Neutral Citation: [2014] IEHC 439

THE HIGH COURT

[2014 No. 6669 P]

COMMERCIAL

[2014 No. 122 COM]

BETWEEN

MICHAEL O'FLYNN, JOHN O'FLYNN, MICHAEL O'FLYNN, JOHN O'FLYNN, BRABSTON LIMITED, BROOMCO (4102) LIMITED, CESIUM LIMITED, COLEBRIDGE INTERNATIONAL LIMITED, CRESTOR LIMITED, DEANSHALL, DELLACOURT LIMITED, EASTGATE DEVELOPMENTS (CORK), FAIRBURY UNLIMITED, FTG PROJEKT KERPEN GMBH & CO. KG, GALILEO RESIDENZ BREMEN GMBH & CO. KG ACTING BY ITS GENERAL PARTNER GALILEO RESIDENZ GMBH, GRAIGUEMORE LIMITED, JELTON LIMITED, LAMADA LIMITED, LITTLE ISLAND PROPERTY LIMITED, MAGNUM FREEHOLDS LIMITED, MAGNUM PROPERTY NOMINEES 15 LIMITED, MEDALLION INVESTMENT LIMITED, MILLINGTON PROPERTIES LIMITED, O'FLYNN CONSTRUCTION (B.T.C.), O'FLYNN CONSTRUCTION (LAPPS QUAY), O'FLYNN CONSTRUCTION (ROCHESTOWN), O'FLYNN CONSTRUCTION (TECHNOLOGY PARK), O'FLYNN CONSTRUCTION CO., O'FLYNN CONSTRUCTION HOLDINGS, PRECIS (2111) LIMITED, PRECIS (2110) LIMITED, PRECIS (2102) LIMITED, PRECIS (2103) LIMITED, PRECIS (1672) LIMITED, PRECIS (2175) LIMITED, PRECIS (2176) LIMITED, PRECIS (2112) LIMITED, RESIDENCIES UNIVERSITARIAS, S.A., ROSE CASTLE, SENTINEL NUMBER TWO LIMITED, SHELBOURNE SENIOR LIVING LIMITED, TIGER ATRIUM LIMITED, TIGER BREMEN ONE GMBH, TIGER BREMEN TWO GMBH, TIGER COWLEY LIMITED, TIGER DEVELOPMENTS, TIGER DEVELOPMENTS GMBH & CO KG, TIGER DEVELOPMENTS (JERSEY) LIMITED, TIGER GUILDFORD LIMITED, TIGER HANNOVER GMBH & CO. KG, TIGER HARBOUR ISLAND LIMITED, TIGER HAYMARKET LIMITED PARTNERSHIP, TIGER 4 LIMITED, TIGER 55 LIMITED, TIGER 130 LIMITED, TIGER (DOMINION) LIMITED, TIGER HAYMARKET NO. 1, LIMITED (AS GENERAL PARTNER FOR TIGER HAYMARKET LIMITED PARTNERSHIP), TIGER (IOM) LIMITED, TIGER (RETAIL DOMINION) LIMITED, TIGER NO. 1 GENERAL PARTNER LIMITED FOR ITSELF AND AS GENERAL PARTNER OF TIGER NO. 2 LIMITED PARTNERSHIP, TIGER NO. 1 LIMITED PARTNERSHIP AS LIMITED PARTNERSHIP ESTABLISHED UNDER THE LIMITED PARTNERSHIP ACT 1907, TIGER NO. 2 GENERAL PARTNER LIMITED FOR ITSELF AND AS GENERAL PARTNER OF TIGER NO. 2 LIMITED PARTNERSHIP, TIGER NO. 2 LIMITED PARTNERSHIP A LIMITED PARTNERSHIP ESTABLISHED UNDER THE LIMITED PARTNERSHIP ACT 1907, TIGER NO. 5 LIMITED, TIGER PROPERTIES LIMITED, TIGER ST MICHAEL'S LIMITED, TIGER TEESDALE LIMITED, TOPWELL NO. 1 LIMITED, TOPWELL NO. 2 LIMITED, TOPWELL NO. 5 LIMITED, TOPWELL NO. 6 LIMITED, MAGNUM PROPERTY NOMINEES 3 LIMITED, MAGNUM PROPERTY NOMINEES 4 LIMITED, MAGNUM PROPERTY NOMINEES 14 LIMITED, MAGNUM PROPERTY NOMINEES 16 LIMITED, MAGNUM PROPERTY NOMINEES 43 LIMITED, GODALMING TRUSTEE COMPANY LIMITED, TIGER ENTERPRISE NO. 2 LIMITED, STOCKLEY PARK TRUSTEE COMPANY LIMITED, STOCKLEY PARK TRUSTEE COMPANY NO. 2 LIMITED, THE LIVINGSTONE TRUSTEE COMPANY LIMITED, LIVINGSTONE TRUSTEE COMPANY NO. 2 LIMITED, VALDES PPROPERTY LIMITED, VICTORIA HALL CONSTRUCTION LIMITED, VICTORIA HALL LIMITED, ZONA GASTRONOMICA SLU

