17 May 1996. The defendants know the case they have to meet, they cannot be taken by surprise at the trial and are clearly in a position to deal with the allegation.

In the event that third party disclosure provides further information on the issue the parties are at liberty to amend the pleadings on this issue.

(2) The request is refused. The terms of the disqualification relied upon by the plaintiff have been set out in the public report referred to above. The plaintiff

has not made any allegation as to the jurisdiction to which it is alleged the disqualification extended.

- (3) The request is allowed. The plaintiff should give particulars of the allegation that the first defendant continued to act as a Director during the period of disqualification which particulars should include so far as they are known to the plaintiff the identity of the relevant companies and the jurisdiction in respect of which he is alleged to have so acted.
- (4) This request is allowed on the same basis as [3] above.

Under paragraph 4 of the Statement of Claim

- (9) This request is refused. The case being made is adequately pleaded in paragraphs 5 and 6 of the replies read in conjunction with paragraphs 3.1-3.16 of the ASM Report dated 6 February 2018 served by the plaintiff in the action.
- (10) Request refused on the same basis as [9] above.

Under paragraph 5 of the Statement of Claim

- (14) In relation to 14(a) the plaintiff has already provided an adequate reply. As to (b) to (f) the defendants are essentially seeking to compel the plaintiff to provide evidence. In the absence of evidence (for example by way of accounts or enquiries) linking expenditure on items such as properties and expensive cars to monies which are properly due to the plaintiff I cannot imagine that the court would place any significant weight on this plea. So on balance I do not consider that replies to the question are necessary and therefore the request is refused.

Under paragraph 6 of the Statement of Claim

- (15) This request is refused. Paragraph 6 of the Statement of Claim needs to be read in conjunction with paragraphs 7, 8, 9 and 10. The plaintiff's case is sufficiently particularised to enable the defendants to know the case which they have meet.

Under paragraph 8 of the Statement of Claim

- (23) This requested is refused. Paragraph 8 needs to be read in conjunction with paragraphs 9 and 10. The defendants know the case they have to meet. The context is that the plaintiff is seeking an account of the monies received by the defendants as a result of bout fees, purchase and promotional monies raised in the course of the promotion and management of the plaintiff. The plaintiff is making the case that the defendants have been "syphoning off" and "diverting" such monies into companies and bank accounts controlled by

them. I consider that the defendants should be in a position to meet these allegations on the basis of the particulars set out in the Statement of Claim, in the replies to particulars and in the accountancy evidence served to date. As the case develops by way of discovery and or further expert reports it may be that the particulars can be narrowed or focussed on the precise bank accounts, if any, which are relevant. Indeed, it is clear from the hearing in relation to the discovery issue that this has in fact happened.

Under paragraph 9 of the Statement of Claim

- (28) This request is refused. A combination of paragraph 9 of the Statement of Claim, paragraph 5 of the Replies to Particulars and paragraphs 3.1-3.16 in the ASM Report set out the case the defendant has to meet. Put simply the plaintiff is alleging that the first and second defendants were directors of companies described as being “within the Cyclone Connection” or were shadow directors of the same. The case being made is that where the first and second defendants were not *de jure* directors of the relevant companies they were in control of the same as *de facto* directors. In other words the *de jure* directors who are identifiable in the company records were persons who acted in accordance with the directions, instructions or influence of the first and second defendants. The relevant companies are being identified through the discovery process.
- (29) This request is refused for similar reasons as set out in [28] above. I consider that the case is adequately pleaded both in paragraph 9 of the Statement of Claim, paragraph 5 of the Replies to Particulars and paragraphs 3.1-3.16 in the ASM Report and in the replies set out at paragraph 29. The defendants know the case they have to meet.

Under paragraph 12 of the Statement of Claim

- (41) I consider that the defendants are entitled to further particulars of this allegation. They are entitled to know more detail of the case they have to meet in relation to this allegation and I direct that the plaintiff provide replies to 41 sub-paragraphs (c), (d) and (e).

Under paragraph 13 of the Statement of Claim

- (42) In light of the voluntary further particulars served in relation to this request on 3 April 2019 I consider that no order is required in relation to this request.

