

BETWEEN

DJAN WORKS SDN BHD

... Plaintiff/Appellant

AND

SWEE SDN BHD

... Defendant/Respondent

**(High Court of Brunei Darussalam)
(Civil Suit No. 1 of 2024)**

Edward Timothy Starbuck Woolley, J.C.

Date of Hearing: 16th June 2025.

Date of Judgment: 23rd June 2025.

Further and better particulars – amendment to quantum claimed – whether particulars of sums now claimed should be ordered – principles to be applied

Rejoinder – now rarely granted leave – circumstances in which appropriate – whether court can order without an application

Mr. Tang Weng Leung (M/S CCW and Partnership) for the Plaintiff/Appellant.

Mr. Leney Andrew Albert (M/S AIP Law) for the Defendant/Respondent.

Cases cited:

Perestrello E Companha Limitada v United Paint Co Ltd [1969] 3 All ER 479

Robbie Ilana Tenzer v Dr Vincent C Goh [2013] HKCU 2501

JUDGMENT

Woolley, JC:

I have before me two appeals from the decisions of Deputy Chief Registrar Hazarena bte POKSJ DP Hj Hurairah made on 23 November 2024 and 25 March 2025. The first decision appealed against is to refuse to order the defendant, while allowing an amended defence and counterclaim to be filed and served, to provide further and better particulars of claims made in that pleading. The second decision is to grant leave to the defendant, when allowing the plaintiff to file an amended reply and defence to counterclaim, to file and serve a rejoinder. I will

deal with them separately and in order of date. For the sake of clarity I will refer to the parties as plaintiff and defendant throughout.

2 The application for further and better particulars

The defendant applied by summons to amend the counterclaim and set off to add further items, increasing their counterclaim by the sum of \$4,244,965.30. They supported this by explaining that, at the time of drafting the defence and counterclaim, the contract and sub-contract, the subject of the dispute, was still in progress so their total loss and damage claimed could not be calculated. The project was completed on 26 May 2024 after which the defendant completed its final accounts and quantified the claim.

3 By way of Notice under Summons, the application was opposed by the plaintiff unless the defendant was ordered to file and serve further and better particulars of paragraph 42 of the amended counterclaim with the additional claim pursuant to a request made to the defendant dated 25 October 2024, and that the plaintiff was granted leave to file and serve an amended reply and defence to the amended counterclaim within 21 days of service of it, and the particulars requested. The latter are usefully listed in the decision of the learned Deputy Chief Registrar as follows:

- (a) an itemised description of every defective work and the corresponding house stating the unit number and zone number of each house;
- (b) the costs incurred for the rectification of each defective work;
- (c) the rectification work allegedly carried out for each effective work;
- (d) the dates on which the rectification work were allegedly carried out;
- (e) the names of each of the new subcontractors;
- (f) the sums paid to each of the new subcontractors;
- (g) the scope of works carried out by the new subcontractors;
- (h) the period(s) and nature of the alleged delay;
- (i) the costs allegedly incurred due to the alleged delay;
- (j) the date of the letter of credit; and
- (k) the purpose of the letter of credit.

The last two were allowed by the Deputy Chief Registrar leaving the first nine for consideration.

4 Mr. Tang for the plaintiff has submitted that the particulars are required to fully inform them of the case they have to answer in respect of the counterclaim

and has drawn my attention to a number of cases supporting that proposition. He goes on to say that the sums claimed in the counterclaim are by way of special damages which must be sufficiently particularized, and he supports this with the judgment of the UK Court of Appeal in *Perestrello E Companhia Limitada v United Paint Co Ltd* [1969] 3 All ER 479 at p 486 where it was held that:

“The obligation to particularise in this latter case arises not because the nature of the loss is necessarily unusual, but because a plaintiff who has the advantage of being able to base his claim on a precise calculation must give the defendant access to the facts which make such calculation possible.”

5 Mr. Leney for the defendant submits that the plaintiff had already, in the reply and defence to counterclaim, made a response to the issues identified in the defence and counterclaim and therefore had sufficient particulars to understand the claims and oppose the issues set out therein, and that the request was an attempt to seek evidence, not to clarify the case to be answered. However, I agree with Mr. Tang that this ignores the difference between causation and quantum. While the plaintiff has either denied, or explained the reason for, any delays and defects alleged by the defendant, this is very different from dealing with the costs allegedly arising from such delays and defects. I agree that the sums now claimed in the amended counterclaim are in the nature of special damages, the calculation of which is within the knowledge of the defendant.