PLAINTIFFS

AND

CARBON FINANCE LIMITED, PAUL MCCANN, PATRICK DILLON, MARK BYERS, MARCUS WIDE, THE BLACKSTONE GROUP LLP AND THE BLACKSTONE GROUP INTERNATIONAL PARTNERS LLP

DEFENDANTS

JUDGMENT of Mr. Justice Brian J. McGovern delivered on the 6th day of October, 2014

1. There are two motions before the court in these proceedings. The first is an application by the sixth named defendant for an order discharging the order of O'Malley J. made on 26th August, 2014, whereby she granted leave to the first and second named plaintiffs to issue and serve proceedings on the sixth named defendant out of the jurisdiction. The sixth defendant brings the application on the grounds that the affidavit sworn on behalf of the first and second plaintiffs grounding the application did not meet the requirements of the O. 11 of the Rules of the Superior Courts and did not set out the requisite material and facts to justify the relief sought. ("*The first motion*")

2. The second motion is brought by the first, sixth and seventh defendants for an order striking out para. 11 of the statement of claim on the basis that they referred to various facility agreements which are subject to the exclusive jurisdiction of the English Courts and for other ancillary orders striking out the proceedings on the basis that inadequate particulars of the claim have been furnished. ("*The second motion*")

The First Motion

3. A number of affidavits were filed in the motion and extensive written and oral submissions were presented to the court. The motion is brought pursuant to O. 12, r. 26 which states:-

> *"A defendant before appearing shall be at liberty to serve notice of motion to set aside the service upon him of the summons or of notice of the summons, or to discharge the order authorising such service."*

4. The *ex parte* motion to join the sixth defendant was brought before O'Malley J. on 26th August, 2014. Prior to that date, a statement of claim had been delivered which was based on the inclusion of additional plaintiffs. It was delivered on 15th August, 2014. Particulars were raised by the existing defendants in the proceedings and were responded to on 24th August, 2014. The motion before O'Malley J. took place two days later. It is important to note that the motion was moved on consent of the parties proposed to be joined subject to the right of Carbon Finance Limited and the added defendants to raise jurisdictional issues canvassed in a letter from their solicitors dated 20th August, 2014, sent to the solicitors for the plaintiffs. In that letter, Arthur Cox on behalf of the first, sixth and seventh defendants stated:-

> *"However for the avoidance of doubt, our clients' willingness to accept service of, and to plead to, the amended pleadings is entirely without prejudice to all of their rights and entitlements (contractual and otherwise) and is strictly subject to the 'choice of law' and 'choice of jurisdiction' clauses under any Finance Document, including the Corporate*

Facility Agreements and any other documents which afford the English Courts or any other courts (other than the Irish Courts) exclusive jurisdiction over any dispute relating to or arising under such documents and enter such disputes subject exclusively to the law and courts of such jurisdiction and all of our clients' rights in this regard are fully reserved."

5. On 26th August, 2014, the plaintiffs' solicitors sent an email to the defendants' solicitors in which they stated:-

"As I understand it, your clients' consent to our clients' application to amend pleadings pursuant to my correspondence of yesterday's date (letter sent by email at 20:56 on 25.08.14) remains unchanged. It, therefore, remains as outlined in your dated 20 August 2014 and email of Friday last at 16:32."

The solicitor for the defendants confirmed that this was correct in a replying email sent some five minutes later.

