

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

86 of 1991

BETWEEN:

RAVMAC PTY LTD

Plaintiff

and

DARWIN LAND SERVICES PTY LTD

Defendant

MASTER COULEHAN: DECISION

(delivered 23 March 1995)

The plaintiff alleges that it suffered damage in purchasing real property on 31 May 1988 in reliance on a valuation of the property provided by the defendant on 2 February 1988. The plaintiff sold the property at a loss on 21 August 1990. It alleges negligence and breaches of the Trade Practices Act.

It is unnecessary to canvass the defence in detail save to say that the allegations of negligence and breaches of the Act are denied.

The defendant now seeks to amend its defence to plead contributory negligence, failure to mitigate and limitation bars. The plaintiff opposes the amendments on the grounds that they are not properly particularised.

O.13.10 Supreme Court Rules provides:-

"(1) A pleading shall contain the necessary particulars of a fact or matter pleaded.

(2) Without limiting sub-rule (1), particulars shall be given if they are necessary to enable the opposite party to plead or to define the questions for trial or to avoid surprise at the trial."

It follows that amendments to pleadings which do not contain the "necessary" particulars should not be allowed.

Particular (b) provided in relation to proposed paragraph 22 of the defence, which pleads contributory negligence, reads as follows:-

"Proceeding to purchase the Property notwithstanding that the plaintiff had, since receiving the Valuation, received an assessment of the Property which was significantly at variance with the Valuation."

I consider that it is necessary that the assessment relied upon be identified in order to satisfy the requirements of O.13.10(2). To this extent the particulars are deficient.

The particulars provided in relation to proposed paragraph 23, which pleads failure to mitigate, read as follows:-

"The plaintiff failed to offer the Property for sale at a realistic and reasonable price in the circumstances."

I consider that the price which the defendant alleges was realistic and reasonable should be included in order to satisfy the requirements of O.13.10(2).

As to the proposed paragraph 24, which pleads the statutory bars, the allegations do not particularise when the defendant alleges the cause of action arose.

The Writ was issued on 8 March 1991. On the facts pleaded it is clear that the limitation defences are only viable on the basis that the cause of action arose on the provision of the valuation the subject of the plaintiff's claim.

Particulars as to the date when the cause of action is alleged to have arisen are not usually provided in a pleading and I do not consider it necessary in this proceeding for the purposes of O.13.10.

I order that, subject to the identification of the assessment referred to in paragraph 22(b), and the inclusion of the price which the defendant alleges was realistic and reasonable in the particulars to paragraph 23, the defendant have leave to amend its defence in the terms set out in the letter from the defendant's solicitors dated 23 December 1994.