

SUPREME COURT OF NOVA SCOTIA

Citation: *Eisener v. Wolfe*, 2023 NSSC 336

Date: 20231024
Docket: 523114
Registry: Halifax

Between:

Rachel Leigh Eisener and Joe Elliott

Plaintiffs

v.

Brian Wolfe, Brenda Wolfe, Atlantic Real Estate Services Ltd. operating as Royal LePage Atlantic, Shirley Anne Lloyd, 3283429 Nova Scotia Limited, operating as Canadian Residential Inspection Services -Annapolis Valley, and Robert MacKeen

Defendants

Judge: The Honourable Justice Darlene Jamieson

Heard: October 4, 2023, in Halifax, Nova Scotia

Oral Decision: October 4, 2023

Written Decision: October 24, 2023

Counsel: Christopher Robinson, K.C. for the Plaintiffs

Wayne Francis and Katherine Stevenson (Articled Clerk) for the Defendants 3283429 Nova Scotia Limited and Robert MacKeen

John Shanks for the Defendants Brian Wolfe and Brenda Wolfe (Not appearing)

Ian Dunbar for the Defendants, Atlantic Real Estate Services Ltd. Operating as Royal LePage Atlantic and Shirley Anne Lloyd (Not appearing)

By the Court:

Background

[1] The Defendants, 3283429 Nova Scotia Limited, operating as Canadian Residential Inspection Services - Annapolis Valley, and Robert MacKeen (“ the Defendants”) filed a Notice of Motion on August 22, 2023 seeking an order to compel the Plaintiffs to provide “ a further and better Statement of Claim in accordance with Civil Procedure Rule 38.08(6)”. Specifically the Defendants seek the identification of any and all information in a home inspection report, dated August 2, 2022, which the Plaintiffs allege is false and misleading.

[2] On June 21, 2023, the Defendants provided the Plaintiffs with a Demand for Particulars seeking the following:

1. With regards to paragraph 15 of the Statement of Claim, the particulars of the “false” information alleged to be contained within the inspection report.
2. With regards to paragraph 15 of the Statement of Claim, the particulars of the “misleading” information alleged to be contained within the inspection report.

[3] The Plaintiffs provided the following Answer to Demand for Particulars:

1. Answer: The above demand refers to paragraph 15 of the Statement of Claim. In answer, the Plaintiff’s state that the report of the inspection of the Defendants, 3283429 Nova Scotia Limited operating as Canadian Residential Inspection Services - Annapolis Valley and Robert MacKeen, provided false information, *inter alia*, in its omission of material and accurate information concerning the Home’s construction and condition, which these Defendants knew or ought to have known upon inspection of the Home.
2. Answer: The above demand refers to paragraph 15 of the Statement of Claim. In answer, the Plaintiffs state that the report of the inspection of the Defendants, 3283429 Nova Scotia Limited operating as Canadian Residential Inspection Services - Annapolis Valley and Robert MacKeen, provided misleading information, *inter alia*, its own omission of material and accurate information concerning the Homes construction and condition, which these defendants knew or ought to have known upon inspection of the Home.

[Emphasis added]

Parties' Positions

The Defendants

[4] The Defendants have not yet filed their Statement of Defence as they say they are unable to respond without the requested particulars. The Defendants say the Statement of Claim contains a generic plea that the Defendants provided false and misleading information in the home inspection report, however, makes no effort to explain, indicate or identify what information in the report is false and misleading. The Defendants say they understand the Plaintiffs' allegation regarding omissions, as set out in the Answer to Demand for Particulars, but not what is alleged to be false in the report. The Defendants say without knowing what information is alleged to be both false and misleading they cannot properly defend the claim. They say the particulars requested are not within the knowledge of the Defendants as they do not know what information the Plaintiffs allege to be false and misleading. They say the home inspection report is 105 pages long containing answers to 406 questions about the condition of various aspects of the Home at issue. They say the Plaintiffs have not provided any information to identify which portions of the report are in issue.

[5] The Defendants further say in order to defend the allegation of misrepresentation they must know what it is they are alleged to have said that is untrue. They say they are entitled to know the case they must meet before they file the Statement of Defence. They say the particulars requested are not evidence, they simply seek to identify which part of the report is alleged to be untrue. They say the evidence to determine whether the statements in the report are untrue will be disclosed during the discovery process.