6. There is some confusion over the order made by O'Malley J. and in particular what provisions of O. 11 were relied on by the judge in granting leave to issue and serve proceedings out of the jurisdiction. The *ex parte* docket identified O. 11, r. 1(e) and/or O. 11, r. 1(f) of the Rules of the Superior Courts. However, para. 23 of the affidavit sworn by Mr. Michael O'Flynn in support of the application stated that "*…Blackstone is a necessary and proper party to the within proceedings. Moreover, I say and believe and am so advised that the plaintiffs and the additional plaintiffs have good causes of action against the additional defendants*." It is clear that by making such a statement the plaintiffs sought to rely on Order 11, rule 1(h). Since the application was made *ex parte*, it does not seem to me to be essential that all the relevant constituents of O. 11 be set out so in the *ex parte* docket long as, at the hearing of the application, the applicant satisfies the judge that there are good grounds for permitting service outside the jurisdiction on the basis of one or more of the rules in Order 11. As it happens, when the order was drawn up it did not indicate on what basis the learned judge made the order. What comes before the court on this application is an application by the sixth named defendant to set aside the order on the basis that the requirements of the order were not met in the affidavit sworn on behalf of the first and second defendants.

7. This is not an appeal against the decision of O'Malley J. but rather an application to set aside that order on the application of an interested party who was not in court when the *ex parte* application was made. While the court is obliged to consider whether or not an order granted *ex parte* should be set aside, it should be slow to do so in the absence of new evidence, calling into question the basis on which the first order was made. The plaintiffs argue that no new evidence has been adduced by the sixth defendant to show that the learned High Court Judge should not have made the order which she did.

8. In *McCarthy v. Pillay* [2003] 1 I.R. 592, the Supreme Court considered an application to set aside the service of a third party notice on the grounds that the defendants had failed to comply with the requirements of O. 11 of the Rules of the Superior Courts and also on the basis of *forum non conveniens*. Although that was an application by a third party, the case has many features which are relevant to this application brought by the sixth defendant. At pp. 598 - 599, Hardiman J. set out the relevant provision of the Rules, which provides that applications to serve out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country the proposed defendant is or probably may be found and whether such defendant is a citizen of Ireland or not. Where leave is sought to serve under O.11, r. 1, the applicant must state the particulars necessary for enabling the court to exercise a due discretion in the manner required by rule 2 and no leave shall be granted unless it shall be made sufficiently to appear to the court that the case is a proper one for service out of the jurisdiction under Order 11. At p. 599, Hardiman J. said:-

"It appears to me that these provisions have been complied with. The affidavits on behalf of the defendants contain:-

(a) a summary of the plaintiff's case against the defendants as it appears in her proceedings;

(b) a statement of the facts relied on in the application to join the third party, showing the involvement of that party including the antenatal book, a copy of which is exhibited: it is further stated that the information in this book was inaccurate and the implications of this fact for the treatment of the plaintiff are set out, together with a statement of the possible relevance of the anti-D issue;

(c) it is stated that in the belief of the deponent the third party was a concurrent wrongdoer;

(d) it is further stated that 'The issues as between the plaintiff and the defendants are closely interwoven with the issues as between the plaintiff and the proposed third party and those between the defendants and the proposed third party.'"

9. Hardiman J. went on to say that it did not appear to him that any real issue was taken with the factual contents of the defendants' affidavits. The plaintiffs argue that they have met the test set out by Hardiman J. in *McCarthy v. Pillay* and that the sixth defendant has not taken issue with any of the factual contents of the plaintiffs' affidavits. I accept that submission.