Under paragraph 15 of the Statement of Claim

- (43) In light of the further voluntary particulars provided on 3 April 2019 I do not consider that any order is required in relation to this request.

Under paragraph 17 of the Statement of Claim

- (46) The plaintiff should not be compelled to plead evidence but I consider that the defendants are entitled to further particulars of what is a very general allegation. In particular, the plaintiff should confirm whether or not any enquiries were made in writing and, if so, identify any relevant documents. In relation to oral enquiries I consider that the plaintiff should provide a 'gist' of what is involved in this general allegation. If particular enquiries or conversations are relied upon they should be identified so far as possible in terms of dates, whom the enquiries were made, whether the plaintiff was relying on a particular nature of enquiry or particular response. I therefore order that the plaintiff provides further particulars to this request.

Under paragraph 19 of the Statement of Claim

- (49) This request is refused. I consider that as per the reply the basis for the allegation is set out in the ASM Report at paragraph 3.43 to 3.46 and the appendices referred to therein. I consider this is an adequate reply. It is noted that the plaintiff does not allege bad faith because the allegation relates to an accounting practice on the basis of the analysis in the ASM Report.

Under paragraph 20 of the Statement of Claim

- (52) It is noted that further voluntary particulars have been provided and I consider that those further particulars are adequate. Therefore, no order is required in relation to this request.

Under paragraph 28 of the Statement of Claim

- (83) I consider that the defendants are entitled to the particulars sought. Whilst this will involve to an extent the provision of evidence I consider that the first defendant, in particular, is entitled to know further particulars of what the plaintiff will allege on this important issue, akin to the type of particulars which were provided under request 52. Therefore, I grant an order compelling further particulars in relation to this request.

Under paragraph 35 of the Statement of Claim

- (98) The request is granted. The plaintiff should formally plead what is contained in the summary to the written submissions to the effect that:

"The advice was to accept a purse of up to £200,000.

If the number of tickets required for the £200,000 purse to be payable were not sold, the amount of the purse would depend on the percentage of that number of tickets that had been sold."

Whilst this meets the request to some extent I consider that the defendants are entitled to further particulars of the plaintiff's understanding of the agreement. In particular, can the plaintiff particularise his understanding of the number of tickets required in order to produce a £200,000 purse?

If for example 5,000 tickets were required to produce a £200,000 purse is it his understanding that in the event of 4,000 tickets being sold the purse would be 80% of £200,000?

It may be that these matters are not within the understanding of the plaintiff but his understanding of the agreement should be particularised as fully as possible and on that basis an order for Further Particulars is ordered in the above terms, namely the plaintiff should provide full particulars of his understanding of the agreement.

- (102) This request is granted. It is correct that the issue raised has been referred to in particular 38(xii) of the Statement of Claim and at paragraph 209 of the plaintiff's replies to particulars. I consider that the plaintiff should expressly reply to the particulars sought which relate to an important issue in the trial and in respect of which the plaintiff should plead clearly the case made against the defendants on this issue.

Under paragraph 36 of the Statement of Claim

- (103) I consider that the defendants are entitled to particulars of "repeated requests for discovery and/or disclosure". The application has brought some clarity to this issue. The request relates to requests made prior to 10 August 2017. This issue is addressed in paragraph 52 of the defence to counterclaim.

I consider that the plaintiff should confirm by way of reply that he is relying on the requests set out in paragraph 52 and if he relies on requests prior to March 2017 insofar as it is possible to do so he should provide particulars, notwithstanding that this may involve a degree of particularisation of evidence.

- (104) See above at (103).

- (105) See above at (103).

- (106) See above at (103). I add that it is probable that one reply will deal with each of the requests in (103) to (106).

(109) I do not consider that an order should be made in relation to this request. The allegation is that the requests referred to in paragraphs 103 to 106 were refused. I consider that subject to some further clarification in relation to the requests that the defendants are on notice of the case they have to meet. To require the plaintiff to provide the detail sought in this request will require extensive pleading of evidence which I do not consider is necessary or appropriate. Ultimately, a key issue for the court will be the entitlement of the plaintiff to the additional documentation sought in the ASM Report and the implications the material has for the issue between the parties.

(110) See (109) above.

(111) See (109) above.

(112) See (109) above.

