Judgment 47/2004 **Island Star Limited v. John Reid & Son (Structsteel) – Royal Court (Civil action file 730) – 20 October, 2004**

Contract for building works – dispute over variation – Exception de forme in Plaintiff's Replique and Counterclaim – whether "playing games with pleadings" – principles as to the functions of particulars

IN THE ROYAL COURT OF GUERNSEY

20th day of October, 2004 before Alan Robin Winston Hancox Esquire, EGH, CBE, Lieutenant Bailiff; sitting alone

In the matter of:

ISLAND STAR LIMITED

(Plaintiff/Applicant)

and

JOHN REID & SON (STRUCTSTEEL)

(Defendant/Respondent)

Whereas on 24th and 29th September, 2004, the Lieutenant Bailiff considered the Exception de Forme of the Plaintiff seeking further and better particulars of paragraphs 4.2, 5.1, 5.3 and 7.2 of the Defence and heard thereon Advocates P Richardson and J Roland Counsel for the Plaintiff/Applicant and Defendant/Respondent respectively.

The Lieutenant Bailiff this day handed down judgment in the terms attached hereto and ORDERED that further particulars be given as requested of paragraphs 4.2 of the Defences, heads 1 to 4; of paragraphs 5.1, head 5.1 (as related to the Response given on 24th February, 2003); and of paragraphs 5.3, heads 3, 4 and 5.

As to the time within which the said answers are to be given, the Lieutenant Bailiff DIRECTED that he would sit to hear counsel on this matter in default of any agreement between them.

S. M. D. ROSS
Her Majesty's Deputy Greffier

Approved Text

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

ISLAND STAR LIMITED……...….....Plaintiff/ Applicant

And

JOHN REID & SON (STRUCTSTEEL)……..…Defendant/ Respondent

Judgment.

1. This action involves a complicated dispute in relation to the construction of a building on the Plaintiff's property at Harbour House, St. Sampson's, for which leave to serve the summons in Dorset in the United Kingdom was granted by the Bailiff on 7th June, 2002. The parties are agreed on the pleadings that in the first half of the year 2000 there was an exchange of correspondence between them which resulted in an agreement whereby the Plaintiff (Island Star) accepted the Defendant's (Reid's) quotation of £161,435 for the work. The contract thus concluded was subject to the terms and conditions contained in a document entitled Terms of Business 05/97.

2. Although the timing is disputed the parties are also agreed that there were additional negotiations resulting in a variation of the original agreement whereby Reid would supply and install the glazing and cladding work for a further £46,950. However Reid's say that throughout the contract Island Star, as the main contractor, constantly instructed Reid to 'change modify and vary' the original terms of the agreement causing delay and disruption in its performance. There is also a dispute as to the period for completion of the construction programme, Island Star maintaining this was seven weeks, and Reid that there was an 'estimation' of twelve weeks, with the intention that it should be completed by Christmas, 2000, but that this was provisional.

3. Leaving aside for the moment the contentious allegation that Reid carried out the work in a defective manner, it is clear that the relationship, such as it was, broke down in early 2001, and all work on the site ground to a halt; that the parties resorted to the services of Mr. Graham Hollingsworth, a reputable Guernsey Chartered Surveyor, to carry out a detailed survey of the work so far carried out; that (although this is not stated) probably due to his good offices there were further negotiations resulting in that which became known as the Completion Agreement. This was executed on behalf of both parties at Mr. Hollingsworth's offices on 23rd May, 2001, and Island Star thereupon paid Reid £25,000. Island Star maintain this was by way of consideration for the Completion Agreement, but Reid's say it was for outstanding invoices rendered.

4. Island Star further allege that Reid's did not abide by Mr. Hollingsworth's recommendations, failed to rectify defects that he identified and generally failed to meet reasonable standards of construction and workmanship. These failures amounted to a repudiation of the Completion Agreement and resulted in loss and damage to Island Star of £213,801.60 as particularised in paragraph 18 of the Cause. All these matters are denied in the Defence, which then adds a Counterclaim for the three outstanding invoices which, less the £25,000, is put at £36,044.

5. In its Replique and Defence to Counterclaim of 24th January, 2003, the Plaintiff has joined issue on all the allegations in the Defence and Counterclaim and, in particular, denies that it owes either the £36,044 claimed, or that sum less the alleged discount of £3,240, making £32,804. It is that last pleading which contains the *Exceptions de Forme*, seeking further and

better particulars of paragraphs 4.2, 5.1, 5.3 and 7.2 of the Defence, which now concern this Court on the present Application.