10. In the statement of claim delivered on 15th August, 2014, (and prior to the application before O'Malley J.) the plaintiffs pleaded that the first named defendant ("*Carbon*") is a limited company registered within the State and is a member of the Blackstone Group of companies. In his affidavit grounding the application to O'Malley J., Mr. Michael O'Flynn stated that Carbon appears to be a special purpose vehicle incorporated in Ireland for the purpose of Blackstone's acquisition of the O'Flynn Groups loans from the National Asset Loan Management Limited. Paragraph 42 of the statement of claim sets out the claim of conspiracy and makes it referable to earlier acts of Carbon and the receivers (who have since been discharged from the proceedings). Paragraph 98 of a reply to a notice for particulars delivered prior to the application before O'Malley J. sets out in some detail the nature of the conspiracy alleged insofar as it is possible for the plaintiffs to do so at this stage. In my view, the plaintiffs have met the test of setting out a "*good arguable case*" as articulated by Fennelly J. in *Analog Devices BV v. Zurich Insurance Company* [2002] 1 I.R. 272. The statement of claim pleaded conspiracy and the affidavit of Mr. O'Flynn set out, in sufficient detail, the matters alleged to connect the sixth named defendant with the conspiracy alleged. The plaintiffs set out sufficient grounds for establishing that they were entitled to an order joining the sixth named defendant under O. 11, r. 1(f) and Order 11, rule 1(h). It is questionable whether there was sufficient information to enable the plaintiffs to obtain an order under O. 11, r. 1(e) so far as the sixth named defendant is concerned but the plaintiffs did not appear to press for an order based on that rule. Although the *ex parte* docket grounding the application before O'Malley J. refers to O. 11, r. 1(e) and O. 11, r. 1(f) of the Rules of the Superior Courts it is clear that the application was made on foot of an affidavit which included an averment by Mr. O'Flynn that Blackstone was a necessary and proper party to the proceedings and he set out the grounds on which he believed this to be so.

11. While the sixth named defendant complains that the plaintiffs did not produce the evidence required to entitle them to an order

for service out of the jurisdiction, the plaintiff relies on the observations of Clarke J. in *National Educational Welfare Board v. Ryan* [2008] 2 I.R. 816. In that case, Clarke J. cautioned against requiring too much detail at an early stage of proceedings insofar as it is the nature of cases brought in fraud or conspiracy that the victim would not have the means of knowledge of the precise extent of what has been done to them until they have obtained discovery. He held that a balance has to be struck between competing considerations. At pp. 824 – 825, he said:-

> *"The balance must be struck on a case by case basis but having regard to the following principles. Firstly, no latitude should be given to a plaintiff who makes a bare allegation of fraud without going into some detail as to how it is alleged that the fraud took place and what the consequences of the alleged fraud are said to be. Where, however, a party, in its pleadings, specifies, in sufficient, albeit general, terms the nature of the fraud contended together with specifying the alleged consequences thereof, and establishes a prima facie case to that effect, then such a party should not be required, prior to defence and, thus, prior to being able to rely on discovery and interrogatories, to narrow his claim in an unreasonable way by reference to his then state of knowledge. Once he passes the threshold of having alleged fraud in a sufficient manner to give the defendant a reasonable picture as to the fraud contended for, and establishes a prima facie case to that effect, the defendant should be required to put in his defence, submit to whatever discovery and interrogatories may be appropriate on the facts of the case, and then pursue more detailed particulars prior to trial."*

12. In my view, the plaintiffs have set out their claim with sufficient particularity, at this stage, to entitle them to the order joining the sixth named defendant. Since the sixth named defendant has not challenged any of the factual evidence before O'Malley J., I see no reason to discharge the order which she made on the *ex parte* application.

The Second Motion

13. This motion is brought on behalf of the first, sixth and seventh defendants seeking two forms of relief. The first (items 1 and 2 in the notice of motion) seek orders striking out para. 11 of the amended statement of claim insofar as that paragraph makes reference to a number of facility agreements which, it is claimed, are subject to the exclusive jurisdiction of the English Courts. The application is made under O. 19, r. 27 of the Rules of the Superior Courts. In the alternative, an order is sought pursuant to the inherent jurisdiction of the court dismissing the plaintiffs' claims insofar as they seek a determination of the construction of those agreements on the grounds that they are subject to the exclusive jurisdiction of the English Courts and/or that the plaintiffs' claims were bound to fail. For convenience, I will refer to those claims in the notice of motion as "*the jurisdiction claims*". The other reliefs sought in the notice of motion (set out in paras. 3 – 5) are orders requiring the plaintiffs to reply to particulars No. 33, 62, 64, 68, 70, 73, 76, 79 and 82 of a notice for further and better particulars delivered by the first, sixth and seventh defendants on 29th August, 2014. The plaintiffs seek an order staying the proceedings pending the delivery of such particulars. The plaintiffs also seek an order pursuant to O. 19, r. 5 and/or O. 19, r. 27 of the Rules of the Superior Courts striking out the claim of the plaintiffs against the first, sixth and seventh defendants for damages for conspiracy, and against the sixth and seventh defendants for damages causing loss by unlawful means; and damages for inducement to breach of contract and interference with contractual relations on the grounds that no particulars of same have been provided in the amended statement of claim or in the replies to two notices for particulars. I will refer to the reliefs sought in paras. 3 – 5 as "*the motions for particulars".*

