

**FIRST GLOBAL FUNDS LIMITED PCC & ANOR v NOMURA INTERNATIONAL
PLC & ORS**

2023 SCJ 283

Record No. SC/COM/PWS/01016/2016

**THE SUPREME COURT OF MAURITIUS
(Commercial Division)**

In the matter of:

- 1. First Global Funds Limited PCC**
 - 2. Weston International Asset Recovery Company Limited**
- Plaintiffs**

v

- 1. Nomura International PLC**
 - 2. Nomura Bank International PLC**
- Defendants**

In the presence of:

- 1. First Capital Management Limited**
 - 2. The Financial Services Commission of Mauritius**
- Third Parties**

RULING

At the sitting of 07 July 2022, the defendants informed the Court that the particulars furnished under the second answer to demand of further and better particulars dated 03 June 2022 were not satisfactory and that arguments would have to be heard in relation thereto. As at 06 February 2023, a letter has been uploaded on behalf of the defendants that particulars in relation to questions 1, 2, 4 to 19, 22 to 32, 34, 36 to 50, 52, 56 to 59, 61, 63 to 65, 70 to 79, 81 to 84, 87, 89, 90, 92 to 99, 101, 103, 104, 106 to 109, 112 to 114, 116, 118 to 130, 132 to 139 of the defendants' second demand of further and better particulars dated

29 March 2022 are being insisted upon as the plaintiffs have failed to provide adequate responses to those questions in their answers to the second demand of further and better particulars dated 03 June 2022.

Arguments put forward by the defendants

The defendants are insisting on these particulars inasmuch as they are necessary for the defendants to know the case they have to meet with clarity and precision and to prepare their defence fully. It has been submitted by learned Senior Counsel for the defendants that the plaintiffs' answers to these questions and the reference to the bulk of documents and appendices purportedly supplied in support thereof are vague, uncertain, defective by their lack of clarity and precision and framed in a way which does not meet the purposes of an answer to a demand of particulars.

The second demand of further and better particulars dated 29 March 2022 contains a paragraph explaining that the particulars provided by the plaintiffs in the latter's previous answer dated 08 November 2021 are inadequate inasmuch as they are, for the most part, mere references to appendices which contain vast amounts of imprecise information and, therefore, they do not amount to particulars at all. It has also been submitted that when the plaintiffs do provide an answer to a question, the answer generally refers to an appendix. Defendants have been referred to 26 appendices which span over a number of pages and which contain multiple documents without any reference or indication as to what part of the appendices might be relevant to the question asked. It has been argued on behalf of the defendants that the plaintiffs' repeated references to the appendices are vague which contain unnecessary and immaterial averments that are unduly prolix and which is not an acceptable approach to particulars under the Supreme Court Rules. It has also been submitted that the plaintiffs' assertion which is repeated in many answers to the effect that *"any additional document not already communicated to the Plaintiffs' previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial"* is not consistent with the Supreme Court Rules and contrary to the interests of justice as such a course of action will allow the plaintiffs to withhold documents they currently hold but which will only be disclosed nearer to the trial to the detriment of the defendants.

Learned Senior Counsel appearing for the defendants has directed the Court to the answers in question.

Answer 1

It has been argued that answer 1 and its supporting appendices are a perfect illustration of the plaintiffs' failure to meet the requirements of our law on particulars.

A key aspect of the plaintiffs' case is the allegation that the issue and acquisition of the 7,217,207 Participating Redeemable Preference Shares in plaintiff No. 1 by defendant No. 1 was made in breach of the plaintiff No. 1's constitutive document at the time, that is, a Memorandum and Articles of Association dated 06 April 2001 (the 2001 Memorandum).

In question 19 of the first demand of particulars, the defendants asked the plaintiffs for particulars of how the provisions of the 2001 Memorandum had allegedly been breached by these acquisitions. It has been submitted that this is a straightforward question which requires the plaintiff to simply identify (i) which provisions of the 2001 Memorandum were allegedly breached and (ii) the actions that were allegedly taken by defendants in breach of those provisions. The plaintiffs' answer was that *"the Defendants are referred to the provisions of the 2001 Memorandum, which are self-explanatory"*.