6. As I understand the submissions of Advocate Richardson on behalf of the Plaintiff/Applicant, his client's case is (as, indeed is expressly pleaded in paragraph 16 of the Cause) that the Defendant having, by its conduct, repudiated the Completion Agreement, the original agreement, which had been concluded by an exchange of letters, was thus revived. Accordingly, he submitted that the Plaintiff is entitled to the particulars which are sought in relation to events prior to the execution of the Completion Agreement. I should say at this juncture that Mr. Richardson said he would be submitting that, in any event, the Completion Agreement had also been breached by the Defendant, but it is arguable as to whether the alternative plea in paragraph 17 covers this.

7. The Defendant's case, on the other hand, as presented by Advocate Roland, is that the Completion Agreement replaced the earlier one; that her client does not, in any event, admit it committed a breach, or evinced repudiation, of either agreement. In the Defence it is further pleaded that even if (which is denied) the acts alleged by the Plaintiff amounted to a repudiation of the Completion Agreement, such repudiation was not accepted by the Plaintiff and that the money claimed in the Counterclaim is still due to it. As to the Counterclaim, Miss Roland said, it could not be simpler, being a straightforward claim for unpaid invoices.

8. I will dwell for a moment on the chronology, as Miss Roland alleged there has been a degree of inertia on the part of the Plaintiff. She submitted that the history of the action shows that the Plaintiff has not moved the case on as might be expected if it was keen to get it heard and on a just result, and that virtually every move forward has been made by the Defendant. The particulars now sought evinced, and were in furtherance of, a pattern of delay in which the Plaintiff had, for tactical reasons, indulged.

9. Apparently the Defendant had begun an action for the sums due under the unpaid invoices in the Bournemouth County Court in February, 2002. That action was not, however, proceeded with, and the Defence and Counterclaim in this action were lodged in November, 2002. The Defendant having responded negatively on 24th February, a hearing was sought on 26th March, 2003, and the *Exceptions* were provisionally fixed for hearing on 26th June of that year. That date was vacated due to lack of Court space, and, as Miss Roland accepted, was not the parties' fault.

10. The case was then listed twice in the Interlocutory Court in October of 2003, and, the Deputy Bailiff having suggested that mediation might be an appropriate way forward, on the second of those occasions a possible mediator was named and his appointment was said to be under consideration by the Plaintiff. These efforts came to naught, however, and at the instance of the Defendant, by its Application of 2nd July, 2004, a hearing date was obtained and the *Exceptions* were duly heard on the 22nd and 29th September, 2004.

11. All in all Miss Roland submitted that the Plaintiff's conduct was inconsistent with the spirit, let alone the letter, of the directions by the Jersey Court of Appeal in Gruppo Torras S.A v. Sheikh Fahad Mohammed Al Sabah & Others [also known under the title In re Esteem Settlement], decided on 27th July, 2000, as follows:

> "From now on it has to be appreciated by all who are involved in civil proceedings in the Royal Court that their objective has to be to progress those proceedings to trial in accordance with an agreed or ordered timetable, at a reasonable level of cost, and within a reasonably short time."

12. Mr Richardson responded vigorously to this criticism. He said he had been taken by surprise: that there had been no material delay which was attributable to the Plaintiff: that he was not, as was suggested, 'playing interlocutory games'. As was implied by the mediation proposals in the latter part of 2003, there had been negotiations behind the scenes and

Alternative Dispute Resolution had been explored but without success. Mr. Richardson added that the Particulars sought were designed to shorten matters in the long run, and, in any event, the Plaintiff was entitled to certain basic information and to pin down the Defendant as to what its case really was.

13. I do not think it is possible to lay the blame for the length of time this case has taken to get even to this interlocutory stage at the door of either party. I accept that Miss Roland's application of 10th October, 2003, was the catalyst which precipitated the appearances before the Deputy Bailiff during that month. Suggestions that the parties might explore the possibility of mediation were then made. Apart from Miss Roland's second application to set a date for the hearing of this matter on 30th June, 2004, there is no material on record to show that the period was not occupied by the ultimately unsuccessful attempts at that solution of the dispute.

