

Federal Court



Cour fédérale

Date: 20260415

Docket: T-900-20

Toronto, Ontario, April 15, 2026

PRESENT: Mr. Associate Judge Michael D. Crinson

BETWEEN:

**THE TORONTO REGIONAL
REAL ESTATE BOARD**

**Plaintiff/
Defendant by Counterclaim**

and

**IMS INCORPORATED C.O.B. RESTATS
ALSO KNOWN AS REALITY**

**Defendant/
Plaintiff by Counterclaim**

ORDER AND REASONS

[1] The Toronto Regional Real Estate Board (“TRREB”), the Plaintiff/Defendant by Counterclaim brought this motion seeking specific particulars of the allegations set out in the Statement of Defence and Counterclaim of the Defendant, IMS Incorporated c.o.b. RESTATS also known as REALITY (“IMS”). In addition, TRREB is seeking relief in the form of scheduling next steps depending upon whether any particulars are ordered.

[2] The Amended Fresh as Amended Statement of Claim was filed on July 18, 2022, and alleged various breaches of copyright. The Statement of Defence and Counterclaim (the “Defence and Counterclaim”) was filed February 14, 2025. The defences included a denial of infringement of copyright, an implied license from TRREB or, in the alternative acquiescence by TRREB to IMS’ impugned copyright infringing acts.

[3] TRREB sent to IMS a Demand for Particulars and IMS provided answers to some of those demands and not to others. It is the particulars that were either refused, or according to TRREB, deficiently answered that are the subject of this motion. The particulars sought are argued by TRREB to be necessary for TRREB to intelligibly plead over.

[4] The specific particulars sought on this motion are with respect to

a) paragraph 5 of the Defence and Counterclaim:

a. Second Sentence: Particulars of the “TRREB directors and presidents” alleged to have had direct knowledge of “IMS activities” including (i) the names of each of the TRREB directors and/or presidents, (ii) the year(s) they were each alleged to have “subscribed to IMS’s software tool, REality™”, and (iii) the terms by which “TRREB directors and presidents” are alleged to have “subscribed to IMS’s software tool REality™”;

b. Third Sentence: Particulars of the “TRREB directors and presidents” alleged to have “referred other TRREB members to become new subscribers of REality™” including (i) the names of the TRREB directors and presidents who

allegedly made referrals, (ii) when each director and/or president was alleged to have made the referral, (iii) how the alleged referral(s) was/were made, (iv) the alleged TRREB members to whom the referral(s) was/were allegedly made, and (v) the terms by which the TRREB members to whom referrals were allegedly made are alleged to have subscribed to REality™; and

- c. Fourth Sentence: Particulars of the “analytical services” offered by IMS that were allegedly encouraged by “TRREB’s own presidents and directors”;
- b) paragraph 7 of the Defence and Counterclaim:
- a. Particulars of the “directors and presidents” of TRREB through whom it is alleged TRREB had “direct knowledge” of IMS’s activities since 1996 including (i) the names of each of the directors and/or presidents allegedly aware of IMS’s activities, (ii) when each director and/or president was alleged to have become aware of IMS’s activities, (iii) how each director and/or president is alleged to have become aware of IMS’s activities, and (iv) the “activities” which each director and/or president was alleged to have been aware of.
- c) paragraph 9 of the Statement of Defence and Counterclaim:
- a. First Sentence: Particulars of the “directors and presidents” of TRREB who allegedly encouraged IMS’s business activities since 1996 including (i) the names of each of the directors and/or presidents who allegedly encouraged IMS’s business activities, (ii) when each director and/or president was alleged

to have encouraged IMS's business activities, (iii) how each director and/or president is alleged to have encouraged IMS's business activities; and (iv) the business activities that were allegedly encouraged by directors and presidents of TRREB.

- b. Second Sentence: Particulars of the alleged "implied license" to IMS including (i) when the alleged implied license was formed, (ii) the terms of the alleged implied license, and (iii) the "business activities" to which the implied license applied;

- d) paragraph 10 of the Defence and Counterclaim:
 - a. Particulars of the "directors and presidents" of TRREB who allegedly encouraged IMS's business activities since 1996 including (i) the names of each of the directors and/or presidents who allegedly encouraged IMS's business activities, (ii) when each director and/or president was alleged to have encouraged IMS's business activities, (iii) how each director and/or president is alleged to have encouraged IMS's business activities, and (iv) the business activities that were allegedly encouraged by directors and presidents of TRREB.

