IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2008-485-2768

BETWEEN	TRI MEDIA INTERNATIONAL LIMITED Plaintiff
AND	MARK BREWER Second Plaintiff
AND	THE WELLINGTON COMPANY LIMITED First Defendant
AND	ONE MEDIA LIMITED Second Defendant
AND	SYNCRON INVESTMENTS LIMITED Third Defendant
AND	KEVIN JONES Fourth Defendant

Hearing: 17 June 2009

Appearances: B. O'Callaghan & G.S.G. Erskine - Counsel for plaintiffs
P.W. Michalik - Counsel for First and Third Defendants

Judgment: 30 June 2009 at 3.30 pm

JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

This judgment was delivered by Associate Judge Gendall on 30 June 2009 at 3.30 p.m. pursuant to r 11.5 of the High Court Rules.

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Introduction

[1] Before the Court are applications brought by the first and third defendants first, for security for costs and secondly for further and better particulars of the claim as against the first and second plaintiff.

[2] The second and fourth defendants have filed a memorandum to indicate they support these applications brought by the first and third defendants.

[3] Both applications are opposed by the plaintiffs.

Background Facts

[4] The first plaintiff, Tri Media International Ltd, is a company carrying on business as what is described as a "provider of media solutions". The second plaintiff ("Mr Brewer") is, and at all material times was, a director of the first plaintiff.

[5] The third defendant, Syncron Investments Ltd, owns a commercial building in Lambton Quay, Wellington which it leases out to tenants. The third defendant is a subsidiary of the first defendant, the Wellington Company Ltd. On 22 December 2006 the first plaintiff entered into a lease agreement with the third defendant. The lease was for a site on the side of the third defendant's building on the corner of Lambton Quay and Willeston Street, Wellington ("the site"). The purpose of the lease was to enable an electronic advertising display billboard ("the billboard") to be established on the site. The first plaintiff agreed to pay rent for the site to the third defendant at the greater of $4500.00 per month or 30% of the net revenues from selling advertising space on the billboard.

[6] Related to this venture, the first defendant agreed to advance a loan to the first plaintiff of $150,000.00 ("the loan"). The loan was for the purpose of acquiring and installing the billboard. It was repayable at the expiry of two years, or after nine months from the date of the advance if the first defendant became concerned that the first plaintiff was "not performing well" upon 90 days written notice. In addition,

the first defendant had the option of converting the loan to a 25% shareholding in the first plaintiff at any time. Mr Brewer and Brent Dominic Harkin ("Mr. Harkin"), a former director of the first plaintiff, provided personal guarantees of the first plaintiff's obligations in respect of the loan.

[7] The second defendant is a company based in Christchurch carrying on a similar business to that of the first plaintiff. Around December 2006 the first plaintiff and the second defendant entered into a written agreement by which the second defendant would provide the billboard for the site. Pursuant to that agreement, the second defendant was to install and administer the billboard, including controlling the display of clients' electronic advertising material, and the first plaintiff was to sell the advertising space displayed at different times on the billboard. The first plaintiff and the second defendant were to share the first plaintiff's net profits from the advertising revenue equally.

[8] In mid-May 2007 the billboard was installed. Effectively this established the working digital sign on the site and monthly rent became payable to the third defendant from the first plaintiff. From June to August 2007 rent was paid to the third defendant. Monthly rent for September was paid late by the plaintiffs, but rent for October and November was not paid.

[9] The plaintiffs allege that from June to November 2007 the billboard experienced intermittent problems with the display of advertising material as follows:

i. In or around the week of 16 – 20 July 2007 on at least three separate occasions the electronic billboard's screen went blank, froze, or otherwise failed to display the scheduled advertising. On each occasion the screen was inoperable for between 5 and 60 minutes;

ii. In July/August 2007 the electronic billboard shut down for a period of approximately 10 days;

iii. From between August to November 2007 the electronic billboard experienced approximately 8-12 occasions which left the screen inoperable for periods between 1 and 48 hours.