14. Given that the notes of the Deputy Bailiff and of Miss Roland show that there were attempts at mediation, coupled with Mr. Richardson's statement that ADR was explored; given also the difficulties of obtaining hearing dates, of which at least one of these was vacated at the instance of the Court, I find myself unable to say that it has been shown that there has been inordinate delay on the part of the Plaintiff. It is therefore with an open mind in this respect that I approach *seriatim* the Requests for Particulars in the *Exceptions.*

15. The Defences are cast with specific reference to sections of the Cause. Thus, paragraph 4.2, in relation to which the first Request for particulars is made, relates to paragraphs 5 to 7 of the Cause. The averment of which further and better particulars are sought is as follows:

> "During the entirety of the course of the contract the Plaintiff, *as main contractor,* instructed the Defendant and its servants to change modify and vary the original terms and conditions agreed between the parties' [and, to complete the sentence in which this passage appears] 'in relation to the design and fitting of the structural steel building causing delay and disruption."

Pausing here for a moment, the italicised words, coupled with Paragraph 5.3, which refers to 'the main contract works on site', give the first glimpse to the reader that the contractual relationship between the parties was not of building owner and building contractor, as might be supposed from the Cause, but of main contractor and sub-contractor, which the Replique, with its general traverses, does little to correct.

16. Mr. Richardson submitted that the requests in sub-headings 1 to 4, which sought the identities of the person or persons representing the parties when the instructions to change modify or vary the original terms were given, the date and place thereof and the nature of the change 'discussed', were eminently reasonable and in line with the well-known passage in the Commentary to Rule 12 of Order 18 R.S.C. at paragraph 18/12/5. If these particulars were not furnished, Mr. Richardson said, the name of a person who can testify as to the alleged instructions could suddenly crop up at the trial, or it would be open to the Defendants to call a witness thereto, without the Plaintiff having any idea or any advance warning, so that it would be very difficult to rebut it at that stage. He asked the Court to hold that the cursory Answer given by the Defendant to this request was wholly inadequate and did not begin to address the issues raised.

17. Miss Roland reiterated the charge regarding 'playing games with pleadings' (see also Southwell J.A at paragraph (1) of the observations in the Esteem settlement case *(supra)*) and said that where the parties were two corporate bodies it was inevitable, and obvious, that they could only contract, or do any of the other acts alleged through human agency. It would be oppressive at this stage to require the names and other minute details of each and every person who had a hand in any of the activities going on at the site, and she relied on the second part of paragraph 18/12/5. The two authorities cited there are said to support the proposition that

where an agreement arises from a series of letters, or, as in this case, faxes, oral instructions, further particulars will generally not be ordered of the numerous instances which arise.

18. I will now consider these authorities. In Brogden v. Metropolitan Railway Cmpany [1877] 2 App. Cas. 666 the Appellants had in a course of dealing which extended for some eighteen months supplied the Defendant Company with coal from their colliery. At the inception of the relationship a draft agreement was drawn up which passed back and forth between the parties with various alter- ations and amendments, and in particular, the name of the arbitrator, in the event of a dispute, was left blank. This was completed by the head of the Defendant firm who made one or two further amendments to the wording. It was then returned to the officer who was the normal custodian of the Company's supply contracts, who put it into a drawer where it remained and was never executed.

19. Meanwhile letters and telegraphic communications passed between the parties with regard to the individual weekly supplies, and to a regular increase in the price by the colliery, reflecting price increases in a rising market. In early 1873 the supplies became sometimes deficient in quantity and sometimes irregular, and in December the Defendants declined to continue the supply. On an action for damages for breach of contract by the company, Brett J. held that the evidence of the course of dealing between the parties, coupled with the correspondence, was sufficient to establish that there was a binding contract, notwithstanding that the draft agreement was never formalised. The decision was upheld by a majority in the Court of Appeal, and by the House of Lords on a second appeal by the colliery, Lord Cairns L.C. saying at page 679:

> "…..…….having read with great care the whole of this correspondence, there appears to me clearly to be pervading the whole of it the expression of a feeling on the one side and on the other that those who were ordering the coals were ordering them, and those who were supplying the coals were supplying them under some course of dealing which created on the one side a right to give the order, and on the other side an obligation to comply with the order."

20. The second case, Hussey v. Horne-Payne [1879] 4 App. Cas. 311, concerned the proposed sale of land in the North End district of London. There were negotiations consisting of offers and counter offers, and whether the sale was to include the Mornington Estate. When eventually a price was agreed the second defendant, whose separate property it was, through her solicitor, insisted on a ten per cent deposit immediately and the balance 'over the next few months' and 'nothing less'. Later she relented and agreed to accept the balance by six instalments over three years, and instructions were given to prepare a draft formal contract. The letter of acceptance on behalf of the purchaser, contained the words 'subject to the title being approved by our solicitors' and there was an error as to the date when the first instalment was payable.

21. Due to the illness of the vendor's solicitor the contract was never prepared and the purchaser then sued for specific performance and damages. The Vice-Chancellor at first instance held on the strength of the four letters exchanged in October, 1876, and taking no account of many other letters which had not been produced, that there was a concluded contract within the Statute of Frauds. The Court of Appeal held that the phrase 'subject to title being approved by our solicitors' prevented there being a concluded contract. In the course of his speech in the House of Lords when dismissing the appeal Lord Cairns L.C. said at page 316:

> "……..where you have to find your contract, or your note or memorandum of the terms of the contract in letters, you must take into consideration the whole of the correspondence which has passed…….In order fairly to estimate what was arranged and agreed, if anything was agreed between the parties, you must look at the whole of that which took place an passed between them."

22. Miss Roland submitted that where there was a course of dealing between the parties, as here, both parties were fully aware of the position as it developed, that realistically no one could possibly be in the dark and it is unreasonable to expect the party alleging, here the Defendant, to identify each and every document or communication passing between them.

23. Both the authorities cited in the text of the Commentary in the White Book were decided after the passing of the Judicature Acts of 1875, and the provisions relating to particulars, save for the process of demurrer, were substantially similar those applicable in 1999. It follows that if the parties in either Brogden's case or Hussey v. Horne-Payne had wanted particulars there would have been applications therefore. But there were no such applications. Each case turned on the question of whether the course of dealing between the respective parties, and the correspondence passing between them, were sufficient to establish that there was a binding contract constituted by the course of dealing and the exchange of letters and telegrams. In the first case it was held that an enforceable contract existed and in the second not. Neither case, therefore, is authority for the proposition that further and better particulars will not generally be ordered where there are a number of communications, said to constitute the contract, passing between the parties.

24. Dealing first with the *Exception* relating to paragraph 4.2 of the Defence I have set out above the averment of which further and better particulars are sought. That does not relate to the formation of the contract, as in the two cases above, but to changes modifications and variations which the Plaintiff is said to have instructed the Defendant to carry out with the contract already in progress. In my judgment the Plaintiff is entitled to the particulars asked for in sub-headings 1 to 3 and the first part of 4, namely the respective identities, the date, place and nature of the modification.

25. I take a different view regarding the second part of sub-head 4, and the request to provide a Schedule of working drawings by sub-Request 4.1. To my mind that is part of the discovery process, and the application is premature in this respect. As to sub-Request 4.2, insofar as this part of the request is not covered in the body of 4 itself, I consider that the comparison of the working drawings with 'previous drawing issues' should equally be part of the discovery process, inasmuch as when the previous drawing issues are disclosed on the list of documents under Rule 39 (1)(a), the changes between them and the working drawings referred to in 4.1 will then become apparent.

26. Turning to sub-head 5, that is the orders of the Plaintiff in relation to the variations and modifications said to have been ordered by the Plaintiff and allegedly carried out by the Defendant, I agree with Miss Roland's comment in the Answers to the *Exceptions*, that these are matters of evidence and are not properly requested by way of particulars. I take a similar view with regard to sub-head 6. Again these are matters more properly of evidence than in response to a request for particulars. As regards the *Exception* relating to paragraph 4.2, therefore, in my judgment sub-heads 1 to 3, and 4 down to 'discussed' must be answered, but not the remainder of that request.

27. The next Request relates to the latter part of paragraph 5.1 of the Defences which is as follows:

> "Furthermore it was an express term of the Contract between the Plaintiff and the Defendant that such an erection programme' [I pause here to observe that in the preceding paragraphs the references are entirely to a written 'construction programme' which the Plaintiff, according to paragraph 7 of the Cause, is said to have requested on 6th July, 2000, and I assume, for the purposes of this part of this Ruling that these two terms are being used interchangeably in the pleadings] 'was for guidance only."

