CITATION: Brigaitis v. IQT, Ltd., 2012 ONSC 6584
COURT FILE NO.: 11-CV-432919CP
DATE: November 21, 2012

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	
BOB BRIGAITIS and CINDY RUPERT Plaintiffs	*Theodore P. Charney* and *Andrew J. Eckart* for the Plaintiffs
– and –	
IQT, LTD., c.o.b. as IQT SOLUTIONS, IQT SOLUTIONS, IQT CANADA, LTD., JDA PARTNERS LLC, IQT, INC., ALEX MORTMAN, DAVID MORTMAN, JOHN FELLOWS, RENAE MARSHALL, and BRAD RICHARDS Defendants	*J. Gardner Hodder* for the Defendants, IQT Canada Ltd, JDA Partners LLC, IQT, Inc., Alex Mortman, David Mortman *Eric M. Roher* for the Defendant Bradley Richards
Proceeding under the *Class Proceedings Act, 1992*	**HEARD:** November 16, 2012

PERELL, J.

REASONS FOR DECISION

A. INTRODUCTION

[1] On this motion, the Plaintiffs Bob Brigaitis and Cindy Rupert seek to have the defendants Alex Mortman, David Mortman, IQT, Inc., IQT Canada Inc., and JDA Partners LLC (the "IQT Defendants") deliver particulars of allegations in their Statement of Defence and Crossclaim.

[2] For their motion, the Plaintiffs had also sought orders that: (a) the IQT Defendants produce for inspection documents referred to in the Statement of Defence and Crossclaim; (b) the IQT Defendants produce for inspection documents relevant to this proposed class action; and (c) the IQT Defendants provide authorizations to access information in computers at Canada Revenue Agency. These requests were withdrawn

during the course of the argument of the Plaintiffs' motion in light of their understanding that the IQT Defendants would be delivering an affidavit of documents in the normal course and that the motion for certification would proceed in the normal course with the exchange of materials and attendant cross-examinations.

[3] For the reasons that follow, I dismiss the Plaintiffs' motion for particulars.

B. FACTUAL BACKGROUND

[4] IQT, Ltd., an Ontario corporation (formerly known as Durham Contact Centre Limited), carried on business as "IQT Solutions." IQT, Ltd operated a customer call centre in Oshawa, Ontario.

[5] IQT, Ltd.'s primary client was Bell Canada, for whom it had a service agreement, under which IQT, Ltd. would operate a call centre for Bell. A central allegation in this law suit is that the Defendants stripped IQT, Ltd. of its assets when it appeared that its Bell connection was going to be lost.

[6] The Plaintiffs, Bob Brigaitis (of Oshawa, Ontario) and Cindy Rupert (of Oshawa, Ontario) were employees of IQT, Ltd.

[7] IQT, Ltd. was owned by: (a) JDA Partners, LLC; (b) IQT, Inc.; (c) John Fellows (of Flower Mound, Texas); (d) David Mortman (of New York City); and (e) Alex Mortman (of New York City). IQT Ltd.'s officers and directors were Fellows, the Mortmans, Renae Marshall (of Nanoose Bay, B.C.) and Brad Richards (of Littleton, Colorado).

[8] JDA Partners, IQT, Inc., Fellows, the Mortmans also owned IQT Canada, Ltd., another Ontario corporation carrying on business in Oshawa, Ontario.

[9] JDA Partners is a New York corporation that is an investment bank. It is alleged that JDA Partners controlled the business activities of IQT, Ltd and IQT Canada, Ltd. JDA Partners is owned by Fellows and the Mortmans.

[10] Alternatively, it is alleged that the defendant IQT, Inc., a Delaware corporation, controlled the business activities of both IQT, Ltd and IQT Canada, Ltd. IQT, Inc. is owned by JDA Partners, Fellows, and the Mortmans.

[11] The Plaintiffs allege that the various IQT companies carried on business jointly and operated as one economic unit or enterprise. The Plaintiffs allege that IQT, Ltd. had no independent decision making power and all decisions were made by the individually named defendants.

[12] The event that precipitated the action now before the court occurred on July 15, 2011. On that date, without prior notice, the Plaintiffs and all the other employees of IQT, Ltd. were told that their employment was terminated and that they would not be receiving their paycheques, severance pay, and vacation pay, and that their benefits were discontinued.

[13] On August 16, 2011, the Plaintiffs issued a Notice of Action and, on September 15, 2011, they filed a Statement of Claim in a proposed class action under the *Class Proceedings Act, 1992*.