The Plaintiffs

[6] The Plaintiffs say the Statement of Claim provides a clear, comprehensive and intelligible pleading of the allegations of fact against the Defendants. They say that no defendant confronted with this Statement of Claim would be left in any doubt as to the case they must meet nor would they be surprised when a fact alleged in the Statement of Claim is sought to be proved.

[7] They say the Defendant's request for isolated affirmative statements contained in their report which are alleged to be misrepresentations not only seeks evidence or a description of evidence but information that is within their

knowledge and will be disclosed through document disclosure and oral discovery. They say the Statement of Claim sets forth the factual allegations upon which the report of these Defendants is alleged to be misleading. The failure to represent accurately the true construction and condition of the Home, in light of the specific purpose for which the Defendants were retained to inspect it, constitutes negligent misrepresentation. The Plaintiffs say omitting information concerning the conditions found in the Home are the misrepresentations. They further say that to consider that an untrue, inaccurate, or misleading representation must consist in a statement extricable from the Defendant's inspection report is incorrect. They point to the case of *Gesner v. Ernst* 2007 NSSC 146 and *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 to support their position that "misleading" can encompass silence or omissions.

Issue

[8] The sole issue in this motion is whether the Defendants are entitled to further particulars of the allegations set forth in paragraph 15 of the Statement of Claim. Stated another way: Does the Plaintiffs' Statement of Claim and its Answer to the Demand for Particulars set out sufficient particulars to permit the Defendants to respond and file a Defence?

The Law

[9] The requirements for filing pleadings appear in multiple sections of the *Nova Scotia Civil Procedure Rules*. Rules 4.02 and 38 are relevant to this motion. I am guided by these *Rules* and the cases that have considered them or their predecessor *Rules*. The *Rules* state:

4.02 Notice of action

...

(4) The statement of claim must notify the defendant of all the claims to be raised by the plaintiff at trial, conform with Rule 38 - Pleading, and include each of the following:

- (a) a description of the parties;
- (b) a concise statement of the material facts relied on by the plaintiff, but not argument or the evidence by which the material facts are to be proved;

(c) reference to legislation relied on by the plaintiff, if the material facts that make the legislation applicable have been stated;

(d) a concise statement of the remedies claimed, except costs

...

38.02 General principles of pleading

(1) A party must, by the pleading the party files, provide notice to the other party of all claims, defences, or grounds to be raised by the party signing the pleading.

(2) The pleading must be concise, but it must provide information sufficient to accomplish both of the following:

(a) the other party will know the case the party has to meet when preparing for, and participating in, the trial or hearing;

(b) the other party will not be surprised when the party signing the pleading seeks to prove a material fact.

(3) Material facts must be pleaded, but the evidence to prove a material fact must not be pleaded.

(4) A party may plead a point of law, if the material facts that make it applicable are also pleaded.

38.03 Pleading a claim or defence in an action

(1) A claim or defence in an action, and a claim or defence in a counterclaim, crossclaim, or third party claim, must be made by a statement of claim that conforms with Rules 4.02(4) and 4.03(5), of Rule 4 - Action, or a statement of defence that conforms with Rule 4.05(4) of Rule 4.

(2) The following additional rules of pleading apply to all pleadings in an action:

(a) a description of a person in pleadings must not contain more personal information than is necessary to identify the person and show the person's relationship to a claim or defence;

(b) claims or defences may be pleaded in the alternative, but the facts supporting an alternative claim or defence must be pleaded distinctly;

(c) a pleading that refers to a material document, such as a contract, written communication, or deed must identify the document and concisely describe its effect without quoting the text, unless the exact words of the text are themselves material;

(d) a pleading that alleges notice is given must state when the notice was given, identify the person notified, and concisely describe its content without quoting the text, unless the exact words of the text are themselves material.

(3) A pleading must provide full particulars of a claim alleging unconscionable conduct, such as fraud, fraudulent misrepresentation, misappropriation, or malice.

...

38.08 Requiring particulars in an action

(1) A party to an action may deliver to another party a demand for a further and better statement of a claim or defence.

(2) The party may only demand a statement that the other party could have included in the original pleading, and the party must not demand evidence or a description of evidence.

(3) The demand must contain the standard heading, be entitled “Demand for Particulars”, be dated and signed, demand particulars, and describe each particular in separately numbered sentences.