 - b. Particulars of the "use of the TRREB MLS System in IMS's business activities" to which TRREB has allegedly acquiesced including when such alleged acquiescence occurred.

- c. Particulars as to how IMS is/was gaining access to the TRREB MLS® System to use the TRREB MLS® System (the use of which TRREB is alleged to have acquiesced) including particulars as to IMS’s disclosure to TRREB as to how IMS is/was accessing and using the TRREB MLS® System (the use of which TRREB is alleged to have acquiesced);
- e) paragraph 11 of the Defence and Counterclaim:
 - a. Third Sentence: Particulars of the TRREB directors and presidents alleged to have had “personal subscriptions to REality™” including (i) the names of each of the TRREB directors and/or presidents, and (ii) the year(s) they were each alleged to have “subscribed to IMS’s software tool, REality™”, and (iii) the terms by which they are alleged to have “subscribed”.
 - b. Third Sentence: Particulars of the TRREB presidents and directors alleged to have referred “other TRREB members to become new subscribers of REality™” including (i) the names of the TRREB directors and presidents who allegedly made referrals, (ii) when each director and/or president was alleged to have made the referral, (iii) how the alleged referral(s) was/were made, (iv) the alleged TRREB members to whom the referral(s) was/were allegedly made and (v) terms by which the alleged TRREB members were alleged to have subscribed to REality™;
- f) paragraph 40 (second sentence) of the Defence and Counterclaim, particulars of the “lawful means” through which IMS “accesses the TRREB MLS System”; and

- g) paragraph 46 (second sentence) of the Defence and Counterclaim, particulars of the alleged “influence” TRREB “leverages” over Toronto real estate agents and brokers.

[5] TRREB submits that these requested particulars can be described by three categories of particulars:

- A. Identification and particulars of the “directors and presidents” who allegedly “acquiesced” or granted an “implied licence” to IMS to infringe TRREB’s copyright;
- B. Identification and particulars of the actions taken by those “directors and presidents” that allegedly constituted acquiescence or the granting of an implied licence to IMS to infringe TRREB’s copyright; and
- C. Identification and particulars of the allegedly “entirely lawful means” through which TRREB gains access to the TRREB MLS® System.

[6] The evidence on this motion consists of the affidavit of a law clerk working with Plaintiff’s counsel and attaching the current pleadings, the demand for particulars and the response, and a notice of motion brought by the Defendant in 2023 for a motion to strike the Plaintiff’s Amended Fresh as Amended Statement of Claim.

[7] The purpose of pleadings in an action is to define the issues in dispute between the parties for the purposes of documentary and oral discovery and ultimately trial. More specifically:

This is *the* rule of pleading: all of the other pleading rules are essentially corollaries or qualifications to this basic rule that the pleader must state the material facts relied upon for his or her claim or defence. The rule involves four separate elements: (1) every pleading must state facts, not mere conclusions of law; (2) it must state material facts and not include facts which are immaterial; (3) it must state facts and not the evidence by which they are to be proved; (4) it must state facts concisely in a summary form.

[*Leonard v. Canada*, 2022 FCA 195 at para. 34]

[8] The *Federal Courts Rules*, SOR 98-106 (the “Rules”) make references to the need for fulsome but precise pleadings. For example: (1) Rule 174 requires that every pleading contain a concise statement of the material facts but not the evidence by which those facts shall be proved; (2) Rule 183 requires a defendant to plead any version of facts it intends to prove that differs from the plaintiff’s version; and (3) Rule 181 requires a pleading to contain particulars of every allegation contained therein.

[9] The purposes of particulars of pleading are several and include to:

- A. Inform the opposite party of the case it has to meet;
- B. Focus the allegations and limit the generality of the pleadings;
- C. Limit the issues for discovery and trial;
- D. Tie the party pleading to the allegations made in the pleading, thus ensuring that nothing new will be raised at discovery or trial without leave;

- E. Enable the party opposite to know what evidence it will have to gather and present at trial; and
- F. Prevent surprise at trial.