Under paragraph 37 of the Statement of Claim

(121)-(175) To a large extent the issues raised in these particulars go to the essence of the plaintiff's case. As per paragraph 37 of the Statement of Claim "in the period 2012-2017 the first and second defendant using the 'Cyclone Connection' as a vehicle, concealed, syphoned off, diverted and personally profited from aforesaid purse and promotional monies including broadcasting rights, ticket sales and merchandising generated by the plaintiff's bouts and career."

Paragraph 37 then goes on to provide particulars in (i) to (xvi). In the notices 121 to 175 the defendants in effect seek "chapter and verse" in relation to each and every purse, promotional money, broadcasting rights, ticket sales and merchandising which were concealed, syphoned off, diverted or personally profited from.

The defendants suggest that the particulars provided are vague and general. It is argued that since the pleadings infer dishonesty, with a particular plea of fraud at paragraph 37(xvi) the allegations should be pleaded with the utmost particularity. The defendants further argue that the plaintiff cannot simply make such allegations and then await provision of discovery before they can be made good.

The reply provided to the request is as follows:

"The bouts generating bout fees, purses and promotional monies are identified in paragraph 33 of the Statement of Claim. The plaintiff's claim is sufficiently particularised at this stage to enable the defence to know the case which they have to meet. These are, in any event, requests or

matters of detailed evidence in respect of which (as the defendant well knows) the plaintiff claims he has been denied information/documents to which he is entitled to date and in respect of which he claims to be entitled to disclosure of relevant documents in the defendants' possession or control in these proceedings. If necessary, and possible, further particulars (rather than evidence) can be provided after discovery in these proceedings."

Further responses are provided at paragraphs 137, 143, 147, 149, 150, 152, 153, 154, 155, 156, 157, 158, 160, 163, 167, 169, 170, 171, 172, 174 and 175.

In considering this issue it is essential to consider the context of the dispute. In essence the plaintiff alleges breaches of contract and breaches of fiduciary duty. As a result of the alleged breaches the plaintiff seeks compensation and an application for an account of profits.

In my view the defendants do know the claim that has been made against them. The Statement of Claim, the replies to particulars and the expert evidence disclosed by the plaintiff needs to be read together.

Fundamentally, when an allegation of monies being wrongfully retained or concealed from a boxer by his manager/promotor is made the boxer will by definition not be able to plead detail of the sort sought in the particulars at paragraphs 121 to 175 precisely because of the concealment. This is why the plaintiff is seeking accounts and enquiries. Whilst it may well be a laborious task it seems to me that the defendants are obliged to account for the revenue generated by them in respect of their work on behalf of the plaintiff as his manager/promoter. That the task is laborious is to a large extent due to the complexity of the manner in which the defendants have organised their financial affairs through a range of different companies. I have no doubt that as the case progresses to trial after full disclosure and the exchange of expert reports issues between the parties will crystallise so that the type of details sought in this request will become apparent and to an extent the pleadings in the words of Lord Woolf in *McPhilemy v PNL* (1999) ENLR 751, become of "only historic interest".

It is clear from paragraph 37 of the Statement of Claim (xv) and (xvi) that the plaintiff makes an allegation of dishonesty and fraud. I consider that the basis of that allegation is made clear in the Statement of Claim as pleaded and in the replies to date. As previously said the allegation is that the defendants dishonestly concealed and retained monies generated by their promotion and management of the boxer and by reason of these acts or omissions inferences of dishonesty and fraud can be drawn. Because concealment is alleged by definition full particulars or proof will depend on discovery and the extent to which the defendants account for their management of the plaintiff's affairs.

The process of disclosure and expert evidence will ensure that issues are properly identified and joined for the purposes of any court hearing.

I do not consider that it is necessary to make an order compelling the plaintiff to provide further replies to paragraphs 121 to 175 and the application in respect of these requests is therefore refused.

Under paragraph 38 of the Statement of Claim

- (176) The plaintiff alleges that the first defendant failed to arrange the plaintiff's professional affairs and engagements so as to secure all due and proper profit and reward on terms which were fair and reasonable and as advantageous to the boxer as are reasonably obtainable. The defendants argue that to allow the first defendant to meet this case he is entitled to have full particulars of the allegation along the lines set out in the notice.

