CITATION: Certified Equipment Sales v Iuorio, 2024 ONSC 2948
COURT FILE NO.: CV-18-138525
DATE: 2024/05/24

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: CERTIFIED EQUPMENT SALES SERVICES AND RENTAL LTD. V. DONATA IUORIO

BEFORE: Justice Verner

COUNSEL: Matthew Kersten, for the moving party Donato Corbo

Andrew Monkhouse and Reshida Darrell, for the responding party Donata Iuorio

HEARD: May 22, 2024

ENDORSEMENT

[1] The moving party (Donato Corbo or "Corbo") brought this motion for particulars pursuant to rule 25.10 of the *Rules of Civil Procedure*, in relation to the responding party's (Donata Iuorio or "Iuorio") statement of defence and counterclaim.

[2] Corbo is the founder, owner/operator, and the controlling mind of Certified Equipment Sales Services and Rental Ltd. ("Certified"). Iuorio was an employee of Certified up until 2016. Certified brought the initial action against Iuorio, claiming that she failed to repay a loan given to her by Certified. Iuorio filed a statement of defence and counterclaim against both Certified and Corbo, in which she claimed that while she was employed by Certified she was sexually harassed, her rights pursuant to the Ontario *Human Rights Code* were violated and there was an intentional infliction of mental suffering by Corbo.

[3] Corbo made a demand for particulars on August 1, 2023, in which he sought particulars on many of the paragraphs in the statement of defence and counterclaim. Corbo sought particulars in relation to 35 different paragraphs from Iuorio's pleadings, and titled the demands 1 to 35. In total, the demand sought clarification on 120 different issues. Corbo accepts that Iuorio fulfilled demand 26, and thus, there are 34 of the initial 35 demands outstanding.

[4] Corbo submits that if Iuorio is unable to provide further particulars with respect to a claim, the claim should be struck from the pleadings.

[5] Iuorio articulated her position on the 35 demands in her October, 2023 affidavit. In particular, she swears that for 27 of the demands, she has no more particulars to give; for 2 of the demands, she takes the position that the information is within the knowledge of Corbo; she submits that 5 of the demands are excessive in nature; and she submits that 1 demand is both within Corbo's knowledge and is excessive.

The Legal Principles

[6] Rule 25.10 provides the court with the discretion to order costs as follows:

> 25.10 Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within seven days, the court may order particulars to be delivered within a specified time. R.R.O. 1990, Reg. 194, r. 25.10.

[7] In *Physicians Services v. Cass*, [1971] O.J. No. 1561 (Ont.C.A.), Chief Justice Gale emphasized the limited circumstances in which particulars may be ordered by the court:

> ..we would apply the principles laid down in such cases as *Fairbairn v. Sage*, 56 O.L.R. 462, [1925] 2 D.L.R. 536, in which it was held that particulars for pleading will only be ordered if (1) they are not within the knowledge of the party demanding them, and (2) they are necessary to enable the other party to plead.

[8] In the subsequent case of *Rachelle Champagne v. Kapuskasing Plumbing & Heating Ltd.*, [1996] O.J. No. 5067, the Divisional Court of Ontario provided the following additional guidance on when particulars may be ordered:

> 9 In *Fairbairn v. Sage* (1925), 56 O.L.R. 462 (C.A.) at p. 470, Ferguson J. stated:
>
> > Particulars are ordered for several purposes: (1) to define the issues; (2) to prevent surprise; (3) to enable the parties to prepare for trial; (4) to facilitate the hearing.
>
> 10 Particulars are ordered to have a pleading made sufficiently clear to enable the applicant to frame his answer thereto and also to prevent surprise at trial.
>
> *Steiner v. Lindzon* (1976), 14 O.R. (2d) 122 at 128 (H.C.)
>
> 11 Particulars for the purpose of pleading serve a different purpose than discovery.
>
> *RIS Equities Inc. v. Spivak* (1992), 78 Man. R. (2d) 230 (C.A.)

> 12 A party is entitled to know the case alleged against him or her, and that party may request particulars to ensure that discovery is confined to the material facts pleaded.
>
> *Dumont v. Canada (Attorney General)* , [1991] 3 C.N.L.R. 22, (Man. Q.B.)

[9] In cases where malice is alleged, such as this case, "full particulars" are required. In assessing whether the pleading provides full particulars, the pleading should be considered as a whole. In *Miguna v. Ontario (Attorney General),* 2008 ONCA 799, at paras. 63-64, Blair J.A. found that it was an error to look at statements in the pleadings in isolation and strike them on the basis they are "bald" or "conclusory" allegations. Instead, all of the allegations, should be considered in the context of the pleading as a whole to determine whether there are sufficient particulars provided.