In line with the principle that the defendants are entitled to bind the plaintiffs to a definite story and to know the case they have to meet with certainty, better and further particulars were insisted upon. However, the plaintiffs still refused to specify which provisions of the 2001 Memorandum were in issue and instead referred the plaintiffs to four appendices, labelled A, B, H and K. Appendix A is "a case memorandum" of 8 pages, an internal note prepared by the plaintiffs to give a broad outline of the plaintiff with summons (the plaintiff) among other irrelevant matters. Appendix B is a note of 41 pages providing, with references to charts and diagrams, a general description of the alleged fraud. Appendix B does not explain how this alleged fraud ties into the provisions of the 2001 Memorandum. Appendix H has 485 pages and appendix K 779 pages. Nowhere do the plaintiffs indicate which part of these appendices may be relevant to the question being asked. The defendants then asked for specific particulars on this question without references to documentation that is, for the most part, irrelevant to the question being asked. The plaintiffs' answer is that *"this has already been answered in ATP2"* and *"for further clarification please refer to Appendix A for Share Sale Agreement contracts synopsis into chart form"*.

It has been argued that there is no chart in appendix A to the third answer to particulars. Secondly, the document does not in any way identify the provisions of the 2001 Memorandum in issue. Lastly, the document is full of averments that are irrelevant to the question,

unnecessary and generally vexatious. It is the contention of the defendants that the plaintiffs have failed to answer question 1 so that an order must be given for proper particulars to be furnished.

Answer 2.2

Answer 2.2 reads as follows -

"Please refer to Appendices B,C,D,E and F that confirms (sic) a document of the minutes of an FGFL PCC Board of Directors meeting held in Mauritius on 31 March 2009 that is already in the Defendants' possession indicating that each and every issuance of the FLN's, VRN's, VRCD's and other securities issued by Nomura totalling USD 9.15 billion were structured, layered, placed and integrated by Nomura, Bank Century and Robert Tantular under 169 separate acts of fraud that was committed by Nomura "without the knowledge of the company"."

It has been submitted that appendix B is a series of tables seemingly prepared by the plaintiffs. Appendix C contains two documents, a status report and another series of tables. Appendix D is a note with three diagrams summarising the alleged fraud and appendix F is an extract of appendix B to the second answer to particulars (a note by the plaintiffs on the fraud in general). The documents together are about 50 pages and themselves refer to several further documents.

Without any reference to the part of these appendices that is relevant to the "*minutes of an FGFL PCC Board of Directors meeting held in Mauritius on 31 March 2009*", the defendants are at a complete loss as to what "document" these appendices "confirm".

In light of the above, it has been submitted by learned Senior Counsel for defendants that answer 2.2 in the response is vague and fails to meet the purposes of particulars and must be disregarded.

Answer 4

At paragraph 13(e) of the plaint, the plaintiffs aver that, as part of the alleged fraudulent scheme carried out by defendant No. 1, the shares registered in defendant No. 1's name in plaintiff No. 1 are subject to "*liens*" preventing any further transfers. In the first demand of the

defendants' demand of particulars, the defendants asked for particulars of these "*liens*". The plaintiffs' answer was that this was a matter of evidence.

The defendants insisted on further and better particulars of these "*liens*" and the answer was as follows: "*the Defendants are referred to Appendix E and documents provided under the Answer to Particulars*". Appendix E to the second answer to particulars is a 714 page document which does not contain any reference to the said "*liens*". The plaintiffs have maintained the above answer and stated that "*any additional document not already communicated by the Plaintiffs' previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial.*"

It has been submitted that, whenever an allegation of fraud is made in a claim, the facts, matters and circumstances in support of the allegation must be clearly and distinctly pleaded (based on **Premchand I. & Ors v Jagoo A. R. & Ors** [\[2013 SCJ 184\]](#)). The purpose of pleadings is to ascertain with precision the matters on which the parties differ and each party should state clearly and intelligibly the material facts on which he relies, omitting everything immaterial. It is submitted that answer 4 is a mere reference to hundreds of pages of irrelevant documentation without any explanation or guidance and does not constitute an acceptable approach to particulars within the meaning of the Supreme Court Rules.

It has, therefore, been submitted that proper particulars to question 4 must be provided by the plaintiffs.