[14] The Plaintiffs bring their action on behalf of:

> All persons who were employees of IQT, Ltd. whose employment in Oshawa, Ontario, was terminated on July 15, 2011, exclusive of its directors and officers."

[15] The Plaintiffs sue the Defendants for: (a) wrongful dismissal; (b) conspiracy; (c) inducing breach of contract; (d) an oppression remedy under s. 245 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16; and (e) negligence.

[16] The Plaintiffs claim on their own behalf, and on behalf of the members of the class, for, among other things:

(a) declaration that the Defendants wrongfully dismissed all employees of IQT, Ltd. and that the class members are entitled to reasonable notice or pay in lieu of notice, including payment for all outstanding pay, vacation pay, bonuses, benefits and severance pursuant to sections 54, 57, 58, 60, 61, 62, 63, 64 and 66 of the *Employment Standards Act, 2000*, S.O. 2000, c.41;

(b) a declaration that all employees of IQT, Ltd. who filed claims under s. 96 of the *Employment Standards Act, 2000*,to the Ministry of Labour be granted leave to participate as members of the class despite s. 97 of the Act ;

(c) a declaration that the Defendants conspired together to wrongfully dismiss the employees of IQT, Ltd. and to strip IQT Ltd. of its assets;

(d) a declaration that the directors, officers, and shareholders of IQT, Ltd. intentionally interfered with the contractual relationships between IQT, Ltd. and its employees in Ontario;

(e) a declaration that the directors, officers, and/or shareholders of IQT, Ltd. were negligent; and,

(f) an oppression remedy under s. 245 of the Ontario *Business Corporations Act*.

[17] The Plaintiffs claim damages in the amount of $20 million, aggravated damages in the amount of $5 million dollars, and punitive damages in the amount of $5 million dollars.

[18] On December 20, 2011, IQT, Ltd. was assigned into bankruptcy. The Defendant Marshall is also bankrupt. The Defendant John Fellows has been noted in default.

[19] On May 16, 2012, IQT Canada Ltd, JDA Partners, IQT, Inc., and the Mortmans (the "IQT Defendants") delivered a Statement of Defence and Counterclaim.

[20] The Defendant Brad Richards has not yet delivered a Statement of Defence in light of discussions about settling or discontinuing the claim against him.

[21] By way of defence, JDA Partners pleads that it nothing to do with any of the IQT companies or the call centre. The IQT Defendants state that IQT, Ltd., now in bankruptcy, was the sole employer of the Plaintiffs and of the proposed class members.

[22] In their defence, the IQT Defendants deny the application of the doctrine of common employment, and they plead that there is no basis to pierce the corporate veil.

[23] The IQT Defendants allege that IQT, Ltd. experienced financial difficulties operating the Bell call centre and that Wells Fargo Business Credit Canada ULC, which was providing financial assistance, required David Mortman and IQT Inc. to provide guarantees, which were provided, or it would withdraw its financial support for IQT, Ltd's business. The IQT Defendants plead, however, that in early 2011, Wells Fargo began to take steps to terminate financing IQT, Ltd.'s business.

[24] The IQT Defendants plead the during the final months of the operation of IQT, Ltd., its operation had effectively been taken over by Wells Fargo. The IQT Defendants plead that they were unsuccessful in their efforts to avert this crisis, and in the result, Wells Fargo refused to fund IQT, Ltd.'s payroll on July 14, 2011. The IQT Defendants say they had no choice but to close the business and end the employment of the Plaintiffs and the other employees.

[25] The Defendants deny that they engaged in any conspiracy of any kind. In particular, they deny that they stripped IQT, Ltd. of its assets. They deny that they have breached any contract with either of the plaintiffs or any member of the proposed class. However, as will be revealed further below, they accuse their co-defendant Fellows of defalcations, and of impoverishing and bringing down IQT, Ltd.'s business. (I foreshadow to say that the Plaintiffs' Demand for Particulars mainly concerns Fellows' activities.)

[26] The IQT Defendants plead that: (a) they exercised all due diligence to the extent reasonably expected or required; (b) they infused capital into IQT, Ltd. and sought financing and took many measures to maintain and extend the financing necessary for the operation of IQT, Ltd.; (c) at no time did they prefer their own interests to those of the employees of IQT, Ltd.; (d) they conducted themselves with all reasonable prudence in the circumstances; and (e) they removed Fellows as president of IQT, Ltd. after it became apparent that he had engaged in defalcation.