(4) The demand for particulars may be in Form 38.08.

(5) The demand may not be filed with the court.

(6) A judge may order a party to provide a further or better statement of a claim or defence.

[10] It is also important to keep in mind the overarching principle found in *Rule 1.01*:

1.01 Object of these Rules

These Rules are for the just, speedy, and inexpensive determination of every proceeding

[11] It is well established that a plaintiff must plead facts to establish the necessary elements of a cause of action. A plaintiff cannot merely plead allegations or legal assertions. (See for example, *MacLellan v Canada (Attorney General)*, 2014 NSSC 280).

[12] Justice Perell in *Pennyfeather v. Timinco Limited et al*, 2011 ONSC 4257 discussed the role of particulars in relation to Ontario civil procedure. His comments are useful here as well:

In between material facts and evidence, is the concept of "particulars". Particulars are additional details that enhance the material facts, and particulars have a role to play different from just being evidence: *Copland v. Commodore Business Machines Ltd.* (1985), 3 C.P.C. (2d) 77 at 80-81 (Ont. S.C.J.), *affd* (1985), 3 C.P.C. (2d) 77n (Ont. H.C.J.). Particulars are ordered primarily to clarify a pleading sufficiently to enable the adverse party to frame his or her answer, and their secondary purpose is to prevent surprise at trial: *Steiner v. Lindzon*, (1976), 14 O.R. (2d) 122 (H.C.J.). Particulars have the effect of providing information that narrows the generality of pleadings: *Mexican Northern Power Co. v. Pearson* (1913), 25 O.L.R. 422 (Ont.S.C.). Particulars define the issues, enable preparation for trial, prevent surprise at trial and facilitate the hearing: *Physicians' Services Inc. v. Cass*, [1971] 2 O.R. 626 (C.A.) at p. 627; *Areva NP GmbH v. Atomic Energy of Canada Ltd.*, [2009] O.J. No. 4372 (S.C.J.) at paras. 39-40; *Obonsawin v. Canada*, [2001] O.J. No. 369 (S.C.J.) at para. 33. A function of particulars to a statement of claim is to define the claim sufficiently to allow a defendant to respond intelligently to it: *International Nickel Co. v. Travelers Indemnity Co.*, [1962] O.J. No. 56 (C.A.); *Hou v. Wesbild Holdings Ltd.*, [1994] B.C.J. No. 2021 (B.C.S.C.); *Blatt Holdings Ltd. v. Traders General Insurance Co.*, [2001] O.J. No. 949 (S.C.J.).

[Emphasis added]

[13] The case law refers to a number of helpful principles regarding necessary particulars of material allegations in pleadings. For example, the court in *M.A. Hanna Co. v. Nova Scotia (Attorney General)*, 1990 CarswellNS 52 discussed the function of particulars and the various principles at para 10:

...

Function of Particulars. This Rule imposes on the parties a primary obligation to state in their pleadings all the 'necessary particulars' of any claim, defence or other matter pleaded, and if any pleading does not state such particulars or states only some or insufficient or inadequate particulars, the Rule enables the Court to order a party to serve either (1) particulars or further and better particulars of any claim, defence or other matter pleaded, or (2) a statement of the nature of the case relied on, or (3) both such particulars and statement. It is therefore an essential principle

of the system of pleading that particulars should be given of every material allegation contained in the pleading.

The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to reduce costs (cited with approval by Edmund Davies L.J. in *Astrovlanis Compania Naviera S.A. v. Linard*, [1972] 2 D.E. 611, [1972] 2 W.L.R. 1414 at p. 1421)(sic). This function has been stated in various ways as follows:

- (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
- (2) to prevent the other side from being taken by surprise at the trial;
- (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
- (4) to limit the generality of the pleadings or the claim of the evidence;
- (5) to limit and define the issues to be tried, and as to which discovery is required;
- (6) to tie the hands of the party so that he cannot without leave go into any matters not included. But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings.

(citations omitted)

(See also *Cansulex Ltd. v. Perry* (March 18, 1982), Vancouver Registry No. C785837, at pp. 10-11 (B.C.C.A.))