[10] The plaintiffs allege that because of these problems, various potential clients were dissuaded from using the billboard for advertising. This is said to include "some or all" of seven named potential clients as well as other unknown potential clients. The plaintiffs further allege that certain customers refused to renew contracts or take up further business in relation to the billboard because of these problems.

[11] On 22 November 2007 the first defendant gave written notice to the first plaintiff requiring repayment of the loan at the expiry of 60 days, and the third defendant gave notice of its intention to terminate the lease unless rent arrears outstanding then were paid. On 20 December 2007 the first plaintiff received written notice from the third defendant terminating the lease of the site. Rent had not been paid since September 2007.

[12] On 7 May 2008 liquidation proceedings were served on the first plaintiff for failure to comply with a statutory demand issued for the unpaid loan and the outstanding rent. In addition, I understand Mr Brewer has failed to comply with the terms of a settlement agreement reached in respect of his personal guarantee of the loan, and a bankruptcy notice has been served upon him. He has however now applied to set aside the bankruptcy notice out of time.

[13] Mr Brewer suggests that initially he believed that the first plaintiff's business had failed due simply to bad luck and tough economic times. Subsequently, however, he contends that he "heard" that the first and second defendants had been "in communication with each other" and upon hearing this, and seeing that the billboard was still operating on the site after termination of the defendants' contracts, he said he became suspicious. Mr. Brewer deposes that he went back and looked at correspondence with the second defendant regarding the problems with the billboard, and that now he no longer believes that the second defendant provided to the plaintiffs information that was legitimate and correct. He claims that the defendants made a plan to cut the first plaintiff out of the business and operate the business themselves, increasing their own revenues. He contends they deliberately interfered with the electronic sign to cause the problems experienced. As such, the first plaintiff and Mr Brewer have brought the current proceedings against the four defendants. They plead eight causes of action:

a) Conspiracy for an unlawful purpose (injuring the plaintiffs' economic interests) – all defendants

b) Interference with contractual relations – first and second defendants

c) Breach of contract (implied term to perform billboard agreement to reasonable degree of skill and care) – second defendant

d) Breach of contract (implied term to maintain/repair electronic billboard and/or its software to reasonable degree of skill and care) – second defendant

e) Negligence – second defendant, brought by first plaintiff

f) Negligence – second defendant, brought by second plaintiff

g) Breach of section 9 of the Fair Trading Act 1986 – second defendant

h) Breach of section 9 of the Fair Trading Act 1986 – fourth defendant

Allegations of Fraud

[14] The question of whether the plaintiffs are making allegations of fraud against the defendants is relevant to both the application for security for costs and the application for further particulars. Counsel for the defendants has argued that pursuant to the High Court Rules, r 14.6, solicitor/client costs are likely to be awarded in cases of failed allegations of fraud, which is directly relevant to the appropriate quantum of security to be ordered: *Colgate Palmolive Co v Cussons Pty Ltd* (1993) 118 ALR 248 cited *in Hedley v Kiwi Co-operative Dairies Ltd* (2002) 16 PRNZ 694, para 8; *McGechan on Procedure*, para HR14.6.03.

[15] Counsel further argues that the importance of clear and detailed particulars increases where defendants are facing allegations of fraud: *Paper Reclaim Limited v Aotearoa International Limited* HC AK CIV-2004-404-4728 14 February 2005, Harrison J; *Motorworld Limited and Ors v McGregor* HC AK CIV-2007-404-6558 9 October 2008 Lang J; *Connell v NZI Securities Limited* (1995) 9 PRNZ 36 (HC).

[16] In response, counsel for the plaintiffs disputes that allegations of fraud are being made here. The two causes of action in question in this regard are the torts of conspiracy to economically injure and interference with contractual relations.

Neither of these causes of action are fraud, and none of the elements of either tort are fraud. But, in reply, counsel for the defendants argues that the plaintiffs are alleging fraud in everything but name.