The Jurisdiction Claims

14. In these proceedings, the plaintiffs refer to eight corporate facility agreements (including a Spanish facility) which were entered into between various plaintiffs and the National Asset Loan Management ("*NALM*") on 28th February, 2013. Seven of those facility agreements and the continued existing Spanish facility were assigned by NALM to Carbon on 16th May, 2013. In the proceedings, the plaintiffs seek certain declarations in respect of what is characterised as "*the Loan Construction Issue*" which is said to arise in respect of facility agreements between various plaintiffs and the first named defendant (Carbon) as assignee of NALM. The parties accept that all the agreements were dated 28th February, 2013, and are, broadly speaking, similar in their terms apart from jurisdiction clauses.

15. Five of the group facility agreements provide that they are governed by the laws of England and that the Courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with the agreement. In those agreements, the parties agreed that the Courts of England are the most appropriate and convenient courts to settle disputes and stated that no party will argue to the contrary. Three of the facility agreements are governed by Irish law and provide that the Irish Courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection therewith and that the Irish Courts are the most appropriate and convenient courts to settle such disputes and no party will argue to the contrary.

16. The clauses in the agreements relating to jurisdiction are clear and unambiguous.

17. The plaintiffs argue that in entering a non-conditional appearance to the proceedings, Carbon waived any entitlement to claim English jurisdiction in those agreements which referred to the acquisition of the loans and the interpretation of clauses in the various loans. The first defendant entered a non-conditional appearance and the plaintiffs argue that it has abandoned its entitlement to rely on the English jurisdiction clauses by reason of:-

> (i) the conduct of the first defendant in the course of correspondence between the parties prior to 29th July, 2014. In that correspondence no point was taken that a number of facility agreements referred to therein were subject to an exclusive English jurisdiction clause;
>
> (ii) the entry by the first defendant of what they term a non-conditional appearance on 1st August, 2014; and
>
> (iii) the participation by the first defendant in the application for an injunction brought by the first two plaintiffs against the first defendant heard by Irvine J. on 5th, 6th and 7th August, 2014.

18. On 29th August, 2014, the sixth and seventh named defendants entered an appearance: "*…without prejudice and solely to contest the jurisdiction of the court*."

19. So far as the sixth and seventh named defendants are concerned there cannot be any doubt but that they intended to contest the jurisdiction of the court to try any issues relating to the facility agreements which are subject to the exclusive jurisdiction of the English courts. They are entitled to do so. But it seems to me that the first defendant is also entitled to do so even though it entered an unconditional appearance. The exchange of correspondence between the solicitors for the parties makes it quite clear that the defendants were willing to accept service and to plead to the amended pleadings:-

> "*…entirely without prejudice to all of their rights and entitlements (contractual and otherwise) and is strictly subject to the "choice of law" and choice of jurisdiction" clauses under any Finance Document, including the Corporate Facility*

> *Agreements and any other document which afford the English courts or any other courts (other than the Irish courts) exclusive jurisdiction over any dispute…"* (See letter from Arthur Cox to P.J. O'Driscoll & Sons, 20th August, 2014)

The plaintiffs cannot have been in any doubt that the defendants intended to raise these issues in the proceedings. In circumstances where the plaintiffs are relying on a number of facility agreements, some of which are subject to Irish law and jurisdiction and some of which are subject to English law and jurisdiction, the defendants cannot be precluded from raising these jurisdictional issues in the proceedings having entered an appearance. The conditional appearance on behalf of the sixth and seventh named defendants was entered on 29th August, 2014. The plaintiffs rely on the fact that the first defendant entered an unconditional appearance on 1st August, 2014, which was sometime prior to the letter from Arthur Cox of 20th August, 2014, in which they sought to reserve their client's position on the jurisdictional issue. In *Kelly v. Lennon* [2009] 3 I.R. 794, Charleton J. held that where parties to a contract have agreed a choice of jurisdiction and have signed the document the "*…Court is obliged to give effect to the choice of jurisdiction*". In *Kutchera v. Buckingham International Holdings Limited* [1988] I.R. 61, McCarthy J. considered that, "*the correct legal principle is that the party's choice of jurisdiction should be upheld and the necessary procedural orders granted unless there are strong indications to the contrary*". At p. 83 he said "*In my view, it must be the policy of this and other courts to hold parties to the bargains into which they enter*".