[27] The IQT defendants plead that the ultimate failure of IQT, Ltd.'s financing was not reasonably foreseeable by them. The plead that they could not reasonably have foreseen IQT, Ltd.'s financial difficulties or that Fellows, its president and principal shareholder, would have misappropriated from it and weakened it to the point of extinguishing its financing.

[28] In any event, the IQT Defendants plead that the proposed class members either filed complaints under the *Employment Standards Act, 2000* or were deemed to have filed complaints about IQT, Ltd.'s failure to pay wages, termination pay, and severance pay, and, therefore, under s. 97 of the *Employment Standards Act, 2000,* the class members may not commence a civil proceeding

[29] The IQT Defendants deny that the proposed representative plaintiffs have standing as complainants under section 245 of the *Ontario Business Corporations Act*.

[30] The IQT Defendants crossclaim against Fellows for: (a) a declaration that he was in breach of his fiduciary duty as a director of IQT, Ltd. and IQT, Inc.; (b) a declaration that he was in breach of his duty of care as a director of IQT, Ltd. and IQT,

Inc.; (c) indemnification to the IQT defendants; (d) indemnification for any amounts ultimately owing by David and IQT Inc. as guarantors; and (e) repayment of any improper expenses which may have been paid by the IQT defendants.

[31] The crossclaim against Fellows is set out in paragraphs 40 to 59 of the Statement of Claim and Crossclaim as follows:

> 40. The IQT Defendants plead that it became apparent to Alex and David that Fellows and his operating team, as selected by him, were responsible for the company's struggles. Accordingly, a management change was made removing Richards as CFO for all the Canadian companies and Alex replaced him effective September, 2010.
>
> 41. Upon becoming CFO of IQT, Ltd., Alex discovered a number of accounting irregularities. For example, there were several significant payables that were neither recorded in IQT, Ltd.'s books nor reflected in the operating statements that the Board received.
>
> 42. Alex also noticed substantial travel and entertainment expenses for the entire management team, from Fellows on down. Alex repeatedly requested, both verbally and by email, that Fellows document these expenses. Alex also stopped payment to management employees for all undocumented requests for such expenses. Despite Alex's frequent requests, Fellows never provided any documentation or otherwise explained these unsubstantiated expenses.
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> 43. The IQT defendants also discovered material unauthorized cash withdrawals from IQT, Ltd.'s account that could only have been made by Fellows.
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> 44. Fellows' unauthorized, and undisclosed, travel and entertainment expenses and his unauthorized cash withdrawals, were one of the reasons IQT, Ltd. was unable to maintain its financing. Richards was complicit in Fellows' activities and helped conceal those activities from the other defendants and their auditors.
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> Breach of Fiduciary Duty
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> 45. Fellows is the majority shareholder and former president and director of IQT, Inc.
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> 46. As the CEO and director of IQT, Inc., and a director of IQT, Ltd., Fellows owed a fiduciary duty to both IQT, Inc. and IQT, Ltd., which required him to act at all times in the best interests of IQT, Inc. and IQT, Ltd. and their investors, to avoid self-dealing, and to act in good faith.
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> 47. Fellows intentionally and willfully violated his corporate fiduciary duty of loyalty by misappropriating travel and entertainment expenses either for himself and for others with his approval.
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> 48. Fellows' breaches of his fiduciary duty with IQT, Inc. and IQT, Ltd. led to IQT Ltd.'s inability to maintain its financing, as a result of which it was necessary for the guarantors to execute the aforementioned guarantees. Fellows' breaches of his fiduciary duty led directly to the execution of the guarantees and the exposure of the guarantors thereunder.
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> 49. Fellows intentionally and willfully violated his corporate fiduciary duty of loyalty by taking material unauthorized cash withdrawals from IQT, Inc.'s account that could only have been made by him.
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> 50. Therefore, Fellows is liable for not only the unauthorized misappropriation and defalcation of the corporate IQT defendants' funds, but also the amounts owed, including any fees, costs, and expenses on the underlying guarantees, and for punitive damages.

Breach of Duty of Care

51. As the CEO and director of IQT, Inc. and a director of IQT, Ltd., Fellows owed a duty of care to IQT, Inc. and IQT, Ltd., which required him to act at all times in a way that complied with the applicable standard of care.

52. Fellows intentionally and willfully violated his duty of care by misappropriating travel and entertainment expenses either for himself or for others with his approval.