28. By no stretch of the imagination can it be said that Miss Roland's submission regarding the oppressive nature of a request which seeks information regarding 'pages and

pages' of communications, sometimes 'two faxes per day'. Part 1 of this Request is made specifically regarding that which is pleaded in the Defences as an express term of the contract (meaning, presumably, at that stage, the first or original contract, as opposed to the Completion Agreement, since it is part of the Plaintiff's case that the wrongful renunciation, by way of alleged repudiatory breaches, of the Completion Agreement had the effect of reviving the first agreement). In my judgment the Plaintiff is entitled to seek particulars of an allegation that the construction (or erection) programme was provisional (whether for seven weeks or twelve weeks) and for guidance purposes only. If that averment, and I emphasise the conditional term 'if', is established then it might well alter the complexion of the case when it eventually comes before the Jurats for decision.

29. I have had some difficulty in understanding Part 2 of this Request. It does not ask, for example, as the first Request, in relation to paragraph 4.2 of the Defences does, that particulars of 'each and every occasion' when the alleged instruction to change, modify or vary the original terms was given, be furnished. The operative part of the paragraph is 'that the Plaintiff contracted with the Def- endant that the erection programme provided by the Plaintiff was for guidance only'. One way of interpreting this passage is that the Plaintiff is seeking to elicit instances when the parties contracted that a particular portion of the work would be executed by way of guidance. If so, it would seem that this part of the Request trespasses into the realms of evidence. Even on the most favourable interpretation the second part of this Request is repetitive of the first. In my opinion it is insuf- ficiently precise to admit of a comprehensive answer. It is accordingly disallowed.

30. I now turn to the response to this Request, which now relates only to Head 1 thereof. Mr. Richardson said he was satisfied with the information which is that the erection programme was provided in the Method Statement included in the letter to Mr. Angliss of 6th October. Unfortunately the Answer went on to mention its confirmation by further correspondence and in oral communications between the parties. He therefore seeks particulars of these, on the basis that his client is entitled to know how the case for the Defendant is going to be put. It must be remembered that at the time the Request was made this information had not been vouchsafed. I therefore ask myself the question: can the information that has now been given, on the 24th February, 2003, regarding the further correspondence and oral communications, relate back, as it were to the Request made a month earlier. Moreover can particulars of particulars can be ordered?

31. For the answer to both of these questions I turn to the judgment of Vaughan Williams L.J. in Millbank v. Millbank [1900] 1 Ch 376. The case concerned a dispute under a will between members of a family, and the defence filed included paragraphs referring to an antecedent sale and conveyance by mortgagees and to a remortgage by the defendant, who had succeeded to the baronetcy on the death of the testator. After a short history of the circumstances in which further and better particulars had been ordered in previous cases, Vaughan Williams L.J. said:

> "But under the Judicature Acts particulars are allowed for quite a different purpose: *they are really supplemental to the pleadings. They are in fact amendments of the pleading, and that is what the particulars we are ordering to be given are*."

My emphasis. That statement of the law is perfectly clear, and I am satisfied that when particulars have been supplied they form part of the pleading of the party which supplied them and are to be considered as such.

32. I therefore regard the second sentence in the Answer to the Request for particulars of paragraph 5.1 of the Defences as part of the Defences. It follows that in the instant case that the Defendants can in law seek further and better particulars of the further correspondence and oral communications referred to in the second sentence of the Defendant's response to this Request. I therefore have to go on and decide whether it is right in the circumstances of this case that the Plaintiff should give these particulars.

33. Both Counsel referred to the Commentary on Order 18 Rule 12 as it was in the 1999 White Book before the introduction of the new C.P.R.'s. Mr. Richardson especially relied on the six principles set out at pages 327 to 328 as to the functions of particulars. These are: (1) To inform the other side of the nature of the case that they have to meet, as distinguished from the mode in which that case is to be proved. (2) To prevent the other side from being taken by surprise at the trial. (3) To enable the other side to know with what evidence they ought to be prepared, and to prepare for, the trial. (4) To limit the generality of the pleadings or of the claim or the evidence. (5) To limit and define the issues to be tried and as to which discovery is required. (6) To tie the hands of the party so that he cannot without leave go into any matters not included.

34. The objective of these principles is summarised in the following statement by Cotton L.J. in Spedding v. Fitzpatrick [1888] 38 ChD 410 at 413:

> "The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise."