[14] As the *Rules* indicate, a pleading must provide notice to the other party of all claims, defences, or grounds to be raised by the party signing the pleading. Rule 38.02(2) has specifically included numbers 1 and 2 set out above in *Hanna, supra*, (to inform the other side of the nature of the case they have to meet and to prevent the other side from being taken by surprise at the trial). This highlights their importance. A party must know the case it has to meet when preparing for, and participating in, the trial and must not be surprised when the party signing the pleading seeks to prove a material fact.

[15] Further, the *Rule* is clear that material facts are to be pleaded but not evidence in proof of those facts — the distinction between the two has been noted as difficult to ascertain at times: "it is often difficult to separate material facts from evidence" *Fairbanks v. Nova Scotia (Attorney General)*, 2000 NSSC 103.

[16] In *Robinson v. Jacques Whitford Environment Ltd.*, 2004 BCSC 1424 (B.C. S.C.), at para. 20, the court discussed the distinction between material facts and evidence. The Court quoted the following passage from MacLachlin and Taylor's *British Columbia Practice*, 2nd ed.:

The distinction between material facts and evidence is essentially one of degree. A material fact is a fact that of itself is necessary to establish a legal proposition and without which the cause of action is incomplete. Evidence includes those facts necessary to establish the material facts. It is a safe practice, if in doubt to plead a matter as the risk of having an order go to strike out a portion of one's pleadings as being evidence is remote, and the consequences of such an order are slight (costs), while the consequences of having omitted to plead a material fact might be to have one's pleadings struck out or claim dismissed for failing to state a cause of action or defence.

[Emphasis added]

[17] In *The Law of Civil Procedure*, W.B. Williston, R.J. Roll, (1970) Butterworths, the authors state:

It is an elementary rule in pleading that when a stated fact is relied on, it is enough to allege it simply without setting forth the subordinate facts which are the means of proving it or the evidence to sustain the allegation. While generally any fact which may be given in evidence may be pleaded, the pleading of a fact which is only relevant insofar as it tends to prove a material allegation is in the nature of pleading evidence and will be struck out. (page 647)

[18] Before determining whether the requested particulars should be provided, it is appropriate to examine the tort of negligent misrepresentation. The material facts required in a pleading vary depending on the nature of the alleged cause of action. Here it is the tort of negligent misrepresentation. This court, in *Gesner v. Ernst, supra*, referred to the review of the tort of negligent misrepresentation found in the case of *Brownjohn v. Ramsay*, [2003] B.C.J. No 43:

23 Because the core of the service provided by the home inspector is the advice given regarding the condition of the home, claims against home inspectors in superior courts have been pleaded and considered by the court in the context of the tort of negligent misrepresentation. The five elements to be proven in that tort, as articulated by the Supreme Court of Canada in *Queen v. Cognos Inc.* (1993) 99 D.L.R. (4th) 626, are well established:

1. there must be a duty of care based on a special relationship between the parties,
2. the representation made by one party to the other must be false, inaccurate or misleading,
3. the representation must be made negligently,
4. the person to whom the representation is made must have reasonably relied on the representation and,
5. the reliance must have been detrimental to that person with the consequence of his suffering damages.

24 The third requirement that "the representation must be made negligently" one presumes will fall to be determined by application of the test applicable to other types of "professional negligence", namely, that the home inspector failed to meet the standard of care expected of a reasonably prudent home inspector in those circumstances and at that time.

[19] I now turn to the Statement of Claim. It contains the following allegations at paragraphs 6, 7, 8, 9, 10, 15, and 16:

6. On July 21, 2022 the plaintiffs made an offer to purchase the Home, which was accepted by the Defendants, Brian Wolfe and Brenda Wolfe, on July 23, 2022. An Agreement of Purchase and Sale entered into by the Plaintiffs and these Defendants was conditional upon a satisfactory inspection of the Home. The Plaintiffs accordingly retained the Defendants, Canadian Residential Inspection Services and Robert MacKeen, to conduct an inspection of the Home. On August 2, 2022 the Defendant, Robert MacKeen, for himself and on behalf of Canadian Residential Inspection Services, inspected the Home and prepared a report summarizing the results of this inspection, which was provided to the Plaintiffs.