Answers 5 to 7

Question 5 concerns the legality of the agreements that led defendant No. 1 to become a shareholder in plaintiff No. 1 whereas questions 6 and 7 deal with the alleged "repackaging" of the preference shares acquired by defendant No. 1 in plaintiff No. 1.

It has been submitted that the legality of defendant No. 1's acquisitions of shares in plaintiff No. 1 and the legality of the subsequent "repackaging" of these shares are important issues to which the Court must have regard to determine whether the plaintiffs are entitled to the orders sought in the plaint or not. As such, it is paramount that this aspect of the plaintiffs' case be pleaded in an intelligible, clear and precise manner, complete with all the facts, matters and circumstances that are relevant for the determination of the case, and ultimately devoid of anything immaterial. Given the seriousness of the allegations made against the defendants, the defendants are entitled to precision.

Relying on **Premchand I. & Ors v Jagoo A. R. & Ors (supra)**, it has been submitted that it would also be “unfortunate” for the plaintiffs to simply state that particulars on this aspect of the case are a matter of evidence so that proper particulars should be provided for.

Answer 8

It has been submitted that answer 8 provides a good illustration of a request for information where the answer ought to have been simple but finally turned into a search through vast amounts of irrelevant information provided by plaintiffs.

Answer 8 of the response relates to paragraph 17 of the plaint with summons where the plaintiffs averred that they were the “present owners” of plaintiff No. 1 who became aware of the alleged fraud. When particulars of these “present owners” were asked for, the plaintiffs answered that this is “immaterial” to the plaint. After being pressed on the matter in the second demand of particulars, the plaintiffs referred the defendants to appendix E, a document that is 714 pages long, without any explanation as to what part of the document may be relevant.

The defendants thereupon insisted on proper particulars to the question and in the response, the plaintiffs averred that this is a matter of evidence and that any additional document not already communicated by the plaintiffs’ previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial. The plaintiffs also referred to appendix E to the response which contains twelve documents prepared by Weston International Limited and plaintiff No. 2 totalling over 200 pages. Understanding through whom plaintiff No. 1 became aware of the alleged fraud is part of the facts and circumstances which should be clearly and precisely particularised so that the defendants can prepare their defence; hence, it has been submitted that there is a need for an order from the Court in that regard.

Answers 9 to 11

Answers 9, 10 and 11 relate to the alleged fraud and, in particular, to the defendants’ involvement therein. In the corresponding paragraphs of the plaint (paragraphs 17 and 18), the plaintiffs have made a bare allegation that the defendants were involved in a conspiracy to defraud, unsupported by particulars of the alleged fraudulent actions and/or communications, when they occurred, what made them fraudulent, and/or the defendants’ knowledge of the alleged fraud. It has been submitted that such particulars are required by law when pleading fraud and are critical to the determination of the present matter and yet the

plaintiffs answered that *“this is a matter of evidence”* and *“any additional document not already communicated by the Plaintiffs’ previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial”*. The plaintiffs also referred the defendants to appendices without any explanations or indications as to how these appendices may be relevant.

It has been submitted that these answers are inconsistent with rules on particulars and therefore, proper particulars to questions 9, 10 and 11 should be provided for.

Answer 12

Question 12 was a request for an exhaustive list of the alleged “complicit partners” of defendant No. 1 in the alleged fraud.

The plaintiffs’ answer in the response is that *“the Plaintiffs are not responsible for giving Nomura (sic) full detailed particulars of these complicit partners”* and *“this is a matter of evidence, any additional document not already communicated by the Plaintiffs’ previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial”*.

It has been submitted that the identity of all the persons who have been involved in the alleged fraud as “complicit partners” of defendant No 1, at least to the plaintiffs’ knowledge at this stage of proceedings, constitutes facts, matters and circumstances which must be disclosed to the defendants for them to know the case they have to meet with and this is critical information for the defendants to prepare their defence.

Knowing who has been involved in an alleged fraud is also necessary information. The Court has been referred to **Sofer v Swissindependent Trustees SA [2020] ECWA Civ 699** where it was held that an allegation of fraud should include all the natural persons who, within a body corporate, are said to have been dishonest and/or are said to have had the requisite knowledge. It is further submitted that on the authority of **Sofer v Swissindependent Trustees SA (supra)**, a clear list of defendant No. 1’s alleged “complicit partners” should be provided by the defendants.