53. Fellows intentionally and willfully violated his duty of care by making material unauthorized cash withdrawals from IQT, Inc.'s account that could only have been made by him.

54. Fellows' breaches of his duty of care led to Wells Fargo's declaration of default. But for that declaration of default, the guarantors would never have executed the guarantees underlying Wells Fargo's current action and faced the potential liability they now face under those guarantees.

55. Therefore, Fellows is liable for not only the unauthorized misappropriation and defalcation of the IQT defendants' funds, but also the amounts owed, including any fees, costs, and expenses on the underlying guarantees, and for punitive damages.

Indemnification

56. Because Fellows' unlawful, wrongful, and bad faith misappropriations and defalcations led to IQT, Ltd.'s initial default with Wells Fargo, if any, and because that default led to IQT, Inc. and David signing guarantees, which Wells Fargo is now attempting to enforce, the IQT defendants have a claim against Fellows that he is obligated to indemnify them all amounts owed, in the event that the Court concludes any amounts are owed at all.

57. Therefore, Fellows is liable for the unauthorized misappropriation and defalcation of the IQT defendants' funds and the amounts owed, including any fees, costs, and expenses on the underlying guarantees.

58. The IQT defendants also claim indemnification for any and all amounts they may be found liable to pay to the plaintiffs or the proposed plaintiff class in the within action.

Conversion

59. During his tenure as IQT, Inc.'s CEO and president, and during his tenure as a director, Fellows intentionally and willfully misappropriated and embezzled money and other company assets and property from that company. This money and these assets and property belonged to IQT, Inc.

[32] By letter dated June 29, 2012 to the IQT Defendants' lawyer, the Plaintiffs demanded particulars of the allegations made in the Statement of Defence and Counterclaim as follows:

(1) Paragraph 14: What do the IQT Defendants mean when they claim that IQT, Ltd. was experiencing "financial difficulties"? What type of "financial difficulties" did they suffer? How did these "financial difficulties" relate to John Fellows? What were the "then unknown actions" of Fellows? How and when did the IQT Defendants find out about those actions of Fellows?

(2) Paragraph 17: What "further and substantial efforts to avert" the termination of the financing of IQT, Ltd. did the IQT Defendants make? When did they make those efforts?

(3) Paragraph 26(b): What capital was "infused" into IQT, Ltd and when was this done? What "financing" was sought? From whom was it sought? What were the "many measures to maintain and extend the financing for the operation of IQT, Ltd"? When did they take those measures?

(4) Paragraph 40: Who was part of Fellows' "operating team"? How were they "responsible for the company's struggles"? When did it first become "apparent" to David and Alex that "Fellows and his team, as selected by him, were responsible for the company's struggles"?

(5) Paragraph 41: What were all of the "accounting irregularities" that Alex "discovered"? In what amount were they? Who were the payments to? How were the payments made? Which bank accounts were used? When and how did Alex discover these "irregularities"?

(6) Paragraph 42: What "substantial travel and entertainment expenses" were discovered? Who was part of the "management team"? What was the amount of these expenses? When and how did Alex discover these expenses?

(7) Paragraph 43: What "material unauthorized cash withdrawals" did Fellows make? In what amount? When did he make them? Did anyone assist him in making these withdrawals and if so, who? When and how did Alex discover these withdrawals?

(8) Paragraph 44: How was Bradley Richards "complicit in Fellows' activities" and how did he "help conceal those activities"? What actions did Richards take? When did he do so? What was the dollar amount of the total transactions Richards was complicit in? How many and what transactions was Richards complicit in? When and how did the IQT Defendants find out that Richards was complicit in these activities and that he helped conceal them?

(9) Paragraph 59: When and how did Fellows "misappropriate and embezzle money and other company assets and property"? What is the total dollar amount of this conversion? Who else was complicit in these activities? When and how did the IQT Defendants find out about these activities?

[33] By their lawyer's letter dated August 28, 2012, the IQT Defendants refused to provide the requested particulars.

[34] Certification materials are due from the Plaintiffs by February 15, 2013. The Plaintiffs submit that to adequately prepare for certification and to assess whether the action is worth pursuing it requires answers to the Demand for Particulars. They state that the Defendants' pleading does not adequately inform them of the Defendants' position.

