

Between:

MARTIN FLAHERTY

PLAINTIFF

– AND –

BRADÁN BEO TEORANTA

DEFENDANT

**JUDGMENT of Mr Justice Max Barrett delivered on 12th June, 2018.**

1. Mr Flaherty is the owner and master of the *Anita Marie*, a fishing vessel. Bradán Beo is a company engaged, *inter alia*, in the operation of fish hatcheries and fish farms. In the within proceedings Mr Flaherty claims for damage alleged to have been done to his fishing trawler at sea by reason, he claims, of Bradán Beo's wrongdoing. Bradán Beo has brought an application for discovery and an application for further and better particulars. The application for discovery was resolved between the parties and a related order (and an order for costs) made. The only remaining application is for an order pursuant to O.19, r.7/RSC compelling Mr Flaherty to furnish further and better particulars.

2. By notice dated 1st February, 2017, Bradán Beo sought further and better particulars of Mr Flaherty's claim. In response to the notice for particulars, Mr Flaherty delivered replies dated 22nd February, 2017. Bradán Beo claims that the replies were inadequate in material respects. By letter of 3rd April, 2017, Bradán Beo identified and reiterated the requests to which it considered a proper response had not been given. In a letter of 16th May, 2017, Mr Flaherty has made clear that no further particulars will be furnished absent an order compelling their delivery. Bradán Beo maintains that it is unable to prepare for a trial of the action of the proceedings for lack of a proper understanding of Mr Flaherty's case in several material respects.

3. The court turns briefly to consider the applicable legal principles, the dispute between the parties being not so much the substance of the applicable principles but the consequences of the application of same. In *Cooney v. Browne* [1985] IR 185, 188, Hamilton J. indicated that the ordinary use and purpose of particulars is "to define the issues between parties to any action or proceeding and thereby to prevent either party being taken by surprise and incidentally to limit as much as possible the length and expense of trials". Particulars (i) enable a party to know the case that it has to meet (thus satisfying the demands of natural and constitutional justice in this regard) and (ii) serve the purpose of pleadings by narrowing and clarifying the issues between the parties. The courts are alive to the need that (a) notices for particulars should not be used to interrogate an opponent's case by raising wide-ranging standardised particulars (*McGee v. O'Reilly* [1996] 2 IR 229) and (b) a defendant not be allowed (I) to obtain particulars of matters not alleged in the statement of claim, or (II) to use requests for particulars as a means of serving interrogatories (*Coyle v. Hannan* [1974] NI 160). In general, particulars will be ordered (i) when they are necessary for a party to know the case it has to meet, or (ii) where a refusal so to order would lead to a party being taken by surprise at the trial of the action (*McGee*). Conversely, particulars generally will not be ordered where a party already knows the broad outline of the case it has to meet (*Doyle v. Independent Newspapers (Ireland) Ltd* [2001] 4 IR 594). Nor will a court order particulars of the evidence on which a party will rely at trial (*McK v. MD* [2003] IEHC 161; *Doyle*).

4. Paragraphs 3-8 of the statement of claim provide as follows:

**"3. The Anita Marie is a vessel with a wooden hull, of 23.22 gross tonnes, being 12.19 metres in length, 4.75 metres in breadth, with a depth of 2.07 metres. She has a six cylinder, Gardner diesel engine, which produces a maximum of 82.07 kilowatts. The Anita Marie was built in 1977 in Cork and was the subject of a major overhaul in 2013. She carries pots and traps and is in the polyvalent general segment of the Irish Fleet.**

**4. The Defendant holds five marine fin fish aquaculture and foreshore licences covering twelve sites in Kilkieran Bay, Co Galway. Aquaculture Licence No 427 covers Sites 203A and 203B. Aquaculture Licence No 428 covers Sites 114A and 114B. Aquaculture Licence No 429 covers Sites 136A, 146A and 149A. Aquaculture Licence No 431 covers Sites 119A, 119B and 119C. Aquaculture Licence No 432 covers Sites 105C and 141A.**

**5. The Defendant as the holder of the said marine fin fish aquaculture and foreshore licences, whether by itself or through its servants and/or agents, was under a duty inter alia:**

- a. to conduct its operations with full regard for other users of the sea;
- b. not to interfere with other users of the sea;
- c. to ensure that all cages (including moorings therefor) and ancillary equipment are placed within the licensed areas only;
- d. to properly moor all cages in accordance with the manufacturers' specifications;
- e. to maintain all cages (including moorings therefor) and ancillary equipment in a good and proper state of repair;
- f. to ensure that all cages (including moorings therefor) and ancillary equipment are not injurious to navigation or fisheries;
- g. to ensure that all cages (including moorings therefor) and ancillary equipment do not interfere unreasonably with navigation or fisheries;
- h. to ensure that the sea is kept clear of all redundant structures, waste products or materials associated with or arising from its operations.