[17] Counsel for the defendants went on to point out how the various allegations of misconduct (bearing some resemblance to those in this case) are treated in *Motorworld Limited and Ors v McGregor*. The disputed causes of action in that cause were knowing receipt, dishonest assistance to breach of a fiduciary duty, section 9 of the Fair Trading Act 1986, and conspiracy by unlawful means. Although fraud was not specifically pleaded the court clearly viewed the conduct alleged as falling into the fraudulent category and so requiring pleading of careful particulars. *PTY Homes Limited v Chand & Ors* [1986] NZLR 105 concerned an alleged conspiracy for an unlawful purpose. The Judge took care at para 17 to state that the allegations were never made out, since "this element of conspiracy may connote an imputation of moral turpitude."

[18] The allegations being made against the defendants also fall within r 13.8.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, which states:

> "13.8 A lawyer engaged in litigation must not attack a person's reputation without good cause in court or in documents filed in court proceedings.
>
> 13.8.1 A lawyer must not be a party to the filing of any document in court alleging fraud, dishonesty, undue influence, duress, or other reprehensible conduct, unless the lawyer has taken appropriate steps to ensure that reasonable grounds for making the allegation exist."

[19] The plaintiffs allege that the defendants conspired to and did drive the first plaintiff out of its contract, physically interfered with the first plaintiff's business, and deliberately misrepresented to the plaintiffs the reasons behind apparent electronic faults with the billboard, the reasons behind the first defendant calling up the loan and the third defendant terminating the lease. Noting the way that the misconduct alleged in *Motorworld Limited and Ors v McGregor* was dealt with by the court in that case, and acknowledging that the seriousness of the allegations being made are sufficient to engage the professional rules of Conduct and Client Care, I am satisfied that the allegations in this case are allegations of fraudulent misconduct, such that the relevant rules pertaining to particulars and security for costs are operative.

Security for Costs

[20] Both the plaintiffs on the one hand and the first and third defendants (from hereon "the defendants") on the other, appear to be in agreement that the threshold test in r 5.45(1)(b) of the High Court Rules is met and that security for costs should be provided by the plaintiffs. The only matter in issue is quantum, and the form that the security should take.

[21] On this issue of quantum, McGechan on Procedure at HR5.45.07 states:

> **"HR5.45.07 The amount of security**
> The amount of security is equally in the Court's discretion. It is not necessarily to be fixed by reference to likely costs awards. Rather, it is to be what the Court thinks fit in all the circumstances: A S McLachlan Ltd v MEL Network Ltd (2002) 16 PRNZ 747 (CA).
> Those circumstances include the:
> (a) Amount or nature of the relief claimed;
> (b) Nature of the proceeding, including the complexity and novelty of the issues, and therefore the likely extent of interlocutories;
> (c) Estimated duration of trial; and
> (d) Probable costs payable if the plaintiff is unsuccessful, and perhaps also the defendant's estimated actual (ie solicitor and client) costs.
> Insofar as past awards of security are a legitimate guide, they generally represent some discount on the likely award of costs as calculated under Schedule 3."

[22] As to quantum, counsel for the defendants noted that this is a claim by two plaintiffs against four defendants, ranging across eight causes of action. The four defendants fall into two distinct interest groups each group being separately represented. Hearing of this case will require witnesses of fact as to problems with the billboard and alleged difficulties with customers. In addition discovery will be involved and expert witnesses required with regard to technical problems experienced with the billboard. Counsel says that the claim will require at least five days sitting time.

[23] Counsel also submits that if the plaintiff's claims fail, solicitor/client costs are likely, as such are commonly awarded in cases involving failed allegations of fraud. Solicitor/client costs for each defendant group, assuming a five day trial are estimated at $150,000.00 or more. Counsel submits that security is not normally complete protection for the likely award of costs. As such, the defendants seek approximately half of the estimated solicitor/client costs as security - $75,000.00 to $80,000.00 for each defendant group. Scale costs based on a five day hearing at category 2B apparently total $33,600.00 for each defendant group. This figure could

be doubled to take account of the two defendant groups here, and it does not include court fees or disbursements, such as the likely expert witness costs.