The plaintiff contends that what has been sought in this notice is a request for the plaintiff to refer extensively to evidence relied upon which he says is not permissible or appropriate.

In submissions the plaintiff argues that the plea is based on the first defendant's contractual obligation under the manager/agency contract under Condition 2 of the 2012 Agreement set out at paragraph 22 of the Statement of Claim.

On the basis that the claim is confined to the allegations set out in the Statement of Claim and in the ASM Report then it seems to me that the defendants know the case they have to meet.

However, if it is to be alleged that in fact the defendants should and could have negotiated better or more profitable arrangements than those actually secured then in my view the plaintiff should specifically make this case and particularise it fully. The defendants for example could not be expected to deal with a claim at trial for the first time that a particular arrangement could have been improved upon in the course of the management and promotion of the plaintiff's career. Thus, the plaintiff should confirm that the claim is confined to the allegations set out in the Statement of Claim and the contents of the ASM Report. The plaintiff would not be entitled to introduce evidence that a different promoter/manager would have negotiated more favourable terms or raised more monies or anything of that nature, without this being expressly pleaded or for example dealt with in an expert report served on the defendants. I should add that this has an impact on what is discoverable in the case. For now therefore I do not propose to make an order but will revisit this request if necessary.

(177) See 176 above.

(179)-(182) I take a similar view in relation to these paragraphs as I do in relation to 176 and 177. The plaintiff should confirm that the allegation is confined to the torts and breaches of contract alleged in the Statement of Claim and will not make the case that he is entitled to compensation on the basis that better terms could have been obtained with a different promoter/manager. This case must be confined as to what is currently pleaded.

(186) I refer to the comments made in relation to requests at (121) to (175). The plaintiff alleges that the defendants were in breach of their respective specified obligations by failing to give the plaintiff a full and accurate written account of money which the first defendant received. The matter is therefore adequately pleaded.

(187) The defendants do not require particulars of the money to know the case that they have to meet. The case being made is that the monies so received were not properly accounted for to the plaintiff. Given the fact that the plaintiff's case is based on concealment and a failure to properly account then self-evidently the plaintiff cannot give the sort of detail sought in this request.

(188) See the comments at paragraph 103 above. It is pleaded that the first defendant failed to provide a full and accurate account of expenses allegedly incurred by him. The case is sufficiently pleaded. The first defendant can clearly deal with the allegation, insofar as he relies upon any requests made these are dealt with at paragraph 103 above.

(190) In this respect the first defendant seeks full particulars in respect of which it is alleged that he failed "to act in good faith". In my view the allegation at paragraph 37 of the Statement of Claim concerning concealment of monies; the breaches of obligations referred to in paragraph 38, the dishonest assistance and knowing receipt referred to in paragraph 39 and the alleged misrepresentations of the first named defendant at paragraph 40 together with the replies already served are sufficient to ensure that the first defendant knows the case he has to meet in this regard. See also my comments in relation to paragraphs 121 to 175 inclusive.

(191) I repeat the comments set out in relation to paragraphs 121 to 175. The secret profits are the purse and promotional monies which it is alleged were concealed from the plaintiff to enable the first and second defendants to personally profit as per paragraph 37 of the Statement of Claim and as per the allegations in paragraphs 39(ii) to (iv) of the Statement of Claim.

(194) See comments at (190) above.

(195) See comments at (191) above.