20. The first defendant is domiciled in Ireland and the Irish Courts have jurisdiction over it and can hear issues arising in respect of the facility agreements which contain an Irish law and Irish jurisdiction clause. When the first defendant entered an appearance to the original plenary summons, it was by no means clear that the proceedings encompassed agreements some of which were subject to English law and English jurisdiction clauses. I am quite satisfied that in the circumstances of this case, the defendants are entitled to raise the jurisdiction point with regard to the agreements which were subject to English law and English jurisdiction.

21. I am also satisfied that I am obliged to give effect to the choice of legislation agreed by the parties. The plaintiffs cannot maintain those claims in this jurisdiction as not only did they agree that they were subject to the exclusive jurisdiction of the English Courts and were subject to English law, but they also agreed that in each of those agreements the courts of England are the most appropriate and convenient courts to settle disputes and accordingly, that no party to those agreements would argue to the contrary. In those circumstances the plaintiffs cannot maintain that the Irish Courts held jurisdiction to entertain those claims and they are bound to fail. Accordingly, I will grant an order pursuant to O. 19, r. 27 of the Rules of the Superior Courts striking out para. 11 of the statement of claim insofar as that paragraph makes reference to the facility agreements referred to in the notice of motion as agreements "CF03", "CF04", "CF05", "CF07" and "CF08". I do so on the basis that the reliefs sought with regard to those agreements will prejudice, embarrass and delay the trial of the action and on the basis that they are subject to the exclusive jurisdiction of the English Courts. I also make this order pursuant to my inherent jurisdiction on the basis that a determination by this Court of the construction of the said agreements which are subject to the exclusive jurisdiction of the English Courts are bound to fail.

The Motions for Particulars

22. The applicants seek an order requiring the plaintiffs to reply to particulars No. 33, 62, 64, 68, 70, 73, 76, 79 and 82 of the notice for further and better particulars delivered by the first, sixth and seventh defendants on 29th August, 2014.

23. The reply of 2nd November, 2014, to query number 33 is sufficient and adequate to enable the defendants to deal with the claim. Insofar as the "*Corporate Facility Agreements*" refer to all eight of the amended and restated facility agreements, many of those are no longer relevant as they have been struck out of the proceedings for the reasons set out in para. 22 above. With regard to particulars No. 62, 64, 68, 70, 73, 76, 79 and 82, the information furnished in para. 26 of the statement of claim contains sufficient detail of these matters to enable the defendants to meet the allegations made against them and I accept the submissions made by the plaintiffs that the information sought in these queries has been furnished not only in the statement of claim but also in replies to the notice for particulars of 20th August which replies were furnished on 24th August, 2014.

24. So far as the balance of the motion is concerned, I am satisfied that the claim in conspiracy, inducement of breach of contract, and interference with contractual relations is pleaded insofar as the plaintiffs are able to do so at this stage. The plaintiffs have met the test set out by Clarke J. in *National Educational Welfare Board v. Ryan* set out at para. 12 above. In *Mooreview Developments v. First Active Plc* [2005] IEHC 329, Clarke J. addressed the issue of whether a party can decline to answer a request for particulars in advance of discovery and said, at para. 7.4 that:-

> *"The fact that it may be possible, upon obtaining discovery, for a party to be able to give more detailed particulars does not absolve it from the obligation to particularise the claim as best it can when it makes that claim. One must presume that a claim would not have been included unless the plaintiff had some basis for believing that the claim was well founded. In those circumstances it seems to me that it is appropriate to require the plaintiff to deliver such particulars as it now can. It would, of course, be appropriate for it to reserve to itself the right to deliver such reasonable additional particulars as might become apparent when discovery has been obtained and considered." [Emphasis added]*

25. I am satisfied that the plaintiffs in this case have furnished reasonable particulars of the claim and have done the best they can at this stage. I am also satisfied that, on the basis of the particulars furnished, the defendants have reasonable knowledge of the nature of the conspiracy and related economic torts alleged against them.

26. I refuse the application for further particulars and the application pursuant to O. 19, r. 5 and/or O. 19, r. 27 of the Rules of the Superior Courts striking out the claim of the plaintiffs on the ground of no particulars or insufficient particulars.