C. DISCUSSION

[35] Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within seven days, the court may order particulars to be delivered within a specified time: Rule 25.10; *Fairbairn v. Sage* (1925), 56 O.L.R. 462 (C.A.); *Physicians' Services Inc. v. Cass*, [1971] 2 O.R. 626 (Ont. C.A.); *Steiner v. Lindzon* (1976), 14 O.R. (2d) 122 (H.C.J.).

[36] In P.M. Perell and J.W. Morden, *The Law of Civil Procedure in Ontario* (1st ed.) (LexisNexis: Markham, 2010), p. 347, I describe the nature of particulars as follows (citations omitted):

> In between material facts and evidence, is the concept of "particulars". Particulars are additional details that enhance the material facts, and particulars have a role to play different from just being evidence. Particulars are ordered primarily to clarify a pleading sufficiently to enable the adverse party to frame his or her answer, and their secondary purpose is to prevent surprise at trial. Particulars have the effect of providing information that narrows the generality of pleadings. Particulars define the issues, enable preparation for trial, prevent surprise at trial and facilitate the hearing. A function of particulars to a statement of claim is to define the claim sufficiently to allow a defendant to respond intelligently to it.

[37] An order for particulars is a discretionary order, and the court must be satisfied that the order is just in the circumstances of each case: *Fairbairn v. Sage, supra* at p. 471; *Obonsawin v. Canada,* [2001] O.J. No. 369 (S.C.J.) at para. 42; *Reichmann v. Koplowitz,* 2012 ONSC 5063 at para. 11 (Master). Particulars for pleadings are normally ordered only if: (a) they are not within the knowledge of the party demanding them; and (b) they are necessary to enable the other party to plead his or her response: *Fairbairn v. Sage, supra*; *Physicians' Services Inc. v. Cass, supra*.

[38] The ability to plead is the focus of the need for particulars, and particulars will be refused if the demand for particulars is being used instead as a way to discover evidence before the examinations for discovery: *Blatt Holdings Ltd. v. Traders General Insurance Co.*, [2001] O.J. No. 949 (S.C.J.) at para. 23. As evidence is not to be pleaded; it is not to be ordered by way of particulars: *Caputo v. Imperial Tobacco Ltd.*, [1996] O.J. No. 1396 at para. 8 (Master).

[39] In *Sears Canada Inc. v. Pi Media Ltd.*, 2011 ONSC 2625 (Master), Master Short dismissed a motion for particulars, and he observed that pleadings and the discovery process should not be confused. He stated at para. 49:

> Pleadings should not be confused with discovery, and the sufficiency of a pleading must be read in light of the discovery process in an action proceeding under the Rules. In my view, even with time limited discoveries, a Demand for Particulars should not be used as a "prepleading" discovery.

[40] The onus is on the party requesting particulars to satisfy the court that such particulars are necessary: *Obonsawin v. Canada, supra* at para. 36. The standard for particulars is the same for both ordinary actions and also proposed class actions: *Caputo v. Imperial Tobacco Ltd., supra*.

[41] Typically, a defendant will demand particulars in order to plead his or her statement of defence or a plaintiff will demand particulars in order to plead his or her defence to a counterclaim. The case at bar is novel because there is no counterclaim against the Plaintiffs and their demand for particulars is largely concerned with the Crossclaim included in the Statement of Defence against a co-defendant.

[42] Untypically, in the case at bar, the Plaintiffs demand is made: (1) in order to deliver a reply; or (2) because the Plaintiffs submit that they need particulars to prepare for the certification motion and in order to understand the IQT Defendant's defence to the action and their resistance to the certification motion.

[43] Addressing the Plaintiffs' alleged need for particulars in order to plead a reply, it needs first to be noted that it is at least doubtful that they are entitled to deliver this

pleading, because the right to deliver a reply is a qualified right. The Rules concerning replies are restrictive. Rule 25.08 states:

> 25.08 (1) A party who intends to prove a version of the facts different from that pleaded in the opposite party's defence shall deliver a reply setting out the different version, unless it has already been pleaded in the claim.
>
> (2) A party who intends to reply in response to a defence on any matter that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been raised by a previous pleading shall deliver a reply setting out that matter, subject to subrule 25.06 (5) (inconsistent claims or new claims).
>
> (3) A party shall not deliver a reply except where required to do so by subrule (1) or (2).
>
> (4) A party who does not deliver a reply within the prescribed time shall be deemed to deny the allegations of fact made in the defence of the opposite party.