**6. In fundamental breach of the aforesaid duty of care, and by reason of the negligence and breach of duty of the Defendant, its servants and/or agents, on the 8th day of October 2016 at 1640 hours, while engaged in fishing activities and while located at 100245, 212065 Irish Grid Reference Point (Latitude +53.14998 and Longitude – 9.49193), the propeller, stern tube, rudder and skeg of the Anita Marie was, suddenly and without warning, impacted and fouled by a large quantity of 1.5 nylon rope which caused extensive damage to the vessel's hull and machinery.**

**7. The said rope was the property of the Defendant.**

**Particulars of Negligence and Breach of Duty, including Statutory Duty**

**The Defendant, its servants and/or agents, were guilty of negligence and acted in breach of duty, including statutory duty, in:**

- a. failing to conduct its operations with full regard for other users of the sea;*
- b. interfering with other users of the sea;*
- c. failing to ensure that all cages (including moorings therefor) and ancillary equipment were placed within the licensed areas only;*
- d. failing to properly moor all cages in accordance with the manufacturers specifications;*
- e. failing to maintain all cages (including moorings therefor) and ancillary equipment in a good and proper state of repair;*
- f. failing to ensure that all cages (including moorings therefor) and ancillary equipment are not injurious to navigation or fisheries;*
- g. failing to ensure that all cages (including moorings therefor) and ancillary equipment do not interfere unreasonably with navigation or fisheries;*
- h. failing to ensure that the sea is kept clear of all redundant structures, waste products or materials associated with or arising from its operations;*
- i. failing to remove all redundant structures, waste products or materials associated with or arising from its operations;*
- j. permitting redundant structures, waste products or materials associated with or arising from its operations to remain on the sea;*
- k. failing to ensure that all cages (including moorings therefor) and ancillary equipment were properly marked;*
- l. permitting material which was hazardous to other users of the sea to remain on the sea;*
- m. abandoning, loosing, or otherwise discarding material which was hazardous to other users of the sea;*
- n. creating dangerous conditions for passing vehicles and seafarers;*
- o. failing to warn passing vessels and seafarers of the presence of material that was hazardous to safe shipping;*
- p. causing the Anita Marie to be, suddenly and without warning, impacted and fouled by a large quantity of 1.5 nylon rope belonging to the Defendant.*

**The Plaintiff reserves the right to adduce further particulars of negligence and breach of duty, including statutory duty up to and including at the trial of the within proceedings and will rely if necessary on the doctrine of res ipsa loquitur.**

**8. By reason of the foregoing negligence and breach of duty, including statutory duty, the Plaintiff has suffered loss, damage, inconvenience and expense."**

5. It would be fair to say that the foregoing comprises a fairly generic set of pleas/claims, being in effect: 3. the Anita Marie is a ship, 4. Bradán Beo undertakes aquaculture/foreshore farming at certain sites, 5. Bradán Beo is subject to certain legal duties, 6. on a particular date at a particular place, there was an accident involving a rope, 7. the rope belonged to Bradán Beo and (with 8) Mr Flaherty has suffered as a consequence, and Bradán Beo is liable for that suffering.

6. The further and better particulars being sought are identified hereafter and the nature of the order, if any, that the court is satisfied to make.

A.

**"2. Arising out of paragraph 4 of the statement of claim, please:**

- a. clarify the relevance to the Plaintiff's claim of each of the 12 sites mentioned in line 2;**

***b. clarify whether the existence and or contents of the licences mentioned are significant to the Plaintiff's claim in these proceedings, and if so, please say precisely how in the case of each such licence."***

7. As to a., Mr Flaherty has indicated that this is a matter for evidence. The court respectfully does not consider this to be so. Bradán Beo is seeking merely to know what the case being brought against it is: are all of the 12 sites relevant to the case and, if so, why? The court will **order** further and better particulars in this regard.

8. As to b., Mr Flaherty has indicated that this is a matter for legal submission. While matters may ultimately come down to an issue of law on the interpretation of a particular licence condition or the like, in the first instance it seems to the court that all that is being sought by Bradán Beo is what is being said of it in this regard. The court will **order** further and better particulars in this regard.