6 There are three remaining sums claimed in the amended counterclaim under consideration here:

Costs incurred to rectify the Plaintiff’s defective works	\$2,465,430.84
Additional costs incurred in engaging new sub-contractors	\$1,248,175.69
Costs incurred due to the Plaintiff’s delay in completing the Works	\$481,926.14

These are just bald figures with no explanation as to how they were arrived at, and I have no difficulty in finding that the plaintiff is entitled to some explanation of them in order to know the case that has to be met. Any such particulars requested do not amount to seeking evidence, but the facts claimed upon which calculation of these sums has been made. On that basis I will look at the particulars requested in respect of the above sums claimed.

7 The first of these is \$2,465,430.84 claimed as the costs to rectify the plaintiff’s alleged defective works for which the particulars requested are (a) to (d) of the list in paragraph 3 above. I find nothing oppressive or unreasonable in these requests. They all refer to facts which must be within the knowledge of the defendant to have calculated the sum claimed. I am supported in this by the case

of *Robbie Ilana Tenzer v Dr Vincent C Goh* [2013] HKCU 2501, referred to by Mr. Tang, where a claim for sums for “remedial dental treatment” was made and the Court ordered particulars of the dental treatment to be given. The case here is very similar. A claim is made for rectification of defective work and the plaintiff is entitled to know what the rectifications were, where they were made, and the cost of each, in order to know how to defend the claim.

8 The next concerns the claim for \$1,248,175.69 for additional costs in engaging new subcontractors and the particulars requested are (e) to (g) in the same list. While a list of sub-contractors had been given in the original defence and counterclaim, by referring to “new” sub-contractors in the amended counterclaim it could well refer to others beyond that list. Further, there is no indication of how the claim here is calculated by stating what was paid to whom to arrive at that figure, and I see no reason why this should not be supplied. Again, I find nothing oppressive or unreasonable in this part of the request.

9 The third sum is \$481,926.14 which is claimed for costs incurred due to the plaintiff’s delay in completing the works with no further explanation. The particulars requested are (h) and (i) above. I do not understand how any party could prepare their case in respect of this claim without knowing how it is calculated. It also makes it difficult for the Court to understand the nature of the claim without more detail. I have no doubt that the plaintiff is entitled to the particulars requested.

10 For the sake of completeness I will look at the other matters raised by the defendant. The first of these is the timing of the request for particulars. Mr. Leney submits that it should only have been made after the pleading was filed. This may be the usual procedure, but there is nothing in the rules to prohibit the course taken by the plaintiff here. If there was a procedural irregularity it can be cured by the Court under Order 2, rule 1. This request was made in October 2024 and it would have been a waste of time and costs to have repeated it after the amended counterclaim was filed, rather than proceed with the Notice under Summons and this appeal.

11 The second point raised by Mr. Leney is that it is all now academic as the plaintiff has now filed their amended reply and defence to counterclaim and there is no issue between the parties. I regret that I cannot agree with this submission. While it is usual to make such a request during the filing of pleadings, this has been a live issue since the appeal against the Deputy Chief Registrar’s decision was filed in November 2024 and the question of whether the plaintiff is entitled to them to enable them to understand the case against them and to prepare to defend it has not disappeared as a result of the sequence of events here. They were obliged to file and serve their amended reply and defence to counterclaim by order of the Court. Whether they apply to file a re-amended reply and defence following the provision of particulars is a matter for them.

12 For these reasons I allow this appeal and order that the further and better particulars requested in (a) to (i) in paragraph 3 above be filed and served by the defendant within 21 days from the date hereof. I am not inclined at this stage to make an unless order, but if the defendant does not comply within the time stipulated, then the plaintiff is of course at liberty to apply for it.

13 Costs must follow the event and I accordingly order that the defendant pay the costs of this appeal and the costs in the court below, to be taxed if not agreed.

14 **Rejoinder**

This appeal arises from the decision of the Deputy Chief Registrar on 25 March 2025 when, in allowing the amendments to the plaintiff's reply and defence to counterclaim, she also granted the defendant leave to file and serve a rejoinder within 21 days.