[24] Counsel for the defendant further submits that the current claim is vexatious, and is brought by a failed company and its insolvent principal in a last ditch attempt to stave off what is said to be the principal's imminent bankruptcy. As to this, counsel points to the lack of clear particulars in the plaintiffs claims, to the apparent lack of evidence that any customers were actually deterred by the faults with the billboard, and to a lack of evidence and information surrounding the claim that the actions of the defendants caused the first plaintiff's business to suffer.

[25] In response, counsel for the plaintiffs argues that the authorities generally take an approach of awarding security for a portion only of ordinary costs. For example, in *Chatha v Attorney General* HC CIV-2006-454-868 13 November 2007, a case involving apparently vexatious allegations, including allegations of conspiracy, $20,000.00 of an estimated $29,400.00 (calculated on a category 2B basis) was ordered to be paid as security. It was suggested that *Chatha* was a case justifying a high level of security, given the apparently chaotic setting and vexatious claims being made by a lay litigant.

[26] Counsel for the plaintiffs submitted $33,600.00 was an appropriate estimate of costs, assuming scale costs on a category 2B basis for a five day hearing. Counsel suggested two-thirds of this estimate would provide appropriate security. He also submitted that payment of this security should be staggered so that half is paid now, and the other half closer to the trial.

[27] It is clear that a high threshold must be passed before an order for solicitor/client costs is made: *Paper Reclaim Ltd v Aotearoa International Ltd* [2006] 3 NZLR 188. However, I am satisfied that, in this case should the plaintiffs be ultimately unsuccessful, an award against them of solicitor/client costs, or increased costs, may well be likely. This is because the plaintiffs would have pursued a serious and unfounded allegation of misconduct in the nature of fraud: *Hedley v Kiwi Co-operative Dairies Ltd*; *Colgate Palmolive Co v Cussons Pty Ltd*. Should it eventuate, as suggested by counsel for the defendants, that these extensive proceedings are

ultimately seen as a mere attempt by Mr Brewer to avoid bankruptcy in circumstances where he does not have anything to lose, in my view this would also support an award of solicitor/client costs being made by this Court. While security is not necessarily to be fixed by reference to likely costs awards, the likely award is a relevant circumstance to take into consideration: *AS McLachlan Ltd v MEL Network Ltd*. Further, given the nature of the allegations made by the plaintiffs here, I accept that expert witnesses and a number of witnesses of fact will be necessary.

[28] Mr. Brewer has deposed that money from other companies in which he is involved is available for the payment of costs or the provision of security. Although he noted this would require some re-jigging of his finances, it appears that this is not a case where an order for security for costs would necessarily impede the plaintiffs' access to the courts.

[29] And, as to this, in a late affidavit sworn on 16 June 2009, Mr Brewer suggested that security for costs could be met here by a third party undertaking given by Wairere Road Limited, a company of which Mr Brewer is the sole director. Another company, Promark Holdings Limited is the major shareholder of Wairere Road Limited holding 10,000 out of its total 11,500 shares. Mr Brewer and his wife are the directors and sole shareholders of Promark Holdings Limited. Wairere Road Limited's assets involve one property a farmlet at 12B Wairere Road, Waitakere. With his affidavit, Mr Brewer provided to the Court a market valuation of this property by a registered valuer at a figure of $1,475,000.00. There is a first mortgage to Foundation Custodians Limited registered against this property in respect of a loan under which Mr. Brewer says $929,016.00 is owing. The mortgage however has a priority sum amount of $1,363,049.52 and is to provide first mortgage security for advances interest and repayment defaults up to this figure.