B.

***"5. Arising out of paragraph 7 of the statement of claim, please:***

***a. identify the material facts relied upon for the plea that the rope alleged to have caused the damage to the Plaintiffs the vessel was the property of the Defendant;***

***b. give full and detailed particulars of each statutory duty, the breach of which is alleged, identifying the relevant legislation and section or subsection;***

***c. in relation to sub-paragraph (a), identify the specific acts and omissions of the Defendant alleged to constitute the failing generically described;***

***d. in relation to subparagraph (b), identify the specific acts and omissions of the Defendant alleged to constitute the failing generically described;***

***e. in relation to subparagraph (c), please identify the location of each allegedly non-compliant cage or mooring;***

***f. in relation to subparagraph (d):***

***(i) furnish a copy of the manufacturer's specifications mentioned; and***

***(ii) identify precisely each of the alleged incidences of non-compliance, identifying the location of the cage or mooring in question in each case;***

***g. in relation to subparagraph (e), identify:***

***(i) precisely the location of each cage or mooring alleged to have suffered from a failure of maintenance; and***

***(ii) identify the disrepair alleged to have affected each such cage, mooring, or piece of ancillary equipment;***

***h. in relation to sub-paragraph (f), identify the specific acts and omissions of the Defendant alleged to constitute the failing generically described;***

***i. in relation to sub-paragraph (g), identify the specific acts and omissions of the Defendant alleged to constitute the failing generically described;***

***j. in relation to sub-paragraphs (h), (i) and (j):***

***(i) identify specifically the redundant structures, waste products and other materials to which reference is made; and***

***(ii) state precisely each of the material facts relied upon for the allegation that the same was associated with or arose from the Defendants' operations;***

***k. in relation to subparagraph (k):***

***i. identify precisely the cages, moorings and equipment alleged not to have been properly marked; and***

***ii. please say how, if at all, it is alleged that the relevant items were marked, and the alleged deficiency of marking each case;***

***l. in relation to sub-paragraphs (n) and (m) identify precisely:***

***i. the material to which reference is made, and***

***ii. each of the material facts relied upon for the allegation that the material so identified originated with the Defendant;***

***m. in relation to sub-paragraph (n), identify the specific acts and omissions of the Defendant alleged to constitute the failing generically described;***

***n. in relation to sub-paragraph (o), please identify precisely:***

***i. the material to which reference is made; and***

***ii. the mode and manner of warning that it is alleged ought to have been given;***

***o. in relation to sub-paragraph (p), please identify precisely each of the material facts relied upon for the claim that the Defendant caused the Plaintiff's boat to be fouled;***

***p. please identify precisely how the Plaintiff proposes to rely on the doctrine of res ipsa loquitur."***

9. As to a., Mr Flaherty has indicated that this aspect of matters is adequately pleaded. The court respectfully does not consider that this is so. As counsel for Bradán Beo indicated at hearing the sea is full of flotsam and jetsam and many people have aquaculture centres. All that is being asked in this regard is the material facts on which it is being pleaded that the rope belonged to Bradán Beo, something that Bradán Beo needs to know if it is not to be surprised at the trial. The court will **order** further and better particulars in this regard.

10. As to b., Mr Flaherty indicates that what is being pleaded is breach of s.67 of the Fisheries (Amendment) Act 1997 which is a provision concerned with the removal of unlawful structures from the seabed. That is helpful so far as it goes; however, it is not clear why Bradán Beo cannot be told what case is being made against it in this regard so that it is not surprised at the trial. The court will **order** further and better particulars in this regard.

11. As to c., Mr Flaherty's response is that the obligation described is a term of Bradán Beo's aquaculture/foreshore licences and the extent to which Bradán Beo complied with its obligations under its licences and the law is a matter for evidence. However, it seems to the court that it is in the first instance a matter for particulars because Bradán Beo needs to know how it is alleged that Bradán Beo failed to comply with the said obligations if it is not to be surprised at the trial. The court will **order** further and better particulars in this regard.

12. As to d., Mr Flaherty's response is that the obligation described is a term of Bradán Beo's aquaculture/foreshore licences and the extent to which Bradán Beo complied with its obligations under its licences and the law is a matter for evidence. Again, it seems to the court that it is in the first instance a matter for particulars because Bradán Beo needs to know how it is alleged that Bradán Beo failed to comply with the said obligations if it is not to be surprised at trial. The court will **order** further and better particulars in this regard.