15 Mr. Tang's first argument on this is that the granting of the leave to file the rejoinder was procedurally wrong and that, in the absence of an application by the defendant, with an opportunity for the plaintiff to oppose it, leave should not have been granted by the Deputy Chief Registrar. Indeed, all references to a rejoinder in the Rules of Court assume an application and a hearing on the matter involving both parties. This was not done here. In addition, the defendant's lawyers, having been served with the proposed amended reply and defence to counterclaim, and thus aware of the contents of it, made no application at the hearing, or prior to it, for such an order, indicating that they did not consider it necessary. However, while the rules assume an application will be made, there is nothing that prevents a court from making any order of its own volition where it considers it is in the interests of justice so to do. The lack of application on its own is accordingly no ground for setting aside this order.

16 It is further contended on behalf of the plaintiff that a rejoinder, while available under the rules with leave, is only to be ordered in exceptional circumstances which rarely now arise. Although the Deputy Chief Registrar found that new issues had been raised by the plaintiff in the amendments sought, Mr. Tang submits that the rejoinder was not necessary as there is an implied joinder of issues upon close of pleadings in respect of the last pleading served. It is clear from the authorities, and from the comments in Odgers' Principles of Pleading and Practice, that rejoinders are now very rare, and on an application for it, the Court must be satisfied that it is necessary. The usual example given for what may be deemed necessary is where a party wishes to adduce facts at trial by way of confession and avoidance, these must be pleaded in a rejoinder. There is no suggestion that this is the case here. The learned Deputy Chief Registrar has identified a number of issues which she considered new and clearly considered that the defendant should have the right to answer them. This does not necessarily

follow in view of the implied joinder of issues on close of pleadings. In the Hong Kong Civil Procedure 2012, the notes to Order 18 rule 4 include the following:

“Leave to serve a rejoinder or subsequent pleading will not be granted unless it is really required, so as to raise matters which must be specifically pleaded.”

The same principle must apply here. There has to be some finality in the pleading process and circumstances must be exceptional to take it further than the last reply and defence to counterclaim.

17 I have carefully considered all the amendments made in the amended reply and defence to counterclaim and, while new matters are clearly raised, I can find none that would qualify for the exceptional circumstances necessary for leave for the rejoinder to be granted, and none which would prejudice the conduct of the defendant’s case at trial, which is already protected by the implied joinder of issues.

18 In any event, as has been pointed out by Mr. Tang, a close look at what has been pleaded in the rejoinder shows that there is nothing which can be described as necessary or which shows exceptional circumstances. Indeed, much of it, including paragraphs 4, 5, 6, 7, 8, 12, 13, and 15, are responses to paragraphs of the original reply and defence to counterclaim which were not amended, paragraph 14 was not consequent upon the amendment and the rest of the pleading either repeats matters raised in earlier pleadings or cannot be described as necessary. Equally there is nothing which would come under the heading of a confession and avoidance defence. If the learned Deputy Chief Registrar had had a sight of the proposed rejoinder in a full hearing, I doubt that it would have been allowed.

19 For these reasons I am satisfied that leave should not have been granted to serve the rejoinder here. Mr. Leney has submitted that, if the defendant is not allowed to file a rejoinder, they will be precluded from adducing evidence at trial to rebut matters raised in the reply. This is not the case. As I have already observed, on close of pleading there is an implied joinder of issues, and there is accordingly nothing in the amended reply and defence to counterclaim that cannot be challenged in court. While I accept that there is little prejudice to the plaintiff by the filing of this rejoinder, I find that leave should not have been given in these circumstances to file it. Further, on perusal of the rejoinder itself, it is clearly not a proper or necessary pleading as a result of the plaintiff’s amendments.

20 I accordingly allow the appeal and set aside the order giving leave to file and serve the rejoinder, which will therefore be struck out.

21 The second part of this appeal relates to the order for costs made by the Deputy Chief Registrar. This was to the effect that the costs of the application be

costs in the cause while the costs arising from the amendments be to the defendant. It is now submitted on behalf of the plaintiff that the first part of the costs order was incorrect in that, having been successful in what was an application opposed by the defendant, costs should follow the event. This must be right. If a party chooses to resist an application made to the court and is unsuccessful then there is no reason why the successful party should not have the costs of that application.

22 I therefore also allow that part of this appeal and order that the costs of the hearing below be to the plaintiff, as well as the costs of this appeal, to be taxed if not agreed.



EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner