

Legal Briefing

Ted Lowery considers a case of false economies with pleadings

Halsion Limited v St Thomas Street Development Limited [2023] EWHC 2045 (TCC)

In the Technology and Construction Court

Before HHJ Cawson KC sitting as a judge of the High Court

Judgment delivered 8 August 2023

The facts

Under a trade contract dated 30 July 2018, St Thomas Street Development Limited ('STSD') engaged Halsion Limited ('Halsion') as M&E contractor for a residential tower adjacent to the Shard in London. STSD subsequently complained that the life safety systems generator provided as part of the M&E works was not adequately sized to meet the trade contract specification requirements. Halsion denied any responsibility for sizing the generator.

In January 2023, Halsion issued proceedings challenging the decisions in two preceding adjudications and sought declarations as to the proper construction of the trade contract, alternatively, rectification of the trade contract and/or relief by way of estoppel by convention.

STSD asserted that the particulars of claim did not comply with the Civil Procedure Rules and suggested Halsion re-plead its case. Halsion refused. During February 2023, STSD applied for the particulars of claim to be struck out pursuant to CPR 3.4(2)(a) and (b), i.e., that the particulars disclosed no reasonable grounds for bringing or defending the claim, amounted to an abuse of the court's process and were otherwise likely to obstruct the just disposal of the case. STSD also alleged that contrary to CPR 3.4(2)(c), the particulars of claim failed to comply with court rules, particularly CPR 16.4(1)(a) which requires a concise statement of the facts, Practice Direction 16 and various provisions in the TCC Guide. STSD sought reverse summary judgment on Halsion's claims for declarations in relation to the preceding adjudications, the proper construction of the trade contract and rectification.

Halsion responded that if the particulars of claim were deficient, those deficiencies were at most, "*procedural infelicities*" that fell well short of justifying strike out or summary judgment.

The issue

Should the particulars of claim be struck out?

The decision

Starting with the case on the proper construction of the trade contract, the judge commented that the particulars of claim pleaded those provisions that might bear upon the question of interpretation and set out the construction contended for but failed to meet the essential requirement of identifying the specific wording within the trade contract that Halsion sought to construe. As such, the paragraphs within the particulars of claim concerning the proper construction of the trade contract disclosed no reasonable grounds for bringing a claim, amounted to an abuse of the court's process and were otherwise likely to obstruct the just disposal of the case and therefore should be struck out pursuant to CPR 3.4(2)(a) and (b), albeit the judge noted that these failings could be remedied by amendment.

The judge considered that the paragraphs in the particulars of claim setting out the case for rectification of the trade contract on the basis of common mistake did not plead the factual basis for the existence of the common intention relied upon, nor the accord alleged in relation thereto and how that accord was given outward expression. Hence, these paragraphs failed to disclose reasonable grounds for bringing a claim and could be struck out pursuant to CPR 3.4(2)(a), the judge again noting that amendment could address these deficiencies.

The judge found that Halsion's case for rectification on the basis of unilateral mistake required amendment to remove inappropriate reliance on inferences. Likewise, the claim in estoppel by convention, where Halsion's pleaded factual narrative of the events said to found the convention, did not enable STSD to understand the case it had to meet.

The judge agreed with STSD that, when looked at overall, the particulars of claim could not be described as a concise statement of the facts relied upon, and did reflect serious and significant breaches of CPR 16 and

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the TCC Guide: Halsion's pleading was unduly prolix and incorporated a lengthy factual narrative that was not linked to the heads of claim, included irrelevant matters and dealt with certain relevant matters in excessive and unnecessary detail.

In summary, the judge concluded that where these deficiencies were so marked and the consequences thereof so serious, the only proportionate and practical response was to strike out the particulars of claim in their entirety.

Commentary

The judge indicated he would consider the form of order to be made subject to an application to amend the particulars of claim. It seems likely that in order to address the judge's extended critical analysis, Halsion cannot fine-tune the particulars but will need to completely re-plead its case in any draft amendment.

Halsion's particulars of claim were apparently based on their submissions in the preceding adjudications. The judge offered the caution that submissions to an adjudicator are intended to perform a very different function to statements of case in litigation.

Ted Lowery
September 2023