13. As to e., this is akin to a defendant in a road traffic accident asking 'did the accident occur on Street A or Street B? what are you saying happened? Ultimately such matters will fall to be decided on the evidence; however Bradán Beo needs to know what is being alleged if it is not to be surprised at trial. The court will **order** further and better particulars in this regard.

14. As to f., point (i), this is more properly a matter for discovery, not a matter for particulars. As to f., point (ii), Mr Flaherty indicates that this is a matter for evidence. Ultimately matters will fall to be decided on the evidence; however Bradán Beo needs to know what is being alleged if it is not to be surprised at trial. The court will **order** further and better particulars in this regard.

15. As to g., h., and i., Mr Flaherty indicates that this is a matter for evidence. Ultimately matters will fall to be decided on the evidence; however Bradán Beo needs to know the acts and omissions alleged to constitute the alleged failing if it is not to be surprised at trial. The court will **order** further and better particulars in this regard.

16. As to j., point i., Mr Flaherty has responded "*The large quantity of 1.5 nylon rope*" and no further particulars ought to be or are being sought in this regard. As to j., point ii, it seems to the court that the particulars to be provided in respect of 5.a are adequate. The court will not order further and better particulars in this regard.

17. As to k., Mr Flaherty indicates that these are matters for evidence and legal submission. However, all that is being asked in this regard is 'which cages and moorings were not properly marked? what are the deficiencies being claimed?' The effective non-answer that Mr Flaherty has given in this regard has the result that Bradán Beo is not fairly warned as to the case it has to meet and stands to be taken by surprise at the court of trial. The court will **order** further and better particulars in this regard.

18. As to l., point i, Mr Flaherty has responded "*The large quantity of 1.5 nylon rope*" and no further particulars ought to be or are being sought in this regard. As to l., point ii, it seems to the court that the particulars to be provided in respect of 5.a are adequate. The court will not order further and better particulars in this regard.

19. As to n., point i, Mr Flaherty has responded "*The large quantity of 1.5 nylon rope*" and no further particulars ought to be or are being sought in this regard. As to n., point ii, ultimately matters will fall to be decided on the evidence; however Bradán Beo needs to know what is being alleged as to the type of warning that it is alleged ought to have been given. The court will **order** further and better particulars in this regard. It does not seem to the court that also to order m. is necessary.

20. As to o and p., it seems to the court that all that is being sought is the material facts by reference to which the plea of *res ipsa loquitur* is to be made, i.e. what is it that was under the management and control of Bradán Beo and what are the facts and circumstances by reference to which it is claimed that there could be no reasonable explanation for what happened other than negligence on the part of Bradán Beo? The court will **order** further and better particulars in this regard.

C.

***"Arising out of paragraph 8 of the statement of claim, please...***

***g. identify precisely the nature and quantity of the fishing gear alleged to have been in the water at the time of the incident....***

***i. if it is alleged that the fishing gear was damaged, please give full and detailed particulars of the damage alleged to have occurred and how the same is alleged to have occurred....***

***n. please identify the fishing gear referred to at page 4, paragraph 4, line 4, and please give full and detailed particulars of the damage to the same, and say whether it is alleged that all damage to the same now presenting was caused by the incident on 8 October 2016, and say whether it is claimed gear as mentioned at page 4, paragraph 1, line 4;***

***o. in relation to the deductions identified in the calculation of loss of earnings, please say whether in each case the sum is subject to value added tax, and say whether the plaintiff is registered for value added tax”.***

21. Mr Flaherty claims that a large quantity of fishing gear had to be left in the water and was damaged/written off. At g and i, Bradán Beo seeks details as to the fishing gear in order that it knows the substance of the claim being made in this regard and can then make its own assessment of matters and meet the claim made in this regard. The court will **order** further and better particulars in this regard.

22. As to n and o, what is being sought (at n, to the extent that it does not overlap with i) is detail that there is not some other fishing gear that has also been damaged, and (at o) whether the sum is subject to VAT (Mr Flaherty has indicated that he is not subject to VAT); Mr Flaherty has clearly gone to some detail to put together the estimate and it must be a matter of some simplicity for him to indicate whether the figures are VAT inclusive or not. The court will **order** further and better particulars in respect of n, in order that Bradán Beo knows the substance of the claim being made against it in this regard. As to o, the court admits to some surprise that something as easy to provide as to whether VAT has been applied or not would not be identified. However, it does not appear to the court that the provision of such detail is necessary for Bradán Beo to know the case it has to meet or that its absence would result in Bradán Beo being taken by surprise in this regard at the trial of the action.