35. Moreover as Day D.B said in Tulip Holdings Ltd. v. Orthocentre N.V. [2000] 28th June, referring to the same section of the White Book, at page 3:

> "It seems to me clear from these quotations that the fundamental purpose of the pleadings is to identify clearly the issues which are in contest between the parties and which have to be investigated by the Court. Further particulars of those issues may become necessary, so as to ensure that the litigation and particularly the trial is conducted fairly, openly, without surprises and, as far as possible, so as to mini-mise costs.

36. I find myself in agreement with Mr. Richardson that the sixth principle above, coupled with the third principle, is applicable here. As I indicated earlier, if the erection programme was for guidance purposes only, this could well alter the complexion of the case, inasmuch as the obligations of the Defendant under the first agreement might well not be so strict if the Programme, whether labelled 'Construction' or 'Erection', was for guidance purposes only, as they would otherwise be. Accordingly, in my judgment, the Plaintiff is entitled to guard against surprise at the trial and to be furnished with particulars of the further correspondence and oral communications referred to in the second sentence of the response.

37. I now have to consider the third Request which is made under paragraph 5.3 of the Defences, which in turn relates to paragraphs 8, 9 and 10 of the Cause. The passage of which particulars are sought is as follows:

> "Furthermore the Plaintiff failed to have anyone with adequate experience or training running and co-ordinating the main contract works on site and dealing with the co-ordination agreement of the detailed design adding time to the construction of the project."

38. It will be seen that this is a negative averment. The Request is, however, framed in a way as to interpret it as a negative pregnant, that is to say a negative which necessarily connotes a positive allegation. I do not so read it. Part 1. of this Request asks who *was* running and coordinating the main contract works and the experience and training of that person. But it is readily apparent that that is not the averment. It does not inevitably follow that because the Defendant did not have someone with the requisite experience and training on site that there was someone else there without adequate training and experience. Consequently I have no hesitation in disallowing this part of the Request.

39. I reach a similar conclusion as regards Part 2 of the third Request. I repeat that it is not possible to construe this negative allegation as necessarily carrying with it an averment as to whom the Plaintiff should have had on the site, it is not in my opinion capable of an answer in the context of the Defences. I therefore disallow this Part also.

40. Coming to Part 3 of this Request in relation to paragraph 5.3 of the Defences, this, in my view is a proper subject for particulars, for it is the failure, that is to say the alleged omission, by the Plaintiff to have an experienced or trained person on site, which is as a consequence said to have caused the construction of the project to occupy more time than would otherwise have been the case. I therefore direct that the Defendant should respond to Part 3 of this Request. Since Part 4 is, by consensus, bracketed with Part 3, I do not need to consider it separately. By the same token I consider Part 5 of this Request ought to be answered, and I so direct. As I understand the position Parts 6 and 7 of this Request were abandoned.

41. This brings me to the second Request under paragraph 5.3, which seeks the like particulars of the second sentence in paragraph 5.3 of the Defences as have been sought under paragraph 4.2. It seems to me that, apart from the opening words of the second sentence of paragraph 4.2, 'During the entirety of the course of the contract' and the phrase 'as main contractor', this Request is identical to the earlier one. Both allege that the Plaintiff gave instructions as to the modification of the original terms and conditions relating to the structural steel building, causing delay and disruption. I do not consider it necessary to make a separate order in relation to this Request, since it is covered by that which I have said in relation to paragraph 4.2.

42. Finally, Paragraph 7.2 of the Defences. As I understood Counsel, the amendment made during the submissions to read that Mr. Hollingsworth was appointed as the Plaintiff's Surveyor, and that this was admitted by the Defendant, was sufficient to satisfy this Request. I do not therefore need to deal with it separately.

43. In summary, I order that further particulars be given as requested of paragraphs 4.2 of the Defences, heads 1 to 4; of paragraph 5.1, head 5.1 as related to the Response given on 24th February, 2003; and of paragraph 5.3, heads 3,4 and 5. I do not order to be furnished the particulars sought in Heads 4.1, 4.2, 5 or 6 in relation to paragraph 4.2 of the Defences; nor those sought in Head 2 in relation to paragraph 5.1 of the Defences; nor Heads 1 and 2 of the first Request, or the Second Request, under paragraph 5.3 of the Defences, nor, finally, of the Request under paragraph 7.2 of the Defences.

44. As to the time within which the Answers I have directed shall be given, I am prepared to hear Counsel in default of agreement between them. I propose to reserve the costs, again subject to any submissions Counsel may wish to make.

A.R.W.Hancox
Lieutenant Bailiff
20th October 2004