Lastly, it has been submitted that the plaintiffs are again taking a misconceived approach to pleadings by taking the stand that the onus is on the defendants to guess who these “complicit partners” are, when the onus is actually on the plaintiffs to provide this information.

It is in light of the above that it has been submitted that the defendants insist on proper particulars to question 12 of the third demand of particulars.

Answers 13 to 15

Question 13 deals with the indictment of defendant No. 1’s alleged complicit partners. Questions 14 and 15 deal with the link between defendant No.1 and persons involved in the alleged fraud. In response, the plaintiffs have asserted that the information is, purportedly, already to the knowledge of the defendants which is a misconceived objection.

It has been submitted that the plaintiff’s response to these questions goes on to make further bare allegations regarding the defendants’ involvement in the alleged fraud, once again unsupported by any of the particulars legally required to support a pleading of fraud, in breach of the principles set out in our case law (vide **Premchand I. & Ors v Jagoo A. R. & Ors (supra)**).

In light of the above, the defendants have insisted on proper particulars to questions 13, 14 and 15.

Answers 16 to 19

Questions 16, 17, 18 and 19 of the third demand of particulars concern the complete lack of particulars provided by the plaintiffs of the alleged fraud. The plaintiffs’ answers to these questions do not provide any of the missing particulars. They refer to a number of appendices without any guidance and aver that particulars need not be provided given that these matters are allegedly already to the knowledge of the defendants.

The following documents have been referred to –

- (i) Appendix K: a memorandum by an unknown author, undated but “last reviewed in October 2021” on Money Laundering;
- (ii) Appendix L: a page from Investopedia on Racketeering;

- (iii) Appendix M: guidance notes on AML/CFT for financial institutions issued by the Bank of Mauritius dated June 2005;
- (iv) Appendix N: a note on Money Laundering Offences dated 11 June 2021 by an unspecified author;
- (v) Appendix S: a FATF Report dated July 2018 on Money Laundering; and
- (vi) Appendix T: an advisory from the Department of the Treasury Financial Crimes Enforcement Network for financial institutions issued in March 2012.

It has been submitted that they are all theoretical documents that have no relevance to the facts of the present matter without explanations from the plaintiffs and, in any event, they do not provide a “comprehensive examination” of the alleged fraud.

Answers 22 and 23

Question 22 is in relation to how defendant No. 1 appeared as “Fronting Part” in the alleged fraudulent scheme. While the plaintiffs make broad allegations against defendant No. 1 in answer 22, it has been submitted that they again fail to provide clear and precise facts, circumstances and matter relevant to the allegation including particulars of what is alleged to have made the actions referred to fraudulent and the defendants’ knowledge of the alleged fraud.

Question 23 deals with the underlying assets of plaintiff No. 1 at the time of the alleged fraud. Although this issue is critical in the present matter as it directly relates to the legality of the transactions entered into by the defendants, the plaintiffs’ answer is that particulars need not be provided inasmuch as this matter is allegedly to the knowledge of the defendants.

It has been submitted that these answers do not meet the requirements of rules on particulars and the defendants accordingly insist on proper particulars to questions 22 and 23.

Answers 24 to 32

At questions 24 to 32, the defendants requested information on key averments in the plaint. These include the basis for the plaintiffs to aver that the defendants have failed to meet their legal obligations, particulars of the issue of certain notes by the defendants and their contribution to the assets of plaintiff No. 1 and defendant No. 1’s alleged involvement in the alleged fraud as calculation agent. The plaintiffs have refused to provide particulars in these

answers for reasons that are substantially similar to those already mentioned earlier so that particulars should be furnished.

Answer 34

Answer 34 deals with how and when First Gulf Asia Holdings Limited allegedly ordered the acceptance of fraudulent promissory notes and shares into plaintiff No. 1.

It has been submitted that a significant aspect of the plaintiffs' case is the alleged lack of underlying assets held by plaintiff No. 1 to back the securities and financial instruments used to "repackage" plaintiff No. 1's shares. How and when "fraudulent promissory notes and shares" were added to plaintiff No. 1's assets is, accordingly, an extremely important aspect of the case and is one that must be particularised and pleaded to the extent required by case law on the matter.

In answer 34, the plaintiffs refer, without any additional information, to 23 Share Sale Agreements between the defendants and First Gulf Asia Holdings Limited and have maintained answer 40 of the second answer to particulars.