[30] Counsel for the plaintiffs pointed to a number of cases where third party undertakings have been accepted as suitable security: *Eli Lilly & Co v Douglas Pharmaceuticals Ltd* (1984) 1 TCLR 119 (HC); *Lunn v Fourth Estate Holdings Ltd* (1997) 11 PRNZ 316 (HC); *Ray & Phyllis Denning Trustee Limited v Watercare Services Limited* HC AK CIV-2008-404-2406 3 November 2008 John Hansen J; *Shalimar Supermarket Limited v Toulis* HC WN CP653/90 15 May 1991 Master

Williams; *Combined Logging Company Limited v Crown Forestry Management Limited* HC WANG CP40/91 30 September 1996 Master Thomson. As counsel noted, however, these cases turn heavily on their facts. As John Hansen J. noted at para 6 in *Ray & Phyllis Denning Trustee Limited v Watercare Services Limited*:

> "… there is clear authority that a suitable undertaking from a third party is acceptable as a means of security. The question in this case is, would it adequately secure the plaintiff's costs?"

[31] In reply, counsel for the defendants raised a number of problems with the valuation. Counsel pointed out that it assesses the value of the property at double the rating valuation obtained in 2007, although it seems this may largely be explained by improvements to the property since that time. It is further noted that Wairere Road Ltd has only one asset and is clearly not a substantial company. In addition, because the offer of the undertaking as security has come at a very late stage, the defendants have had no chance to investigate the offer and the security proposed. The amount owing under the mortgage may well have increased if repayments had not been made, and it appears that there is a complete absence of necessary supporting documents here. For example, counsel noted that as Mr Brewer is not the sole director or the only shareholder of the company, it would obviously be prudent if matters were to proceed to have an acknowledgement from the other shareholders before a guarantee for no consideration is offered by the company.

[32] For these reasons, I am not satisfied that this eleventh hour offer of an undertaking from Wairere Road Ltd would adequately secure the defendants' costs in the present case. If, as is claimed by Mr Brewer, it is possible for him to source funds from the company, there should be no reason why he cannot do this now rather than after a trial.

[33] Returning now to the issue of quantum, in my view under all the circumstances prevailing in this case, total security of $40,000.00 for each group of separately represented defendants is appropriate here. That said, the plaintiffs are to give security for costs to the first and third defendants in the sum of $40,000.00 and to the second and fourth defendants in the further sum of $40,000.00 either by paying these sums into Court or by giving some security for these sums to the

satisfaction of the Registrar. It is also not appropriate here for this security to be paid on a staggered basis.

Application for Further Particulars

[34] This application for further and better particulars is again brought only by the first and third defendants although it is supported by the second and fourth defendants as I have noted at para. [2] above. It relates to the plaintiffs' first and second causes of action only (but not the remainder being the third through eighth causes of action) of the plaintiffs' First Amended Statement of Claim dated 17 February 2009.

[35] Those first and second causes of action are in tort – the first being as to conspiracy, the second being as to interference with contractual relations. The conspiracy cause of action is against all defendants. The plaintiffs say essentially that the second defendant deliberately caused some or all of the problems encountered with the billboard. The plaintiffs contend that after the expiry of the lease the billboard continued to operate and that there was agreement between the defendants the details of which the plaintiffs were not privy.

[36] During the period of the problems with the billboard, between May and November 2007, the plaintiffs say the defendants conspired to economically injure the first plaintiff, in that they brought about the plaintiff's breach of the lease agreement enabling the first defendant to call up the loan and the third defendant to terminate the lease so the defendants could deal amongst themselves directly in relation to the billboard. To do this (among other things) it is said the second defendant deliberately interfered with the billboard.

[37] The second cause of action, interference with contractual relations is brought against just the first and second defendants. Although, the second defendant itself has made no application in respect of particulars, it supports the present application brought by the first and third defendants.

[38] The plaintiffs say the second defendant caused some or all of the problems. The plaintiffs allege that during the time when there were problems with the billboard, the first defendant induced or persuaded the second defendant to breach the billboard agreement or to perform it poorly.

