

- [3] I not only had the materials as filed on the motion, but had use of the audio of the proceedings to refresh my memory, given the length of time it has taken me to produce this endorsement.

Position of the Defendants on this motion

- [4] Ms. Webster notes the history of this litigation as it concerns her clients at paragraphs 1-40 of her factum.

Request to Provide Particulars

- [5] In rule 25.10 provision is made for the court to compel particulars. Case law defines when they should be ordered. I will not overview that law here. It is trite, although I recognize that application to any given case is a matter of the facts to be considered.
- [6] The particulars requested are set out at paragraph 52 of the moving party's factum. Counsel submits that its request for these particulars "is reasonable and carefully crafted."
- [7] Ms. Webster says that it is not enough for the plaintiff to say that it has responded to particulars in relation to another defendant, Peter Tieu, as it does not address the concerns of her clients who are separate defendants from Tieu.

Request for Inspection of Documents

- [8] Rule 30.04 speaks to inspection of documents. Compliance for inspection is mandatory and does not depend on whether a document is necessary to plead. At paragraph 59 of her factum, Ms. Webster seeks 4 areas of production for inspection. I will not set those out here.
- [9] I will say the inspection of documents argument is based on well-defined and succinct issues.
- [10] Counsel points out that in excess of a year before I heard the motion, her clients sought inspection but they still have not been given access to those documents.
- [11] Gunggo has indicated that some of the documents are in various motion materials filed previously, but Ms. Webster advises that her clients cannot determine which documents are responsive to which request. Gunggo is obliged, argues Ms. Webster to grant inspection on this record.

Position of Gunggo Co. Ltd.

- [12] This action commenced June 30, 2014 and to date no defence has been filed.

The Demand for Particulars and Inspection

- [13] The defendants on this motion served their demand for particulars and request to inspect on September 03, 2014.

- [14] Mr. Wymes responded for Gunggo on January 12, 2015 via a copy of a letter with respect to the answers he gave for particulars to Mr. Peter Tieu. The response for the particulars is noted at paragraph 9 of the factum of Mr. Wymes.
- [15] Subsequent to this time the now moving defendants did nothing to bring the motion that they now bring. They have been content to sit.
- [16] Referencing Rule 25.0, counsel notes that the moving party seeking particulars may move before a court to seek an order for particulars, where the party seeking the documents does not get the production, sought within 7 days.
- [17] Yet although the moving party threatened to do so, it never did until this motion was brought. Counsel argues that the delay in moving to bring this motion speaks to the fact that this is further evidence that they do not require the particulars to plead.
- [18] Mr. Wymes further submits that knowledge of the claimed fraudulent conduct rests with the defendant Peter Tieu, and not his client.
- [19] In respect of the issue of inspection of documents, Mr. Wymes submits that at no time prior have the moving parties sought to inspect documents.
- [20] Counsel submits at paragraph 17 of his factum that "if the moving defendants required further particulars to plead to the statement of claim herein, they would have most assuredly inspected the plaintiff's documents- if only to answer some of the alleged particulars they allegedly required before pleading to the statement of claim."
- [21] Mr. Wymes argues that the moving parties are engaging in active delay in defending this action and are also engaging in purposeful delay.
- [22] Given no delivery of a statement of defence, the court should assume that there is no defence on the merits.
- [23] Counsel provided case law that is readily accessible in his factum at paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30, to refute the argument of the moving parties in relation to particulars being required.
- [24] Mr. Wymes also argues that the pleadings of his client are sufficient to beg a response via a statement of defence, and are not so devoid of particulars to be unable to be met with a defence.

Decision

- [25] I am of the view that the pleadings require supplementation with particulars and inspection. I disagree that this is a case where "the information and documentation concerning the actions of the moving defendants are not only primarily within the knowledge and control

of the moving defendants, but also, for the most part, outside the knowledge and control of the plaintiffs."¹

- [26] The allegations deal with fraud and conspiracy amongst other tortious conduct. They are not run of the mill pleadings. I am of the view that the particulars requested are necessary for the pleadings of the moving defendants.
- [27] I am also of the view, having regard to the Rules of Civil Procedure, that in this new age of attempts to make civil litigation less time consuming and more efficient, that Rule 1.04 should be applied.² I use resort to that Rule not to denude the rules that deal with pleadings, particulars and inspection, but to increase the momentum to move this case forward with the triaging of production and inspection.
- [28] I am likewise of the view that the request for inspection of documents is focused and articulated.
- [29] Issues of alleged 'connived' delay and failure to move speedily to exert particulars and inspection are matters that can be, if relevant, assessed in the arena of costs.
- [30] I am therefore satisfied that the moving party has met its onus of production of particulars and inspection.
- [31] I therefore order as follows:
- i) Particulars are to be provided to the moving party defendants, as requested at paragraphs 52 and 53 of the factum of the moving party;
 - ii) The documents sought to be inspected shall be provided in copy form and particularized in writing as to which documents are responsive to which request;
 - iii) The 'David defendants' are to file serve and file their statement of defence within 20 days of Gunggo providing its particulars and copies of the documents that are sought for inspection.
- [32] [33] If the parties cannot agree on costs, submissions on same are to be provided on a 15 day turn around basis, from receipt of these reasons, with the cost submissions to be limited to 5 pages plus bill of costs.


H.K. O'CONNELL J.

Released: April 28, 2017; May 02, 2017

¹ See factum of respondent, at paragraph 31, with reference to *Obonsawin v. Canada*, 2001 CanLII 28431 (Ont. S.C.)

² The mantra of efficiency in the prosecution and defence of civil claims is long standing. Recent cases of the Court of Appeal speak to this in the context of the 'new' summary judgment provisions. Indeed I dare say that courts are more acutely aware now of the need to move litigation forward than they have ever been in the past.