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Case No: 2014 FOLIO 1434

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2015

Before :

MR JUSTICE LEGGATT

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Between :

(1) Vincent Aziz Tchenguiz	**Claimant**
(2) Rawlinson and Hunter Trustees S.A	
(3) Vincos Limited	
(4) Euro Investment Overseas Inc	
- and -	
(1) Grant Thornton UK LLP	**Defendant**
(2) Stephen John Akers	
(3) Hossein Hamedani	
(4) Kaupthing Bank hf	
(5) Johannes Runar Johannsson	

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Romie Tager QC, Jonathan Crystal, Zacharias Miah and Harris Bor (instructed by **McGuireWoods London LLP**) for the **Claimants**

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Judgment

Mr Justice Leggatt :

1. Statements of case must be concise. They must plead only material facts, meaning those necessary for the purpose of formulating a cause of action or defence, and not background facts or evidence. Still less should they contain arguments, reasons or rhetoric. These basic rules were developed long ago and have stood the test of time because they serve the vital purpose of identifying the matters which each party will need to prove by evidence at trial.

2. As commercial transactions have become more complex and more heavily documented (including electronically), adhering to the basic rules of pleading has become both increasingly difficult and all the more important. It is increasingly difficult because it is harder for pleaders to distil what is essential from the material with which they are provided and because they can feel pressure to show their mettle and enthusiasm for their client's case by treating the pleadings as an opening salvo of submissions in the litigation. It is all the more important because prolixity adds

substantial unnecessary costs to litigation at a time when it is harder than ever to keep such costs under control.

3. The tendency towards longer and longer pleadings was one of the problems considered by the Commercial Court Long Trials Working Party chaired by Aikens J (now LJ) which reported in December 2007. In its report the Working Party concluded that "the length and complexity of statements of case in even 'average' cases in the Commercial Court, let alone H[eavy and] C[omplex] C[ase]s, has increased, is increasing and ought to be diminished." It added that "the prolixity of statements of case means that they become virtually unreadable." To address this state of affairs, the Working Party recommended that there should be a limit on the length of statements of case in the Commercial Court of 25 pages and that, although permission could be granted for a longer document in very exceptional cases, a very good reason would have to be given. The Working Party also recommended that the Commercial Court Guide should remind the parties of what a statement of case should and should not contain.

4. These recommendations were adopted in the 8th Edition of the Commercial Court Guide published on 30 April 2009 in guidance which has remained unchanged since. Section C1.1 of the Guide is in the following terms:

> "(a) Particulars of claim, the defence and any reply must be set out in separate consecutively numbered paragraphs and be as brief and concise as possible. They should not set out evidence. They should also comply with Appendix 4 to the Guide.
>
> (b) Statements of case should be limited to 25 pages in length. The court will only exceptionally give permission for a longer statement of case to be served; and will do so only where a party shows good reasons for doing so. Where permission is given the court will require that a summary of the statement of case is also served. Any application to serve a statement of case longer than 25 pages should be made on paper to the court briefly stating the reasons for exceeding the 25 page limit."

In addition, Appendix 4 sets out principles applicable to all statements of case, which include the following:

> "9. Contentious headings, abbreviations and definitions should not be used. Every effort should be made to ensure that headings, abbreviations and definitions are in a form that will enable them to be adopted without issue by the other parties.
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> 10. Particulars of primary allegations should be stated as particulars and not as primary allegations.
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> 11. If it is necessary to rely on a substantial factual information or lengthy particulars in support of an allegation, these should be set out in schedules or appendices.

> 12. Particular care should be taken to set out only those factual allegations which are necessary to support the case. Evidence should not be included.
>
> …
>
> 17. The document must not be longer than 25 pages unless the court has given permission for a longer document."

5. The particulars of claim which have been served in the present case flout all these principles. They are 94 pages in length. They include background facts, evidence and polemic in a way which makes it hard to identify the material facts and complicates, instead of simplifying, the issues. The phrasing is often not just contentious but tendentious. For example, the defined term used to refer to three of the defendants is "the Conspirators". Nor can headings such as "the plot" and "the plot evolves" be supposed to be "in a form that will enable them to be adopted without issue by the other party".

6. The case pleaded in the particulars of claim is that the defendants conspired to induce the Serious Fraud Office (the SFO) to investigate the claimants on a false basis by the unlawful means of making statements to the SFO which the defendants did not believe to be true. It is alleged that the defendants acted in this way with the aim of securing certain commercial advantages. This case is not in essence a complicated one. It is of course necessary to specify the statements allegedly made to the SFO by the defendants and to give particulars of the matters relied on in support of the allegation that the defendants did not believe those statements to be true. Those matters are in fact pleaded, starting at page 61 of the particulars of claim. However, this operative part of the statement of case is preceded by some 50 pages of narrative, liberally interspersed with assertions of fraud, falsity, dishonesty and improper motive which are not at that stage particularised. This form of pleading is typical of Complaints in United States litigation where pleadings serve different purposes and different practices obtain. It has no place in English civil procedure.