Answer 40 referred the defendants to appendices A, B, H, P and Q to 29 Share Sale Agreements between the defendants and First Gulf Asia Holdings Limited and plaintiffs have averred that this information is already to the knowledge of the defendants.

It is submitted that the plaintiffs' answers create inconsistencies in the plaintiffs' case and they fail to provide clear and precise particulars on a key aspect of the case so that particulars to answer 34 should be furnished.

Answers 36 to 50

In questions 36 to 50 of the demand of particulars, the plaintiffs sought particulars on key averments of the plaint. These questions deal with the issue of preference shares in plaintiff No. 1; the transfer of those preference shares to defendant No. 1; the alleged contributions of certain financial instruments to "Bank Century" by "Mr. Rizvi" as part of the alleged fraud; the issue of fraudulent valuations of the sub-funds of plaintiff No. 1; the alleged involvement of the defendant in certain activities involving Bank Century and fees allegedly paid to Nomura.

It has been submitted that the common thread in the plaintiffs' corresponding answers is that the plaintiffs again refer the defendants to various appendices without any explanation as to why these may be relevant and they refuse to provide particulars on the ground that these documents are allegedly in the defendants' possession. It has, therefore, been submitted that particulars to these answers should be furnished.

Answer 52

As regards answer 52, it has been submitted that it is an illustration of vague pleadings.

At paragraph 31 of the plaint, the plaintiffs averred that defendant No. 1 did not make the claim of being the owner of "capital" shares in plaintiff No. 1. The defendants asked for particulars of these "capital" shares since plaintiff No. 1 only has Ordinary Shares and Participating Redeemable Preference Shares. The plaintiffs answered that the question was in the nature of an interrogatory.

The defendants insisted on particulars of these "capital" shares since it is essential for them to understand why the plaintiffs used that word in the circumstances and at answer 59 of the second answer to particulars, the plaintiffs' answer was that *"the Defendants are referred to Appendices A, B, C, D, E, F, P, R, S, T and it is stated that the Defendants already have this in their possession."*

Provided there is no inconsistency in the plaint, it has been submitted that this should have been a very simple question to answer as there should only be two possible answers to the particulars requested to be furnished. The plaintiffs either referred to Ordinary Shares or Participating Redeemable Preference Shares. It is submitted that the plaintiffs should be able to answer this question clearly and precisely without referring the defendants to vast amounts of irrelevant documentation.

For all of the above reasons, proper particulars to question 52 are being insisted upon by the defendants.

Answers 56 to 59

Particulars were requested at questions 56 to 59 of the circumstances of the alleged fraud including the alleged complicit partnership between the defendants and other parties and the issuance of allegedly fraudulent notes by the defendants.

It has been submitted that the plaintiffs have again answered these questions with references to various appendices that are irrelevant to the question being asked and that this is matter of evidence that documents are allegedly in the defendants' possession.

It has been submitted that this approach is in breach of rules on particulars and the defendants insist on proper particulars to questions 56 to 59.

Answer 61

In question 61, the defendants requested for particulars of the manner in which these Net Asset Valuations were deemed to be "false" by the plaintiffs.

It has been submitted that answer 61 is so vague, unclear and uncertain that it does not make any sense.

The defendants accordingly insist for proper particulars in relation to answer 61.

Answers 63 to 65

Question 63 requested for particulars of any investigation carried out in relation to the fraud as averred at paragraph 32 of the plaint. At questions 64 and 65, clear and precise particulars of the alleged fraud have been requested.

The plaintiffs, in answers 63, 64 and 65, state that this is interrogatory and is a matter of law and have referred the defendants to appendices K, L, M and Y.

The defendants have submitted that such an answer does not amount to a satisfactory one and particulars need to be furnished.

Answers 70 to 79

Question 70 is a request for particulars of the alleged fraudulent enhancement of Net Asset Valuations. The corresponding answer is a mere reference to appendices X and Y in their entirety.

Question 71 is a request for particulars of the alleged efforts that plaintiff No. 1 and third party No. 1 are allegedly making to enhance the value of plaintiff No. 1. The plaintiffs have refused to answer the question on the ground that it is vague.

Question 72 seeks particulars of the alleged money laundering activities committed by the defendants. The plaintiffs' answer is a reference to appendices without any additional information.

Question 73 has sought for particulars of new legal filings against the defendants in relation to the alleged fraud whilst question 74 has requested for particulars of the defendants' alleged money laundering activities. The plaintiffs' answer to both questions is that this is interrogatory and is a matter of law with references to appendices without any explanations.

In Question 75, the defendants have asked for particulars of the financial instruments allegedly used to "repackage" the shares fraudulently and received as an answer that this matter is already within the defendants' knowledge along with a reference to a number of appendices without any reference to the relevant part thereof.

Identical issues have arisen in relation to questions 76 to 79.

Again, the defendants have submitted that the answers are unsatisfactory and have prayed for an order from the Court.

Answers 81 to 84, 87, 89, 90, 92 to 99, 101, 103, 104, 106 to 109

All these answers raise issues that –

- (i) refer the defendants to volumes of documents without any clear indication as to what part thereof might be relevant;
- (ii) refuse to provide information on the ground that such information is allegedly already to the defendants' knowledge; and
- (iii) maintain that material aspects of the case cannot be particularised because this is a matter of evidence.

It has been submitted that for reasons that have already been canvassed earlier, the defendants are entitled to proper particulars to these questions.

Answers 112 to 114

In answer 112, the plaintiffs refuse to provide particulars of how the amount of USD 108,000,000/- is reached on the grounds that this is a matter of evidence and any additional document not already communicated by the plaintiffs' previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial. The plaintiffs have also stated that this is interrogatory in nature and the defendants already have the information in their possession.

Answer 113 refers to question 101 of the second demand for further and better particular and answer 114 refers to question 109 of the second demand for further and better particulars. Answer 101 of the response is a reference to appendices B, C, D, E, F, and H "*in their entirety for cross-referencing*" and answer 109 is a general refusal to provide the particulars sought.

Since the defendants are faced with a claim of no less than USD 829,720,000/-, it has been submitted that it is only fair that the defendants be provided with certainty on how these amounts are reached so that the defendants can prepare their case (vide **Premchand I. & Ors v Jagoo A. R. & Ors (supra)**). Hence, the defendants should be furnished with proper particulars to questions 112, 113 and 114.

Answers 116, 118 to 127, 129, 130 and 132 to 139

The plaintiffs have generally adopted the same approach in their answers by stating that these particulars are a matter of evidence and that any additional document not already communicated by the plaintiffs' previous answers will be treated in accordance with the Supreme Court Rules of the Supreme Court of Mauritius in advance of the trial and by referring the defendants to appendices with little to no guidance. No clear and precise particulars of the alleged fraud and/or the defendants' alleged involvement have been provided so that proper particulars to questions 116, 118 to 127, 129, 130 and 132 to 139 need to be furnished by the plaintiffs.

Answer 128

Question 128 seeks particulars of all the averments in paragraph 43 of the plaint where the plaintiffs have made allegations regarding underlying assets held by plaintiff No. 1.

It has been submitted that answer 128 refers to appendices A to Z in their entirety and that they cross-refer each and every one of these appendices in their entirety and that such a course of action is contrary to the rules on particulars; hence, the need for particulars to be furnished in relation to answer 128.

Learned Senior Counsel for the defendants has argued that a defendant's right to apply for particulars of a plaint with summons in a case before the Supreme Court stems from Rule 10 of the Supreme Court Rules 2000 which reads as follows -

“10. Particulars of plaint with summons

The defendant or any other party may apply for such particulars of the plaint as he may require and for inspection of any document which the plaintiff proposes to adduce in evidence.”

Learned Senior Counsel for the defendants has referred to the case of **Gujadhur and Ors v Gujadhur & Sons Ltd** [\[1962 MR 49\]](#) where the Court reaffirmed the general principle laid down in **H. M. C. Rassool & Ors v C. P. François** [\[1914 MR 26\]](#) as follows -

“The object of particulars is to prevent surprise at the trial by informing the opposite party what the case which he has to meet, to explain and limit the pleadings which are vague or require limitation, and generally to define and narrow the issue to be tried to save unnecessary expenses.”

Special requirements in cases of fraud under Mauritian law

It has been argued by learned Senior Counsel for the defendants that, in matters of fraud, it is well settled under our case law that it is the cardinal principle of pleadings where fraud is intended to be charged, it must be distinctly charged and its details specified.