- (198) I consider that the alleged conflicts of interest are adequately and sufficiently pleaded and there is no requirement to provide the particulars sought in request 198.
- (200)-(201) This covers similar terrain to that which has already been dealt with. These allegations follow on from and relate to the pleas in the Statement of Claim; at paragraphs (7) and (31); failing to tell plaintiff of the existence of any of the Cyclone Connection companies other than the Northern Irish company; (9) concealment of the financial dealings and ownership of the other Cyclone Connection companies; (10) concealing the movement of monies from the plaintiff's bouts and sporting success within the Cyclone Connection; (17) obstructing access to the information about the activities of the Northern Ireland company; (36) and (37) withholding/concealing information about purse/promotional monies received by the defendants in respect of the bouts referred to at paragraph (33). Any further particulars would require in effect evidence to be pleaded. My view is that the issues are clearly joined on this point and the case being made should be clear to the defendants.
- (202)-(203) See my comments at (200) and (201) above.
- (204) This request seeks particulars of the respects in which the first defendant "misled the plaintiff". On the basis that the plaintiff confirms that the allegations of the plaintiff being misled by the first defendant are confined to the allegations in paragraphs (7) and (31), (9), (10), (13), (15), (17), (36) and (37), no further particulars are required. I consider that the case is sufficiently pleaded and any further detail would constitute an inappropriate request for actual evidence.
- (205) See comments at (200)/(201) and (204) above.
- (206) See (204) above.
- (206) See (204) above.
- (207) See (205) above.
- (215) In this request the defendants seek "full and precise particulars of all facts, matters and circumstances relied upon by the plaintiff to allege the matters alleged at paragraph 39(ii) of the Statement of Claim. The allegation is that the first and second defendants "knowingly and dishonestly appropriated and/or received purse and promotional monies including broadcasting rights, ticket sales and merchandising as earned by the plaintiff's bouts and career to their own personal use and benefit." As the discovery process proceeds I expect that the relevant monies will be identified and if necessary this matter can be revisited.

On the face of it this is a request for evidence. Nonetheless, the defendants are entitled to know the case they have to meet in this regard. It is clear on reading the Statement of Claim that the plaintiff alleges dishonesty on the basis of the acts and omissions of the defendants which have already been rehearsed in detail from which they say it can be inferred they acted dishonestly. It will be a matter for the court to determine firstly whether in fact the defendants committed the acts and omissions alleged and, if so, whether this is sufficient to establish dishonesty. For the purposes of this application I consider that the case is sufficiently pleaded.

- (219) I consider that the plaintiff should formally reply to this request as per the submission in response to the effect that as per paragraphs (14) and (15) of the Statement of Claim the plaintiff became a Director of the Northern Ireland company believing the promotion of his career would thereafter be through this company set up by the first defendant. He alleges that under this agreement he would be entitled to 30% of the profits earned by the company and as per paragraphs (28) and (29) in February 2015 he signed the IPA on the understanding that he would continue to be entitled to the 30% and that he remained in these management/promotional arrangements on the above understanding until August 2017.

Under paragraph (42) of the Statement of Claim

- (221-231) Essentially, all of these requests seek to compel the defendants to quantify the loss and damage claimed by providing full and precise particulars of each loss or alternatively stating the loss in general terms if unable to quantify it specifically.

In relation to these requests I refer to the comments previously made about the nature of these proceedings and the context of the relationship between the plaintiff and defendants. The general nature of this has been set out in the addendum ASM Report dated 5 April 2019.

As previously directed I consider that the Statement of Claim should be amended to plead the claim on the basis of the report, albeit with the caveats contained therein. However, given the nature of the claim which is related to a large extent on allegations of concealment and lack of accounts any final calculation of the claim, if any, will depend on further disclosure and expert evidence. It must be borne in mind that the plaintiff as part of his relief is seeking an account of profits by way of remedy. In general terms I consider that the appropriate way to approach quantum in this action in light of the case that is being made is by way of disclosure and expert evidence. I do not consider that pending this the plaintiff should be compelled to provide the particulars sought.

The court will ensure that the issues are properly joined prior to any trial and the pleadings can be formalised when the expert evidence is complete.

At this stage I am satisfied that the defendants know the case they have to meet and have the necessary information in their possession, custody or control to organise and formulate their defence.

Under paragraph 43 of the Statement of Claim

(232) This matter has been more fully dealt with in the submission of the plaintiff in reply to the application. In that the plaintiff says:

“Rescission is a remedy which is, in principle, available where it is proved that an agent/fiduciary (in the context of an agreement with the principle) has breached their fiduciary duty.

The allegations of breach of fiduciary duty have been pleaded and sufficiently particularised. If they are proved on the evidence the plaintiff will argue for rescission on that basis.

It is for the court to determine as a matter of fact/law whether to grant the remedy.”

I agree and therefore do not propose to make an order.

(233) I make similar observations as made in (232).

The plaintiff should provide the further particulars I have directed in this ruling by close of business on Monday 10 June.