[39] With the removal of the first plaintiff from the billboard and lease agreement it is said the defendants would be able to share a higher proportion of the advertising income proceeds from operating the billboard.

[40] The purpose of particulars is to define the issues and inform the parties in advance of the case they have to meet, and to provide the necessary detail to show that there is a cause of action: *Farrell v Secretary of State* [1980] 1 All ER 166 (HL); *Donovan v Graham* HC AK CP1908/89 22 May 1990. As noted above, the importance of particulars increases in cases where fraudulent conduct is alleged: *Paper Reclaim Limited v Aotearoa International Limited*; *Motorworld Limited and Ors v McGregor*; *Connell v NZI Securities Limited*.

[41] Counsel for the defendants submits that it is very easy for the plaintiffs to allege serious wrongdoing without being specific, and this wide net of general allegations can be harmful. It is difficult to refute such general allegations except by general denials. Counsel argues that it is not sufficient for the plaintiffs to contend vaguely that there was a conspiracy between the defendants to cause technical problems at the sign site with a view to reducing the plaintiff's advertising revenue, thus causing its business to fail and enabling the defendants to procure its business, "particulars of which will be given after discovery". Counsel states that this vagueness in pleading suggests that the plaintiffs are looking to conduct a fishing exercise by way of discovery.

[42] This unsatisfactory position is said to be exacerbated as the defendants will have to prove a negative proposition – that they were not part of a conspiracy. It is submitted that the defendants cannot be expected to bring every communication of any sort made over the time that the billboard was in operation into court, to demonstrate that none of them relate to a conspiracy. In response, counsel for the plaintiffs argues that the defendants do not have to prove anything. It is for the plaintiffs to prove their case. Further, the plaintiffs contend that discovery based on the pleadings as they currently stand would not be as onerous on the defendants as they make out. Only information relevant to the causes of action, in the established time frame, would need to be discovered. As there was no apparent reason for the first and second defendants to be in contact at all, only a small amount, if any correspondence, is expected to come out of discovery.

[43] Turning now to their present application before the Court, on this the defendants seek the following additional particulars:

(a) In respect of the first cause of action:

(i) When did the defendants allegedly conspire against the plaintiffs?

(ii) How did the defendants allegedly conspire against the plaintiffs?

(iii) In respect of the communications between the defendants alleged to amount to the pleaded conspiracy;

(A) What are the names of the people involved in the communications?

(B) By what methods did they communicate?

(C) What was said by these people in their communications?

(D) When did these communications occur?

(E) Where did these communications occur?

(b) In respect of the second cause of action:

(i) When did the first defendant allegedly interfere with the contractual relations of the first plaintiff?

(ii) How did the first defendant allegedly interfere with the contractual relations of the first plaintiff?

(iii) When and how did the defendants become aware of the billboard agreement?

(iv) In respect of the communications between the first and second defendants in which they allegedly deliberately interfered with contractual relations:

(A) What are the names of the people involved in the communications?

(B) By what methods did they communicate?

(C) What was said by these people in their communications?

(D) When did these communications occur?

(E) Where did these communications occur?

[44] Counsel for the defendants argues that these particulars are reasonably required for the defendants to focus their enquiries, carry out discovery and disprove the allegations brought against them, especially as this is a case involving allegations of fraud. It is submitted that these particulars are also reasonably required to show that the plaintiffs' solicitors are not in breach of rule 13.8.1 of the professional rules of Conduct and Client Care.

[45] Counsel for the plaintiffs argued that it is not reasonable to expect the plaintiffs to provide the particulars sought, given that those particulars related to an agreement between the defendants to which the plaintiffs were not privy and are in the exclusive knowledge of the defendants. Counsel pointed to a number of cases supporting the proposition that where the defendants know the facts and the plaintiffs do not, the plaintiffs do not have to give particulars of those facts, or are entitled to discovery before such particulars are required: *Hickson v Scales* (1900) 19 NZLR 202; *R v Merchants Association* (1912) 15 GLR 45; *Ross v Blakes Motors Ltd* [1951] 2 All ER 689 (CA); *Sullivan v Harris and Chate* (1906) 8 GLR 650.

[46] However, it is a well-recognised rule that allegations of fraud must be made with precision. This rule may apply regardless of whether the words "fraud" or "dishonesty" are explicitly used: *Belmont Finance Corp Ltd v Williams Furniture Ltd* [1979] 1 All ER 118 (CA). That the facts may not be known to the plaintiffs is not generally an excuse: *Prosser v NZ Investment Trust Ltd* [1937] GLR 93. Rather, fraud should not be alleged unless the plaintiff already has clear and sufficient evidence to support the allegation: *Savril Contractors Ltd v Bank of New Zealand* [2002] NZAR 699; *Carter Holt Harvey Ltd v Commerce Commission* [2009] NZCA 40, para 80; *X v Y* [2000] 2 NZLR 748; Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 13.8.1.

[47] *Motorworld Limited and Ors v McGregor* involved allegations of a fraudulent agreement, the details of which would have been entirely in the knowledge of the defendants and not the plaintiffs. In that case Lang J accepted the importance of pleadings and the obligations on counsel where allegations of fraud are being made. He found that the plaintiffs allegations were based on inferences from known facts, and that there was little or no direct evidence against the defendants. However, those inferences and the facts on which they were based were found to be sufficiently particularised to show that the plaintiff did have an arguable case, and this was not an instance of alleging fraud without the evidence to support it (although the evidence was indirect): paras 17 – 24.

[48] At paragraphs 58 to 59 Lang J considers the application to strike out the cause of action of knowing receipt/equitable tracing. The cause of action was based

on an alleged agreement or understanding which had the purpose of generating income and profit for the defendant companies, and causing losses to the plaintiff. At para 59, Lang J states:

> I do not accept that the plaintiffs should be required to plead the precise time or date at which the agreement was formed. A plaintiff in a case such as this will never be able to do that. Any such agreement, understanding or arrangement is likely to have been made orally and behind closed doors. It is highly unlikely that it would be contained within any document. The plaintiffs may in fact be required to prove the existence of the agreement, understanding or arrangement by having regard solely to the actions that the parties took in relation to the transactions that are the subject of the claim. I accept, however, that, although the purpose of the alleged agreement, understanding or arrangement has been pleaded, the essential terms have not.

[49] The plaintiffs were required to amend certain paragraphs of the statement of claim to particularise the essential components of the agreement or understanding alleged. Apart from this, the pleadings were found to be sufficient.

[50] Comparing the pleadings in this case to those in *Motorworld Limited and Ors v McGregor*, I find them to be sufficient in all the circumstances. The plaintiffs have set out the facts from which they infer conspiracy and interference with contractual relations. They have set out the nature of the agreement which is alleged and its essential terms. Although dates are not precise, a timeframe is given. The particulars requested in the defendants' application as to when and how agreements between the defendants were made, and details of the communications between defendants, are matters which the plaintiffs cannot be expected to know. They are matters, however, which if indeed they had arisen at the operative times, would be within the knowledge of the defendants. The application by the first and third defendants for further particulars must fail.

Result

[51] The first and third defendants' application for further particulars is denied.

[52] As I have noted above, the first and third defendants' application for security for costs however is granted.

[53] An order is now made that within twenty working days from the date of this judgment the plaintiffs are to give security for costs first, to the first and third defendants in the sum of $40,000.00 and secondly, to the second and fourth defendants in the further sum of $40,000.00, by paying these sums into Court or by giving, to the satisfaction of the Registrar, security for these sums.

[54] A further order is made that this proceeding is stayed until the amounts ordered as security are paid into Court or other security is provided to the satisfaction of the Registrar.

[55] The plaintiffs and defendants have each been partially successful in these applications. As such, costs are to lie where they fall.

‘Associate Judge D.I. Gendall’