It has further been argued that it cannot be said that the particulars of that fraud are “a matter of evidence” and leave the defendants with anything but uncertainty as to the case they have to meet. It has been submitted that matters and circumstances relied upon to support an allegation of fraud must be pleaded and clearly particularised. The need for clarity in matters of fraud is not only for the benefit of the defendants; it is essential that the plaintiffs plead the facts, matters and circumstances relied upon to support an allegation of fraud so that the Court

may reach the proper conclusion. It has been further argued that if a plaintiff fails to meet the required standard of precision, this is not a mere technicality, it is a fundamental flaw which could warrant a claim being dismissed, set aside or non-suited.

The Court has also been referred to the case of **Brendan McEneaney & Others v Ulster Bank Ireland Limited and Another [2015] EWHC 3173 (Comm)** where the High Court reminded practitioners that pleadings, especially those alleging fraud, need to be clear and specific and that allegations of fraud must always be properly particularised: *“the more serious the allegation of misconduct, the greater is the need for particulars to be given which explain the basis for the allegation”*.

It has been submitted that the case before the Court is a claim for orders in relation to shares in a Professional Collective Investment Scheme. It includes a prayer for a payment in the amount of no less than USD 721,720,000/- to plaintiff No. 1 and a prayer for the payment of USD 108,000,000/- to plaintiff No. 2. It is an international finance case revolving around an alleged “multi-billion fraud” with allegations of larceny, embezzlement, fraud and money laundering made against the defendants throughout. The above extract from **Brendan McEneaney & Others v Ulster Bank Ireland Limited and Another (supra)** is, accordingly, particularly relevant to the present matter. It is submitted that since the allegations against the defendants are extremely serious, the need for clear particulars and pleadings is correspondingly greater, hence the need for particulars to be furnished.

Arguments put forward by the plaintiffs

It has been argued by learned Counsel for the plaintiffs that the first demand of particulars sets out 286 questions whilst the second demand of particulars contains 200 questions, which it has been submitted amounts to a demand for communication of documents as opposed to a demand of particulars. It has been submitted that there have been 604 questions since the inception of the case and hundred of questions related to communication of documents.

Learned Counsel for plaintiffs has submitted that the defendants themselves acknowledge that the present matter is a complex one but this would not be a reason for not asking questions but what is of concern is the fact that a number of questions relate to particulars of the evidence or are in the nature of interrogations. The Court has been referred to a number of questions whereby the words ‘to show how this or that has taken place’. Learned Counsel for plaintiffs has equally submitted that the averments of fraud have been

particularised in the plaint, for example, the fraud is set out at paragraphs 22 and 23. Paragraph 29 relates to the averment of money laundering perpetrated by the defendants and other paragraphs that follow, that is 30, 37, 39, 43, 59 to 61 all point to the fraud.

It has equally been submitted that the demand of particulars amounts to no less than forcing each and every time the plaintiffs to state which part of a document they are relying upon, thus forcing the plaintiffs to unnecessarily limit their case. The defendants, it has been submitted, have proceeded in an abusive manner.

Findings

I have given due consideration to the oral and written submissions of learned Counsel.

Rule 10 of the Supreme Court Rules entitled “Particulars of plaint with summons”, provides that the defendant or any other party may apply for such particulars of the plaint as he may require and for inspection of any document which the plaintiff proposes to adduce in evidence. It stems from a reading of Rule 10 that a defendant can ask for particulars of the plaint as he may require; the question that arises is why a defendant is allowed to do so. As laid down as far back as 1888 (the case of **Spedding v Fitzpatrick (1888) 38 Ch D 410**), the object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so as to save unnecessary expense and to avoid parties to be taken by surprise. This principle has been applied in Mauritius in the case of **H. M. C. Rassool & Ors v C. P. François (supra)** where the Court stated that the object of particulars is to prevent surprise at the trial by informing the opposite party what is the case he has to meet, to explain and limit pleadings which are vague or require limitation and generally to define and narrow the issues to be tried and to save unnecessary expenses.