[44] Since the Plaintiffs have already pleaded that the IQT Defendants stripped IQT, Ltd. of assets, and since the IQT Defendants plead a cutthroat defence putting the blame on their co-defendant Fellows, and since the IQT Defendants more or less admit that assets were being stripped from IQT, Ltd., it is not apparent why the Plaintiffs would want to plead a version of the facts different from the IQT Defendants' pleading.

[45] It is also not apparent that the Plaintiffs have information that might take the IQT Defendants by surprise. In other words, there is no apparent need for a reply, and, therefore, no manifested need for particulars for pleading a reply.

[46] Assuming, however, that a reply will be forthcoming, in my opinion, the Plaintiffs have not met the onus of showing that they need particulars to deliver their reply. It rather appears that the genuine reason that they want particulars is to satisfy their curiosity about the details of the IQT Defendants' resistance to the certification motion and about the details of the IQT Defendants' Crossclaim against Fellows, which, as already noted, rather supports the Plaintiffs' allegations that the assets of IQT, Ltd. were wrongfully depleted.

[47] Once again, particulars are not needed. The Plaintiffs' curiosity about the IQT Defendants' case and about the Defendants' position on the certification motion will be satisfied in the normal course by the procedural run-up to the certification motion.

[48] Particulars will not be ordered if they are essentially a means to circumvent the normal procedure for an action where the discovery process follows the close of pleadings. In this regard, I agree with the comments of Justice Cullity in *Stewart v. General Motors of Canada Ltd.*, [2007] O.J. No. 2319 (S.C.J.) at paras. 12-13, where he dismissed a motion for particulars and stated:

> 12. In the first place, a number of the particulars address factual questions relating to the class members and their vehicles. Such facts do not have to be pleaded. The statement of claim properly contains the facts alleged as between the plaintiffs and the defendants. Details with respect to the class may be obtained from the affidavits filed by the plaintiffs on the motion to certify the proceeding — and from cross-examinations on them — to the extent that they are relevant to the requirements for certification or, after certification, through examinations for discovery and the evidence given at trial — or when individual claims are considered subsequently.

> 13. More fundamentally, particulars are required in order to enable a party to plead. The defendants have elected to defer the filing of their statement of defence until after certification. Particulars are not provided unless the necessary material facts have been pleaded: *Copland v. Commodore Business Machines Ltd*. (1985), 52 O.R. (2d) 586 (Ont. Master) If this is not done, causes of action will not be disclosed by the pleading and certification will denied with respect to them. If the material facts have been pleaded in respect of the claims of the plaintiffs, the absence of particulars should not ordinarily bear on issues relating to certification. The factual basis for those relating to commonality, or the preferable procedure, should be dealt with in supporting affidavits and can be explored in cross-examination. Particulars will, therefore, not usually be required prior to certification and I see nothing in the circumstances of this case that would require it to be treated as exceptional.

[49] In *Pennyfeather v. Timminco Ltd*., 2011 ONSC 4257, I ordered a plaintiff to provide particulars prior to a certification motion because the moving defendants in that case required them for an imminent certification motion. I stated that particulars were a matter of procedural fairness in order for the defendants to know the case they must meet at the certification motion. However, I also ordered the Defendants to deliver their Statement of Defence as a condition of my ordering particulars, and I applied the normal tests about when particulars should be delivered, including the test that the particulars must be needed in order to plead. I dismissed many of the Defendants' demands for particulars as improper based on the developed caselaw about when particulars will be ordered.

[50] Practically speaking, in *Pennyfeather*, I was directing both the plaintiff and the defendant in a proposed class proceeding to complete the normal process of closing pleadings and only then proceeding to the disclosure stages of the action. In that context, particulars would play their normal role.

[51] In the case at bar, the Plaintiffs will have an ample opportunity to know the case they must meet for the certification motion through the normal procedures, and they will have an opportunity to question the IQT Defendants about the matters described in the Demand for Particulars. In the case at bar, the Plaintiffs do not meet the onus of showing a need for particulars.

D. CONCLUSION

[52] For the above reasons, I dismiss the Plaintiffs' motion.

[53] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with the IQT Defendants submissions within 20 days, followed by the Plaintiffs' submissions within a further 20 days.

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Perell, J.

Released: November 21, 2012

CITATION: Brigaitis v. IQT, Ltd., 2012 ONSC 6584

ONTARIO
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BOB BRIGAITIS and CINDY RUPERT

Plaintiffs

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Defendants

REASONS FOR DECISION

Perell, J.

Released: November 21, 2012.