7. On top of all this, the particulars of claim were served without first requesting permission from the court to serve a statement of case longer than 25 pages. It was only after the defendants took objection that an application for permission was made retrospectively some two months after the particulars of claim had been settled. The witness statement of Hardeep Singh Nahal, a partner at McGuireWoods London LLP, filed in support of the application included an apology for the fact that permission had not been sought before but did not think it necessary to attach a copy of the particulars of claim themselves.

8. The particulars of claim have been signed by four counsel, including leading counsel. When the claimants' application came to me as a paper application, I was concerned that the counsel responsible for drafting the particulars of claim must either be ignorant of the applicable requirements of the Commercial Court Guide or have taken a deliberate decision to disregard them. In these circumstances I asked each of the counsel concerned to explain individually whether, when drafting the particulars of claim, they were aware of the requirements of Appendix 4 of the Commercial Court Guide, including paragraph 17 which states that the document must not be longer than 25 pages unless the court has given permission for a longer document; and if so, what

steps, if any, they had taken to comply with those requirements and whether they had deliberately not complied.

9. From their answers, it appears that the two most junior counsel (one of whom is a criminal practitioner) were not aware of the relevant requirements of the Commercial Court Guide when they assisted in drafting the particulars of claim. The two senior counsel, Mr Romie Tager QC and Mr Jonathan Crystal, have said that they were conscious of the relevant provisions of the Guide when they embarked on drafting the particulars of claim but that, by the time they completed this task which took place over a period of more than three months, they were no longer conscious of the need for an application to be made for permission to serve particulars of claim longer than 25 pages.

10. The justification given by Mr Nahal in his witness statement for the length of the particulars of claim is that:

> "The length of the document was considered necessary to make sufficiently clear to the defendants (and ultimately the court) the extremely serious allegations being raised by the claimants against the defendants."

It must be abundantly clear to anyone who is accused in a statement of case of fraudulent conduct that extremely serious allegations are being made against them. It is unnecessary to repeat the assertion that the person has been fraudulent again and again on page after page in order to convey this fact.

11. At the same time as asking counsel to explain why the proper practice had not been followed, I invited written submissions on the question of whether the particulars of claim should be re-pleaded and the costs of drafting the current version disallowed.

12. In their written submissions, counsel for the claimants expressly accept that it would be possible to edit the particulars of claim down to perhaps half their current length. However, they submit that doing so would inevitably result in the omission of some of the details and particulars supporting the claim, which in turn would make it inevitable that the defendants would then seek full particulars of the allegations pursuant to CPR Part 18 leading to the same material being used in any event. I do not accept this. A properly pleaded statement of case would, as I have indicated, specify the false statements allegedly made by the defendants and the occasions on which those statements were made and would give particulars of the allegation of knowledge. It would, however, omit the large tracts of unnecessary narrative and rhetoric which have been included. All this could and should be accomplished in a document which is at most half the length of the current particulars of claim.

13. Some further arguments are made in the claimants' written submissions. The first is that following service of the particulars of claim the defendants' solicitors stated in correspondence that the defendants did not, in principle, object to the claimants' application for retrospective approval of their statement of case provided the claimants were willing to agree to a long extension of time for service of the defence – which they have done. The absence of objection from the other party is not, however, a license to disregard the practice and procedure of the court. Equally unfounded is the suggestion that Flaux J by approving a consent order extending time for service of the defence must be taken to have approved the length of the particulars

of claim, merely because their length was mentioned in the defendant's application to which the claimants had consented. That suggestion is obviously untenable – which is why the claimants have recognised that it was necessary to make the present application.

14. The final point made by the claimants' counsel is that, if they are now required to re-plead the claim, this will cause delay and interfere with the defendants' preparation of their defence as well as with an application by the fourth and fifth defendants which is currently pending to challenge the court's jurisdiction. I accept that in the short term some delay and inconvenience will be caused by requiring the claimants to settle fresh particulars of claim. In the longer term, however, the efficient conduct of the case will be assisted by particulars of claim which are properly drafted. In any event, responsibility for such delay and inconvenience lies squarely with the claimants or their legal advisors in disregarding the requirements clearly stated in the Commercial Court Guide including the need for permission. They cannot rely on their failure to seek permission at the proper time as a reason why it should now be given.

15. In Standard Bank PLC v Via Mat International Ltd [2013] EWCA Civ 490, at para 29, Aikens LJ said:

> "Overlong pleadings and written submissions … which are manufactured by parties and their lawyers have become the bane of commercial litigation in England and Wales."

He made it clear (at para 30) that "a failure to heed the need for brevity in pleadings may well lead to strict adverse costs orders".

16. It seems to me that, unless adverse costs orders are made in cases of flagrant non-compliance, practitioners who are well aware of the principles of pleading and the provisions of the Commercial Court Guide will continue to overlook them, as happened here. In my view, the appropriate order in this case, and the order which I will make, is that the particulars of claim are struck out, the costs of drafting the particulars of claim are disallowed, and fresh particulars of claim no longer than 45 pages and otherwise complying with Appendix 4 of the Commercial Court Guide should be served within 21 days.

17. I have shown this judgment in draft to the Judge in charge of the Commercial List, who endorses the principle that flagrant disregard of the guidance applicable to statements of case may lead to adverse costs orders.