In the case of **Collet and anor v Albert [1955 MR 300]**, the same principle is to be found in the following terms: *“Particulars will not be exacted where it would be oppressive or unreasonable to make such an order, as where the information is not in the possession of either party, or could only be obtained with great difficulty or where particulars are not applied for till the last moment. But where the information asked for is clearly necessary to enable the applicant properly to prepare for trial, or where in other respects the application is a proper one, the information must be given, even though it discloses some portion of the evidence on which the other party proposes to rely at the trial”*. In the case of **Hawaldar v Prayag Freres [1960 MR 55]**, the Court referring to **Odgers’ Principles of Pleading and Practice, 16th Edition** stated that *“If your opponent has worded his pleading so vaguely that you cannot be*

sure what his line of attack or defence will be at the trial, it is worthwhile to apply for particulars, even though you can make a shrewd guess at his meaning”.

A reading of the plaint undoubtedly in a gist shows that there are averments of massive money laundering and fraud. As rightly submitted by learned Senior Counsel appearing for the defendants as laid down in the case of **Maxo Products v Swan Insurance Co. Ltd** [1996 MR 41], it is a cardinal principle of pleading where fraud is intended to be charged that it must be distinctly charged and its details must be specified. The Court went on to state that “*General allegations, however strong, are insufficient to amount to an averment of fraud of which any Court ought to take notice*”. It follows that where there are averments of fraud, the fraud needs to be distinctly charged and details particularised and an answer to demand of particulars which plainly states that it is a matter of evidence cannot be of great help in determining the issue raised as a defendant is entitled to know with certainty what case it has to meet.

As laid down in the case of **Premchand I. & Ors v Jagoo A. R. & Ors (supra)** “.....*averments of fraud must be expressly pleaded together with the facts, matters and circumstances relied on to support the allegation, and that the Court must be in presence of the issues which it is expected to determine in order to reach a proper conclusion*”. Likewise, in the present matter, it is altogether too easy for the plaintiffs to aver that the particulars asked for are simply a matter of evidence. Under our law, facts, matters and circumstances relied upon must be pleaded and particularised so that the Court may meaningfully determine the issues in question. It would certainly not be in the interests of justice to allow a case to proceed on the basis of vague pleadings. Since there have been very serious allegations of a massive fraud having been allegedly committed by the defendants, there is a dire need for clear particulars to be furnished by the plaintiffs. In that regard, the Indian case of **K.S Mariyappa v K.T. Siddalinga Setty, AIR 1989 KAR 425** is of interest inasmuch as it was observed therein that in the absence of necessary particulars pleaded by the plaintiffs regarding fraud and collusion, it was not possible to hold that the plaint contained necessary averments as to fraud and collusion. The Court went further to state that “*Material particulars such as when and how and who and in what manner and for what purpose the fraud was practised and who colluded with whom and in what manner and with what object or purpose must be averred*”.

It is of utmost importance that particulars should be given of every material allegation contained in a pleading so that litigation between parties are conducted fairly and without surprises. However, the Court will not condone fishing expeditions and neither will the Court order that particulars be given in every case as of right - it is a discretionary right vested with the Court to be exercised judiciously.

In the light of the foregoing, in the present matter, the plaintiffs are requested to furnish better and further particulars in relation to the questions listed out as the defendants are entitled to know what is the case they have to meet with clarity and precision especially given the allegations of fraud. Mere reference to documents generally will be of no help; the plaintiffs should direct the defendants to which parts of the documents the answer is contained in. The matter is made returnable on the e-filing system for particulars to be furnished at latest by 18 August 2023.

P. D. R. Goordyal-Chittoo
Judge

18 July 2023

For Plaintiffs	:	Mr. T. Koenig, Senior Attorney
	:	Mr. M. Sauzier, Senior Counsel together with
		Mr. S. Dabee, of Counsel
For Defendants	:	Mr. S. Mardemootoo, Attorney-at-Law
	:	Mr. R. Chetty, Senior Counsel together with
		Mrs. P. Balgobin-Bhoyrul, Mr. E. Luchmun,
		Mrs. R. Jogeedee-Pentiah and Mr. K. Chetty, all of
		Counsel
For Third Party No. 1	:	Mrs. V. Babooa, Attornet-at-Law
	:	Mr. S. Dabee, of Counsel
For Third Party No. 2	:	Mr. G. Ramdewar, Senior Attorney
	:	Ms. N. Narayen, of Counsel