

Dispute Resolution
Case Law Update
Rosling King LLP



Background

The Claimant, Ventra Investments Ltd (“Ventra”) was a successful family owned property investment and letting company with a substantial portfolio of properties, predominantly in central London. In February 2008 the value of its portfolio was in excess of £86 million.

The Defendant, Bank of Scotland plc (“BOS”) first lent money to Ventra in 1997. BOS provided Ventra with loan facilities which included some fixed term loans and other credit facilities. In connection with this borrowing, Ventra entered into a number of interest rate swaps with BOS between June 2005 and February 2008 (the “Original Trades”). Subsequently, between October 2008 and February 2009, Ventra replaced the Original Trades by purchasing four replacement interest rate swaps (the “Replacement Trades”) from BOS.

The Claim

The claim concerned the circumstances in which Ventra entered into the Replacement Trades.

Ventra alleged that that it had been induced to enter into the Replacement Trades by BOS. Ventra commenced proceedings claiming that BOS provided negligent and fraudulent misrepresentations in relation to LIBOR, or that BOS induced Ventra to enter into the Replacement Trades by making negligent misstatements, or, alternatively, that BOS had been negligent in its failure to provide an adequate explanation of the nature and effect of the Replacement Trades.

The Application

BOS issued an application to strike out parts of the Particulars of Claim on the grounds that they were immaterial to the pleaded case and had the potential to substantially increase disclosure and the evidential scope of the proceedings. The Civil Procedure Rules (“CPR”) state that the Court may strike out the whole, or part, of a Particulars of Claim if it contains no reasonable grounds for bringing the claim.

BOS submitted that the Particulars of Claim contained a number of very general and wide ranging claims. These included allegations as to the effect of the global financial crisis on BOS, BOS’s acquisition by Lloyds Banking Group (“LBG”), the involvement of the government in having to rescue the banking sector, and the measures taken to remove riskier assets from LBG’s balance sheet.

BOS’s application referred to the following parts of the Particulars of Claim:

1. Paragraphs 18 and 37.6 which alleged that BOS had acted improperly to create an “exit” from its banking relationship with Ventra as a strategy to remove risky assets from BOS’s balance sheet following the acquisition by LBG;
2. Section K which dealt with BOS’s business operations after July 2009. Only one paragraph in this section related specifically to Ventra; and

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3. Paragraphs 13 and 14 which set out allegations regarding BOS's internal assessment and monitoring systems.

BOS contented that the above aspects of the Particulars of Claim were clearly not relevant to the central issues pleaded by Ventra of negligent misstatement or breach of duty. BOS submitted that if the immaterial issues were dealt with this would considerably increase the time and costs for both parties, and significantly increase the length of the trial.

The Decision

The Commercial Court allowed BOS's application to strike out parts of the Particulars of Claim which were immaterial to the pleaded case. The Court agreed that these sections did not have sufficient relevance to the allegations of negligent misstatement or breach of duty by Ventra. The Court found as follows:

1. The Court could not be satisfied that paragraphs 18 and 37.6 of the Particulars of Claim had any bearing on the issues in the case. As Ventra had not offered any reasonable way of dealing with the defects, the Court found that the correct course of action was to make an order striking out those paragraphs;
2. The Court found that the whole of section K of the Particulars of Claim regarding the business operations of BOS after July 2009 cannot be relevant to the question of representation or falsity, nor, did it bear any analysis on the issue of causation. The Court held that if pursued this section would have a real likelihood to inflate and overcomplicate trial preparation for no purpose. The Court found that section K failed the relevancy test; and
3. The Court found that paragraphs 13 and 14 also failed the relevancy test. The Court held that as they were making orders for other passages of the Particulars of Claim to be struck out, and as Ventra had indicated that it would be seeking to amend its Particulars of Claim in any event, the appropriate course of action would be to strike out paragraphs 13 and 14 for irrelevance as well.

Commentary

The Judge did not accept that the Court had to categorise strike out applications into types such as "irrelevancy" or "extraneous claim". Rather, the basis for strike out applications is set out in the CPR and the starting point for the applicant is to set out how the Particulars of Claim fall within one or more provisions of the rules.

The decision provides a helpful reminder that the Courts will not entertain sections of Particulars of Claim which are irrelevant or that have no bearing to the issues in the case.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.