[10] In the moving party's material, he relies on *3 Dogs Daycare Inc. v. Dogtopia Enterprises Canada Inc.,* 2021 ONSC 514, to emphasize the amount of detail that is required in the pleadings when "full particulars" must be provided. In *3 Dogs Daycare,* Master McGraw (as he then was) provides the following guidance on the *limits* of "full particulars":

> In some cases, I agree that **clarification is required as to timing and other details but not at the granular level of minutiae** often demanded by the Defendants. Many of their requests can be characterized as evidence and a *de facto* examination for discovery in writing to which they are not entitled and do not require to plead. While the law of pleading conspiracy requires heightened particularity, precision and clarity, at the same time **it does not impose an obligation on the Plaintiff to plead every date, the specific manner in which every act was carried out or the exact words that were used**. All of this is inconsistent with a pragmatic, flexible approach to pleadings and contrary to the rule against pleading evidence. The Defendants do not require this level of specificity to plead, with some minor exceptions have notice of the case they have to meet and such inquiries are more appropriately left for examinations for discovery where additional particulars will emerge.
>
> [Bold added.]

Application to the Case at Bar

[11] The statement of defence and counterclaim before me has a total of 105 paragraphs and is 18 pages in length. Each and every paragraph is focused on defining Iuorio's position on the claims advanced. It is not rambling and does not include irrelevant information. Overall, it seems quite detailed.

[12] I find that the moving party is asking for too high a level of specificity. I will provide a couple of the demands as examples. I start with demand 17, since it was (accidentally) drawn to my attention by the moving party during his oral submissions:

Demand #17
The statement in Iuorio's pleading:
[Mr. Corbo] installed GPS monitoring devices on Ms. Iuorio's cell phone and later her vehicle, which he used extensively to monitor her off-duty conduct.

Demand for Particulars:
Full particulars on how, where and when Mr. Corbo allegedly extensively monitored "her off-duty conduct" and "physically monitored Ms. Iuorio's home".

Iuorio's Position: She has no further particulars to give with respect to this demand.

Mr. Corbo's Reply:
Mr. Corbo cannot admit or deny this allegation without further particulars.

[13] I find it ridiculous that Corbo claims that he cannot admit or deny whether he put tracking devices on the responding party's phone and car in order to monitor her, without further particulars. He certainly has fallen far short of showing that such information is not within his knowledge. Moreover, any further particulars, would be the evidence Iuorio has regarding him monitoring her through tracking devices and he is not entitled to her evidence on this issue at the pleading stage. At the hearing, the moving party did not try to defend the need for particulars with respect to this claim. The moving party similarly backed down from other demands for particulars during the hearing itself.

[14] The second example I will provide is demand 2, since it too was raised during the moving party's oral submissions and because it importantly reveals that, even if particulars are ordered, the moving party may not be satisfied, and may make more unwarranted demands for further particulars.

Demand #2
The statement in Iuorio's pleading:
Mr. Corbo repeatedly assured and represented to Ms. Iuorio, throughout the duration of her employment at Certified, that she had no obligation to repay [the loan].

Demand for Particulars:
Full particulars of how and when Mr. Corbo allegedly "repeatedly assured and represented to Ms. Iuorio" that she had no obligation to repay the Loan.

Response from Ms. Iourio:
Ms. Iuorio's partial reply: At the end of 2008, Mr. Corbo was in a meeting with Dan Stern his accountant (E & Y) and came up to Ms. Iuorio in the rental office and handed her a piece of paper and said, "This loan is done".
She has no further particulars with respect to this demand.

Mr. Corbo's Response:
Mr. Corbo cannot admit or deny this allegation.
Ms. Iuorio's partial reply is unsatisfactory as it prompts more particulars such as when the alleged "meeting" took place, and the details regarding the "alleged piece of paper" that Mr. Corbo is alleged to have handed to Ms. Iourio.
[Underscore added.]

[15] This statement in Iuorio's pleading is far from a broad, sweeping allegation of misconduct. In fact, it does not relate to any misconduct and therefore is not subject to the need for "full particulars". Moreover, the claim as particularized is very detailed. In response to an initial request for particulars, Iuorio has clarified that at a meeting, at the end of 2008, in the rental office, Corbo handed Iuorio a piece of paper and said, "This loan is done". When questioned at the hearing what further particulars Corbo could possibly need in order to admit or deny the allegation, the moving party acknowledged that some particulars were more important than others. The moving party's position that this incident is still not sufficiently particularized reveals that the demands for particulars could be never ending.

