

PARTIES: ROBERT TAYLOR
v
MILDREN, SILVESTER & PARTNERS
PTY LTD

TITLE OF COURT: SUPREME COURT (NT)

JURISDICTION: SUPREME COURT

FILE NO: 566 of 1989

DELIVERED: Darwin 6 December 1995

HEARING DATES: 21 September 1995

JUDGMENT OF: MARTIN CJ.

CATCHWORDS:

Damages - General principles - Solicitor - Allegation
by client of negligence and breach of contract - Application
for damages for loss of use of money - Interest

Hungerford and Ors v Walker and Ors (1990)171 CLR 125, considered.

Procedure - Supreme Court procedure - Civil Procedure - Statement
of Claim - Defendant alleged absence of proper particulars
- Purpose of particulars discussed

Supreme Court Rules 1986 (NT), r13.02 and r13.10

REPRESENTATION:

Counsel:

Plaintiff: Mr Lindsay
Defendant: Ms J Kelly

Judgment category classification: N/D
Judgment ID Number: mar95023
Number of pages: 4

mar95023

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 566 of 89

BETWEEN:

ROBERT TAYLOR
Plaintiff

AND:

MILDREN, SILVESTER & PARTNERS
PTY LTD
Defendant

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 6 December 1995)

This is an appeal from a decision of the Master, refusing relief to the defendant upon its application that part of the Statement of Claim be struck out because of an alleged failure on the part of the plaintiff to provide proper particulars.

The plaintiff's claim is framed in professional negligence and breach of contract based upon an alleged failure on the part of the defendant to exercise due care, skill and diligence in respect of the plaintiff's claim for compensation under the *Motor Accident (Compensation) Act*, which claim the plaintiff entrusted to the defendant as his solicitors to pursue. It is claimed that as a consequence of

the defendant's default, the plaintiff was kept out of the use of monies properly due to him. The amount of money to which he says he was entitled is particularised as is the period in respect of which the claim for damages is based (see generally *Hungerford and Others v Walker and Others* (1990) 171 CLR 125).

The particulars supplied by the defendant which are in contention are:

"(2) Lost Opportunity

- (i) The plaintiff suffered damage in losing the opportunity to earn interest on his entitlements, through such investments as he may have been advised to take, at commercial interest rates being bank overdraft rates as set out hereunder: (there follows precise details as to the rates of interest applicable at the various times during the relevant period).
- (ii) Had the plaintiff received his entitlements when he should have he would have been able to avail himself of the opportunities that existed at that time for the establishment of a buffalo farming business.

PARTICULARS

The plaintiff can not provide particulars as to the profits such business may have generated."

As to (2)(i), the defendant complains that no particulars are provided as to the investments available to the plaintiff which would return the rates of interest claimed. As to (2)(ii), it is said by the defendant that it simply fails to provide proper particulars of the loss claimed. Its argument proceeds that in the absence of proper particulars it can not prepare for trial and effectively consider the possibility of compromise. It says that the particulars do not comply

with the requirements of r13.10(2), in that those given do not enable it to plead or define the questions for trial or to avoid surprise at the trial.

Amongst the purposes for the giving of particulars is that of giving notice of what is going to be proved. They are to inform the other side of the nature of the case which it has to meet as distinguished from the mode in which the case is to be proved. They are to enable the other side to consider the evidence with which it should be prepared (see generally *Williams Civil Procedure Victoria* Vol 1, pp2899 to 2903). Particulars are not the vehicle for disclosing evidence, no more than is the general allegations commonly found in a Statement of Claim (r13.02(1)(a)). Discoveries and the requirements for disclosure of experts reports are matters usually arising once the issues to be tried have been defined by the pleadings and the giving of particulars if necessary. As to the loss of interest, it is specifically based upon commercial rates, not as counsel for the defendant put in argument, perhaps upon some lost private arrangement. Counsel for the plaintiff specifically denied in argument any such arrangement would be put. Whether the plaintiff would, and could, have earned interest at the rate specified is a matter for evidence, and the defendant is at no disadvantage in that regard.

As to the buffalo farming business, the plaintiff says that not only can he not provide particulars of profit, he does not intend to put his claim for loss on that basis. Rather, it is intended to argue that the plaintiff is entitled to a non-specific sum by way of

general damages, the loss not being susceptible of precise calculation.

The defendant accordingly knows of a basis upon which the plaintiff will seek to recover loss and knows that the plaintiff will not seek to quantify the loss as if it were special damage. The plaintiff is unable, as opposed to being unwilling, to provide further particulars.

An issue at trial may be the basis upon which the Court should proceed to compensate the plaintiff (if the claim in liability is made out). Consideration may have to be given as to what the plaintiff would have done had he the money to which he claims to have been entitled, at the time it ought to have been paid to him. Questions going to remoteness on the score of foreseeability may arise. However, none of those matters arise in this application.

The particulars provided by the plaintiff meet the requirements of the rules and the purposes of the rules.

The appeal is dismissed.