

CAUSE NO: 134/98

C.T
- Filed
- 6-06-00

BETWEEN: (1) ALETA JO STURDIVANT et al
(2) MELLON BANK N.A.

PLAINTIFFS

AND: (1) PARROT LANDING WATER SPORT LTD
(2) CHARLES E. BOXWELL
(3) DUANE LN BRINSON
(4) FREDERIK MEINRJES

DEFENDANTS

Mr. J. Campbell for the Plaintiff
Mr. R. McDonough for the second Defendant
Ms. K. Houghton for the first and fourth Defendants

May 12th and 26th 2000

BEFORE MR. JUSTICE SANDERSON

REASONS FOR JUDGMENT

This is an application by the 2nd Defendant to strike the interrogatories issued on behalf of the 1st and 4th Defendants.

The Plaintiff is the personal representative of Ralph Sturdivant, who died in a scuba diving accident on March 3rd 1995. The 1st Defendant was the dive operator conducting the dive. The 2nd Defendant was the deceased's dive "buddy" or partner. The 3rd and 4th Defendants were employed as dive masters by the 1st Defendant and were present on the dive in question.

The Plaintiff alleges in part, that the 2nd Defendant was negligent because he allowed the deceased to attempt to ascend to the surface by himself when his air supply became low.

The Plaintiff and the 1st and 4th Defendants say that a reasonable standard of care required the



IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

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2nd Defendant to ascend with his partner in these circumstances and not continue with his own dive, alone. It is unknown exactly what happened to the deceased. Tragically he was found on the sea bed having drowned.

The 1st and 4th Defendants have delivered interrogatories to the 2nd Defendant. They are just over 11 pages in length and number 115 questions. It is not asserted that they are irrelevant or oppressive. Rather counsel for the 2nd Defendant and counsel for the Plaintiff say that the interrogatories should be struck because they are premature and serve no litigious purpose. They rely upon the decision of the English Court of Appeal in Hall v. Sevalco. [1996] P1 QR 344 and the test enunciated therein; namely that the guiding principle is that interrogatories must be necessary either for disposing fairly of the cause or matter or for saving costs.

The 2nd Defendant submits that these interrogatories will not result in a cost saving, but rather it will increase the expense of the defence. With respect I do not think that answering these questions will have any real impact on the costs of the defence. The questions are relatively straight forward and can be answered fairly easily. There is little or no documentation involved. The questions essentially amount to "tell me everything that happened on the dives in question and the surrounding time period."

On the other hand I am not persuaded that the answering of the interrogatories will result in any cost savings in terms of simplifying or shortening the pre-trial procedure or trial itself. The answering of the interrogatories may result in the parties having to give fewer or shorter witness statements, but I believe that possibility is at the moment, speculative. Accordingly I am not persuaded that there would be a saving of costs if the interrogatories were to be answered. The question is therefore, whether or not the interrogatories are necessary for disposing fairly of the cause or matter.



“ The guiding principle in this field must be that laid down in R.S.C. Ord. 26, r. 1.(1), that interrogatories must be necessary either for disposing fairly of the cause or matter of for saving costs. Necessity is a stringent test. It cannot be necessary to interrogate to obtain information or admissions which are or are likely to be contained in pleadings, medical reports, discoverable documents or witness statements unless, exceptionally, a clear litigious purpose will be served by obtaining such information or admissions on affidavit.”

Counsel for the 2nd Defendant says that no litigious purpose is being served by these interrogatories since the evidence sought by the 1st & 4th Defendants will be available at trial when the 2nd Defendant gives his evidence and further, that at least part of it will be available when he gives his witness statement.

Counsel for the 1st & 4th Defendants points out that the 2nd Defendant lives in the United States and there is no assurance that he will attend the trial. She wants his evidence by interrogatories – under oath. As I previously stated counsel for the 2nd Defendant assured the Court that it was his clients intention to attend the trial but of course that intention can always change. In the end I am not persuaded it is necessary at this stage to obtain Mr. Boxall's evidence under oath but that is not the end of the issue.

Mr. McDonough also argued that counsel for the 1st and 4th Defendants had obtained a statement from Mr. Boxall directly and also had a copy of his sworn statement which he gave to the Coroners Inquiry. I have reviewed both of these documents and I am satisfied that they do not contain the answers to several areas of questioning put forward in the interrogatories.

Finally Mr. McDonough submits that interrogatories are premature in that much of the



information sought by them will be contained in the witness statements. He relies again upon Hall v Sevalco. (Supra). In that case the pleadings had just been exchanged as well as a demand for further and better particulars. The Court of Appeal concluded that interrogatories should not be allowed because the information requested in the interrogatories would likely be provided in particulars, doctors reports and witness statements.

I am not satisfied that will occur here. Particulars have been demanded and given. The litigation is more than 2 years old and not at a preliminary stage as in Hall v Sevalco. The only source of much of the information requested, is from Mr. Boxwell himself. It is not available from any other witness or document. Answers to the interrogatories may or may not given in Mr. Boxwell's witness statement.

Some of these answers to the interrogatories will be key to the Plaintiff as well as the 2nd and 4th Defendants. Some of the information will be crucial for instructing experts on the issue of standard of care and whether or not that standard has been met.

I therefore conclude that the interrogatories are necessary for disposing fairly of the matter and I dismiss the application.

Costs are awarded to the 2nd and 4th Defendant, in the cause.

Dated 6th June 2000



Dale Sanderson
Judge of the Grand Court