[16] More importantly, on a general note, Iuorio's pleadings should *not* be assessed sentence by sentence. Instead, as noted in *Miguna v. Ontario,* when assessing whether there are sufficient particulars, the pleadings should be considered as a whole. When the pleadings in this case are read in their entirety, it is clear that Iuorio is not relying on sweeping allegations of misconduct. Instead, she has specified throughout her statement of defence and counterclaim exact incidents that she is relying upon as evidence of her claims. Furthermore, for the allegations of misconduct, she has sworn in an affidavit that she has no more particulars to provide. In other words, the statement of defence and counterclaim includes *all* of the incidents she will rely on to support her claim of malice or wrongdoing.

[17] In oral argument, Corbo emphasized that there was insufficient detail of the sexual harassment and harassment claims in Iuorio's pleading. However, Iuorio has included in her claim details with respect to all of Corbo's harassing behaviour that she intends to rely on. The following are some examples of the behaviour specified in the pleadings to support the harassment claims:

(i) Frequent physical contact in the hallways at work, contributing to the sexual harassment;

(ii) Staring at her in a suggestive manner in her office, also contributing to the sexual harassment;

(iii) Requesting/demanding that she renew her sexual relationship with him, by saying things along the lines of "it's only a matter of time" and that "eventually people do come around";

(iv) Spreading lies around her workplace about her leaving work and selling her home;

(v) Directing a "tirade of profanity" at her when she objected to a new scheduling policy being enforced on her without explanation;

(vi) Starting "lewd and unwelcome discussion" about her relationship with him and about her relationship with her new boyfriend, Mr. Nascimben at work;

(vii) Taking punitive measures against her when she refused to resume their sexual relationship;

(viii) Aggressively cursing and using profanity towards her at team meetings, in front of other team members; and,

(ix) As already mentioned, installing GPS monitoring devices on her cell phone and vehicle to monitor her off-duty conduct.

[18] The moving party submits these allegations are not sufficiently detailed for Corbo to respond in his pleadings. In oral submissions, Corbo's counsel particularly and repeatedly emphasized the vagueness of the allegation of, "physical contact in the hallways", suggesting that it was so vague, it could refer to unwanted intercourse or kissing. However, given that Iuorio has sworn in an affidavit that she cannot provide any further details of the physical contact that contributed to the sexual harassment, it defies common sense that the physical contact would involve unwanted intercourse in a hallway at work, or similarly unwanted kissing in a workplace hallway. Those are details she would be able to provide.

[19] Although more particulars *may* be provided, I find they are not necessary for Corbo to complete his pleadings. I give little to no weight to his claim in his affidavit that he is unable to do so, since, as I already mentioned, I find it completely incredible that he is unable to "admit or deny" that he put a GPS monitoring device on Iuorio's phone and car. I find it similarly disingenuous that Corbo "cannot admit or deny" that he suggested to Iuorio that her new boyfriend Nascimben "was more philandering than" he was (demand 16); that he cursed and used profanity aggressively towards Iuorio during team meetings, in front of other team members (demand 19); or that he stared at Iuorio in a suggestive manner and suggested they renew their relationship while they were at work (demand 20). I use these three demands - demands 16, 19 and 20 - as examples, since they were emphasized in Corbo's factum as being amongst the most problematic. (If Corbo truly cannot deny *any* of these allegations, I would think that this action would have been resolved by the parties by this point.)

[20] I find that Corbo's demand for particulars is similar to the demand in *3 Dogs Daycare,* in that a "granular level of minutiae" is being demanded. The request for particulars seems to be in fact a *de facto* examination for discovery in writing. Moreover, in assessing whether I should exercise my discretion under rule 25.10 to order particulars, I keep in mind that the demand for particulars may be unending, as evidenced by the fact that even after seemingly fulsome particulars were provided in response to demand 2, Corbo demanded further particulars, as well as evidenced by the fact that at least one of the

requests for demands was ridiculous. I find that the information Corbo is requesting is not necessary for his pleadings, and better suited to be obtained through the discovery process.

[21] I do not exercise my discretion under rule 25.10 to order particulars. The motion for particulars is dismissed.

COSTS

[22] As a secondary issue, Corbo is seeking costs on a substantial indemnity basis as a result of the improper cross-examination of him in preparation for this motion. Indeed, he seeks costs irrespective of whether he is successful on the motion for particulars, since the cross-examination of him was an abuse of process. In particular, he alleged it was "improper, inflammatory, argumentative, vague, overbroad, irrelevant and beyond the permissible scope of the motion". Corbo's counsel complains that he was forced to interrupt "*ad nauseum*", due to the consistent impropriety of the Iuorio's counsel's questions.

[23] Corbo relies on *Larry Levchak v. Automation Now Inc.,* 2022 ONSC 6703, to support his position that Iuorio's counsel was only permitted to ask questions regarding Corbo's potential knowledge of the particulars sought. However, the trial judge in *Levchak* was not making a determination of what is appropriate in every case. She was making an order based on the facts before her. I find that *Levchak* stands for the position that when assessing what questions will be appropriate in a cross-examination on a motions for particulars, the unique nature of a motion for particulars must be kept in mind. It goes no further than that. I will keep the comments of *Levchak* in mind in assessing whether the questions posed in this case were appropriate.

[24] I agree with Corbo's counsel that he interrupted Iuorio's counsel *ad nauseum*, but I disagree that the questions that were interrupted were improper. For example, Corbo's counsel:

(i) insisted on answering several questions regarding how Corbo had prepared for the cross-examination, rather than allowing Corbo to answer those questions himself.

(ii) effectively prevented any questions being asked regarding the preparation of Corbo's affidavit for the motion.

(iii) advised Corbo not to answer whether Corbo was the President, Director or Owner of Certified, on the basis the relevance of the question was unclear. (At the hearing, Corbo's counsel could not explain why he objected to this question at the time. I find his response that he later answered this question through correspondence unsatisfactory, since the relevance of this question to Corbo's possible knowledge of the allegations should have been obvious at the time and the failure to answer this foundational question would have made it difficult for the responding party to ask follow-up questions.)

(iv) advised Corbo not to answer how he was related to Iuorio, on the basis the relevance of the question was unclear. (I find this was another foundational question that was obviously relevant.)

[25] These are but a few examples of unnecessary interruptions found in the first 40 pages of the transcripts. As a result of these types of issues, Corbo barely opened his mouth for the first portion of the cross-examination. His counsel's objections filled most of the first 40 pages. I, myself, found it frustrating to read, not due to the impropriety of the questions, but due to the unnecessary interruptions.

[26] Having gone through the 184 pages of the transcripts and the listed 563 questions, the moving party has identified a total of 16 questions, he suggests were inappropriate. The first 11 of those 16 questions either directly or indirectly relate to Corbo's *motives* to bring this motion for particulars. The undertone of the 11 questions is that Corbo brought the motion to further harass Iuorio. I find that this is a unique case in which Iuorio's counsel's concern that this motion may be brought to further harass Iuorio is *not* unfounded. I, myself, had similar concerns in reading Corbo's material, since it contained ridiculous claims by Corbo such as not being able to admit or deny whether he put tracking devices on Iuorio's phone and car. Such motives are relevant to the motion itself in assessing whether Corbo truly needed the information requested to complete his pleadings, and they are particularly relevant to the issue of costs. It was not improper in this unique case for Corbo to be cross-examined on his motives.

[27] The other five questions complained of, were requests for admissions or denials. I agree that although requests for admissions or denials are relevant in the sense that they assist in showing whether Corbo has sufficient information to either admit or deny the allegations, such requests should be avoided during a cross-examination on a motion for particulars. However, the moving party only identified five such questions out of a total list of 563 questions. And the five questions identified seemed to be on issues that were not seriously contentious. None of them relate to the allegations of harassment or malice. They all relate to issues that were raised in the original action by Corbo's company Certified. I further note that Iuorio's counsel was understandably frustrated by the unnecessary interruptions by Corbo's counsel at the time he asked those questions. Therefore, although such questions should have been avoided, I find that the responding party's actions in asking the questions are not deserving of sanctions.

[28] Finally, the moving party pointed to some comments made by Iuorio's counsel during the cross-examination, as being inappropriate. However, given how obstructionist Corbo's counsel was during the cross-examination, I am not surprised that Iuorio's counsel may have made some unnecessary comments in his frustration. I in fact find his comments understandable in the circumstances.

[29] I find that Corbo's counsel's serious allegations of opposing counsel's impropriety are unfounded. The moving party is not entitled to costs.

[30] Moreover, I find that making unfounded allegations of impropriety of opposing counsel should not be taken lightly. I further accept that Corbo's counsel improperly frustrated the cross-examination of his client. I therefore find that the responding party is entitled to costs on an elevated basis. I invite the parties to consult with one another in hopes of agreeing on costs. If they are unsuccessful, I invite Iuorio to provide a bill of costs and no more than three pages of submissions on costs to my judicial assistant at Manuella.Pascoe@Ontario.ca within 30 days of the date of this endorsement. I further invite Corbo to provide no more than three pages of responding submissions within 45 days of this endorsement.

The Honourable Madam Justice Verner

Date: May 24, 2024