7. The Plaintiffs state that the Home consists of an older original structure and large addition constructed by the Defendants, Brian Wolfe and Brenda Wolfe, for use as an apartment or rental unit. This addition, represented by these Defendants and by the Defendants, Royal LePage and Shirley Anne Lloyd, to constitute a "2-bedroom income unit", was especially important to the Plaintiffs as they planned to rent the apartment and apply the income to their mortgage payments for the Home. The Plaintiffs state that they specifically asked Robert MacKeen to confirm that the Home's addition was constructed on a slab on grade. This was not done. The Plaintiffs further state that they specifically asked the Defendants, Brian Wolfe and Brenda Wolfe, that the Home's inspector be given and shown access to all parts of the Home for the purposes of inspection. This was not done, and the Defendant, Robert MacKeen failed to locate and identify access to a crawl space located below the Home's addition, which was not constructed on a slab on grade. As a result, the inspection report provided by the Defendants, Canadian

Residential Inspection Services and Robert MacKeen, did not accurately represent the Home's true construction and condition.

8. On August 31, 2022 the Plaintiff's purchase of the Home closed and on September 3, 2022 the Plaintiffs began to move in. The Plaintiffs state that, shortly after occupying the Home, a rain event occurred, following which a mouldy and rancid smell was noticed in the home and was particularly severe in the Home's addition. At this time a tenant who had agreed to rent an apartment in the Home's addition and had begun to move in, discovered that there was no running water in the apartment. The tenant subsequently developed cough and could not continue to live with the smell in the Home's addition. By agreement with the Plaintiffs, the tenant left the apartment and her rent was returned to her.

9. The Plaintiffs further state that after taking possession of the Home they observed that the water in the Home had a persistent rancid smell and taste, they subsequently discovered a rat in the Home's well, which was required to be drained and disinfected with bleach in an attempt to obtain a safe and odourless supply water. During the time required to complete this process the Plaintiffs were without running water in the Home for approximately one week. The Plaintiffs further state that, due to the continuing rancid odour in the Home, they were required to rent a carpet cleaner and repeatedly clean the carpets in the Home in an attempt to rid the Home of persistent odour. Despite repeated cleaning the Home continued to release a rancid smell and the water collected by the cleaner was found to be black.

10. The Plaintiffs state that on October 15, 2022 they discovered a hidden hatch to a crawl space under the Home's addition, extending to more than one third of the area of the Home. Instead of the addition being constructed on a slab on grade, a 4 four-foot crawl space was discovered which was filled with between seven and twelve inches of water. In addition, the Plaintiffs discovered severe rot, mould, and major structural damage to the Home, as well as evidence of recent repairs affected in an attempt to conceal sagging encountered when walking on the kitchen floor of the Home. Subsequent to taking possession of the Home the Plaintiffs discovered that these Defendants had failed to apply for and obtain the permit necessary for construction of the Home's addition and that the Home's addition failed to comply with the requirements of applicable building codes. The Plaintiffs further state that the Defendants Brian Wolfe and Brenda Wolfe, who constructed the Home's addition 1986, were at all times aware of the crawl space located under the Home, as well as the rot, structural damage and mould within the home. The Plaintiffs state that these Defendants with knowledge of the Home's construction and condition, deliberately concealed the existence of the crawlspace under the Home and misrepresented the Home's construction and condition to the Plaintiffs.

...

15. The Plaintiffs repeat the foregoing and state that the Defendants, Canadian Residential Inspection Services and Robert MacKeen, owed a duty to the Plaintiffs to take reasonable care in the inspection of the construction and condition of the Home, and negligently failed to properly inspect the Home and provided false and misleading information in the report of the inspection provided to the Plaintiffs, which was intended to be relied upon by the Plaintiffs, and which was relied upon to their detriment. The Plaintiffs further state that the failure of these Defendants to take reasonable care in performing the inspection of the Home, and the provision of false and misleading information in the report of this inspection, constitute breaches of the express and implied terms of contract for which the Plaintiffs are entitled to damages from these Defendants.

16. The Plaintiffs plead and rely upon the provisions of the *National Building Code of Canada* and *Nova Scotia Building Code Act* and Regulations in force at the material times hereto.

[Emphasis added]

[20] I preface my comments by saying that this is not a motion seeking to strike portions of the Statement of Claim, for example, as not sufficiently disclosing a cause of action. What follows should not be taken as commenting on the sufficiency of any of the claims set out in the Statement of Claim. Here, the Defendants seek particulars solely relating to paragraph 15 of the Statement of Claim where the Plaintiffs reference false and misleading information in the inspection report. The question raised by the Defendants is whether specific reference needs to be made to each and every area of the report where it is alleged the information is false and misleading. This is the nature of the Defendants' motion for further and better particulars.

[21] In relation to the elements of the tort of negligent misrepresentation, element number 2 from *Cognos, supra*, is what is in issue here, being that the representation must be false, inaccurate or misleading. The Defendants say the Statement of Claim contains a generic plea with no information to identify what is false and misleading in the report. However, it is important to note that paragraph 15 specifically states "the plaintiffs repeat the foregoing and state that the defendants"... In other words, they incorporate the prior paragraphs by reference into paragraph 15. It is the prior paragraphs that contain the details of the material facts alleged by the Plaintiffs. The Plaintiffs have not simply pointed to the inspection report and said it contains false and misleading information without further detail or context. They have made this allegation in the context of the prior factual allegations. The Plaintiffs allege in the Statement of Claim that the Defendants negligently failed to properly inspect the Home and provided false and

misleading information in the inspection report. The Plaintiffs outline the specific elements of the Home's construction that they say Mr. MacKeen was asked to confirm, being that the addition was constructed on a slab on grade and allege that it was not but contained a 4 four foot crawlspace containing between seven and 12 inches of water. They further allege there was no running water in the rental unit; there was a mouldy and rancid smell, particularly severe in the Home's addition; there was severe rot, mould and major structural damage to the Home as well as evidence of recent repairs done in an attempt to conceal sagging encountered when walking on the kitchen floor of the Home; and that the Home failed to comply with the requirements of the applicable building codes.

[22] The Reply to the Demand for Particulars specifically indicates the false and misleading information relates to omissions from the report. The Plaintiffs' use of the phrase "*inter alia*" in the Reply (meaning amongst other things) may have been somewhat confusing to the Defendants. But reading the entirety of the Statement of Claim in relation to paragraph 15 provides clarity. Further, counsel for the Plaintiffs' confirmed in submissions that the allegations of negligent misrepresentation relate solely to omissions from the report.

[23] I am of the view that the above specific allegations set out in the Statement of Claim, including the failure to confirm that the Home's addition was constructed on a slab on grade, inform the Defendant of the case that it has to meet. The Plaintiffs have identified the nature of the alleged representations, who made the alleged representations and that false and misleading information is contained in the inspection report. For example, they specifically state in relation to the allegation that the addition was not built on a slab on grade, that the inspection report did not accurately represent the Home's true construction and condition. A pleading is a summary statement (or as Rule 4.02 says "a concise statement of the material facts relied on by the Plaintiff") of the material facts and not the evidence to be relied on to establish those facts.

[24] The pleading contains a sufficient summary statement of material facts relating to the paragraph 15 allegation of false and misleading information in the report. It is sufficient for the Defendants to enter their defence. The Defendants will not be taken by surprise given the specific facts alleged. There is enough particularity in the pleading to allow the Defendants to answer properly. The pleading allows them to know what evidence they now need to prepare.

[25] In short, I am of the view no further facts are necessary in relation to the allegation of providing false and misleading information contained in paragraph 15. There is no requirement for the Plaintiffs to identify each and every alleged false or misleading statement in the inspection report that relates to the various pleaded material facts in the Statement of Claim. Such an exercise would be an evidentiary exercise not appropriate for the pleading stage but to be addressed through the discovery process and perhaps through expert evidence. What the Defendants seek is not a statement in summary form of the material facts supporting the tort of negligent misrepresentation, they seek evidence or a description of evidence. *Rule* 38.08 prohibits such a request.

[26] The Plaintiffs have set out the alleged conditions found in the Home that form the basis of their claim for negligent misrepresentation (omission of these alleged conditions in the Home from the report). It is at the Plaintiffs' peril, if they have not sufficiently identified the extent of their claim through the material facts. The pleaded facts have set the parameters of the Plaintiffs' claim and are clear and capable of being understood by the Defendants in relation to the case they have to meet. How the Plaintiffs will prove their case is a matter of evidence. The discovery process will be the proper forum in which to address the evidence relating to the worthiness of the Plaintiffs' claim. A party should not confuse the right to make a Demand for Particulars with other provisions of the Rules such as disclosure of documents, discovery examination, Interrogatories etc.

[27] The Defendants' motion is dismissed with costs in the amount of \$800 awarded to the Plaintiffs, payable forthwith in any event of the cause.

Jamieson, J.