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NZLR

NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP 125/97

BETWEEN

HUNG YUEN HSU & KUEI LAN HSU
Plaintiffs

A N D

PHILIP WONG
First Defendant

A N D

LESLIE WILFRED DIVERS, RICHMOND
JOSEPH CLANCY & PHILIP WONG
Second Defendants

A N D

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP 126/97

BETWEEN

WONG MEI FANG CHEN & RON CHING CHEN
Plaintiffs

A N D

PHILIP WONG
First Defendant

A N D

LESLIE WILFRED DIVERS, RICHMOND
JOSEPH CLANCY & PHILIP WONG
Second Defendants

Hearing: 3 February 1999

Counsel: JE Long for the plaintiffs/ respondents
JR Mulligan for the second defendants

Judgment: 3 February 1999

(ORAL) JUDGMENT OF MASTER KENNEDY-GRANT

Solicitors for the plaintiff
George Bogiatto
DX CP 19060

Counsel
JE Long

Solicitors for the defendant
Kensington Swan DX CP 22001

- [1] This is an application by the second defendants for an order striking out the plaintiffs' statement of claim on the ground that the plaintiffs have failed to respond properly or, in certain respects, at all to a request for further particulars which was confirmed by an order of this Court made on 28 October 1998.
- [2] The latest pleading on behalf of the plaintiffs on the file is the amended statement of claim dated 16 July 1998. The opening words of this describe it as the pleading of the plaintiffs in CP125/97. There does not appear to be on file a pleading of the case of the plaintiffs in CP126/97.
- [3] Counsel are directed to confer regarding this and to report to me by memorandum within 7 days as to whether CP 126/97 is still extant and if so, where the current pleading on behalf of the plaintiffs in that matter is to be found.
- [4] Turning from that preliminary matter to the application before me, which is made by the second defendants, as already stated, on the ground of failure by the plaintiffs to respond properly or at all to a request for further particulars confirmed by order of this Court, I propose to deal with the matter as follows:
- (a) The second defendants complain of the adequacy of the further particulars given to paragraphs 7 and 34 of the amended statement of claim and of the failure to make any answer to the particulars sought of paragraph 26(g) of the amended statement of claim.
 - (b) My provisional view, reading the amended statement of claim as a whole, is that paragraph 7 is really only part of the background and that the only relevant allegation of any form of conduct giving rise to a cause of action by the plaintiffs against the second defendants is contained in paragraphs 9 and 10, particularly paragraph 9, of the amended statement of claim.

- (c) On that basis, I require counsel for the plaintiffs to advise by memorandum filed and served within 7 days of today whether the only allegations relating to immigration seminars which are relevant for the purposes of the causes of action are those contained in paragraphs 9 and 10 of the amended statement of claim.
- (d) If it is confirmed by counsel for the plaintiffs that the seminar on 29 January 1993 referred to in those two paragraphs is the only seminar at which relevant representations were made, then I consider that
- (i) there is no need for further particulars to be provided of paragraph 7 because they really are unnecessary; and
 - (ii) the particulars provided of paragraph 34 will be adequate, subject only to an amendment to paragraph 34 to make it clear that the representations there referred to are the ones alleged to have been made on 29 January 1993 as pleaded in paragraphs 9 and 10.
- (e) If, however, the advice of counsel is that the plaintiffs rely on representations made on other occasions, then the present pleading is in my view totally inadequate. If that turns out to be the position I will, on receipt of the memorandum, make an order for the filing and service of a further amended statement of claim or arrange to see counsel in Chambers to make further orders as appropriate.
- (f) So far as the failure to provide particulars of s26(g) is concerned, the paragraph of the amended statement of claim in question reads as follows:

By allowing United Pacific to continue to trade until 21 July 1994 the first defendant has prejudiced United Pacific and its creditors in that they or one or more of them ...

- (g) Continuing (that should be continued) to incur creditors (that should be debts I would have thought) with the knowledge or reasonable expectation that such creditors would not be repaid.

- (g) Mr Donovan has sworn an affidavit on behalf of the plaintiffs in opposition to the application and, in so far as the particulars sought in respect of paragraph 26(g) are concerned, he explains that the plaintiffs have difficulty in providing them because the information is in the hands of the liquidators of United Pacific.

- (h) I make two comments:
 - (i) I would have thought it was debatable at the very least whether it was proper to make an allegation such as is made in paragraph 26(g), which comes close to being an allegation of fraud, without having proper grounds for making it. The plaintiffs must have known something, otherwise they would have had no basis for making that allegation. They should provide particulars of that “something”
 - (ii) In my view, it is their responsibility to obtain the particulars from the liquidators.

- (i) Being of this view, I require counsel for the plaintiffs to include in the memorandum already referred to:
 - (i) a statement of the particulars which can be given of the “something” which was known to them; and
 - (ii) a statement of what steps he proposes to take to obtain further information from the liquidators.

[5] I will make further orders in respect of the matter in the light of the memorandum.

- [6] I will give counsel for the second defendants a further 7 days to respond to the memorandum by counsel for the plaintiffs.
- [7] If either counsel wishes to see me they are to say so in their memorandum and I will then see them. Otherwise I will make orders on the memoranda as I consider appropriate, unless I consider it necessary to see counsel.
- [8] That leaves only the question of costs.
- [9] Mrs Mulligan, for the second defendants, has sought costs. Mr Long, for the plaintiffs, argues that costs should be reserved. The basis on which Mrs Mulligan seeks costs is that this has been a long drawn-out process, that these particulars were first sought in August 1997 and that they have still not been provided adequately or, to some extent, at all. Mr Long, for the plaintiffs, submits that the appropriate order is to reserve costs because, as is clear from what I have said previously in this judgment, the matter is now seen in a different light from that in which the parties had seen it hitherto.
- [10] I am going to reserve the question of costs but only until I have received the further memoranda. I will then make a decision in the light of the situation which is reached at that point.


MASTER T KENNEDY GRANT