[*Throttle Control Tech Inc. v Precision Drilling Corporation*, 2010 FC 1085 at para. 11].

[10] It is with these purposes of pleadings and particulars in mind that a demand for particulars will be considered. Justice Zinn in *Throttle Control supra* at para. 10 set out the two questions the Court should ask when faced with a motion for further and better particulars:

- A. Are the alleged particulars requested evidence or are they material facts? If the former, they should not be ordered to be provided; if the latter they may be ordered to be provided; and
- B. Are the particulars requested necessary for the purpose of being able to respond to the pleading? If they are necessary, then they should be ordered to be provided; if they are not then they should not be ordered to be provided.

[11] The answer to the question of necessity of any requested particulars may be clear in the circumstances and on the face of the pleadings themselves. It may also be possible on a motion for particulars to establish with affidavit evidence the need for the requested particulars [*The Gillette Co. v Dynamic Toy Importers Ltd.*, 2003 FC 956 at paras. 9-11]. However, on a motion for particulars, evidence setting out why particulars are required is not necessary where, such need for particulars is clear on the face of the pleading.

[12] Additional circumstances come to bear on the determination of necessity of the particulars as elaborated in *Toronto Regional Real Estate Board v. IMS Incorporated (RE Stats)*, 2024 FC 1537 at para. 12, an earlier decision in this proceeding when IMS brought a motion to strike or in the alternative particulars of the Amended Fresh as Amended Statement of Claim.:

[12] While particulars may be of benefit to the party seeking them, there are some limits to what would be considered appropriate particulars at the pleadings stage of a proceeding:

1. the scope of permissible requests for particulars is narrower at the pleading stage than later on in the litigation or during discovery. Before the filing of its defence the defendant is only entitled to particulars which are necessary for filing its defence;
2. a party is not entitled to request particulars of information within its knowledge unless the pleading is otherwise faulty through its failure to plead a necessary material fact;
3. particulars are intended to allow the party requesting them to know the case it has to meet not the way in which the allegations will be proved; and
4. a request for particulars equivalent to a fishing expedition, to determine if there is a factual basis for a potential defence, is not appropriate.

Quality Goods IMD Inc v RSM International Active Wear Inc. (1995), 1995 CanLII 19278 (FC), 101 F.T.R. 318 (TD)

[13] The Defendant should be tied to the allegations made in the pleading with a view to limiting the issues for discovery and ensuring that nothing new will be raised at discovery. This means the allegations in the pleading should have some focus sufficient to inform TRREB of the case it has to meet. Application of these principles in the present motion makes clear on the face of the pleadings themselves that the Plaintiff requires the particulars of the names of each of the “TRREB directors and/or presidents”:

- A. alleged to have had direct knowledge of IMS's activities (paragraph 5, second sentence);
- B. alleged to have referred other TRREB members to become new subscribers of REality™ (paragraph 5, third sentence and paragraph 11, third sentence);
- C. through whom it is alleged TRREB had direct knowledge of IMS's activities (paragraph 7);
- D. alleged to have encouraged IMS's business activities (paragraph 9 first sentence and paragraph 10);
- E. alleged to have had personal subscriptions to REality™ (paragraph 11, third sentence).

[14] The balance of the requests for particulars relating to paragraphs 5, 7, 9, 10 and 11 are for information within the knowledge of TRREB, specifically within the knowledge of the TRREB directors and/or presidents referred to in the preceding paragraphs. TRREB has not established on the record that it requires the additional requested particulars in order to know the case it has to meet when considered in the context of the totality of the allegations and knowing the identity of its own TRREB directors and/or presidents. These remaining requests for particulars relating to paragraphs 5, 7, 9, 10 and 11 are not necessary for pleading and will not be ordered at the pleadings stage.

[15] Paragraph 40 of the Statement of Defence and Counterclaim denies the version of facts pleaded by TRREB as to how IMS has gained access to the TRREB MLS System. That paragraph goes on to plead “Rather, IMS accesses the TRREB MLS System through entirely lawful means. This latter part of the paragraph does not satisfy Rule 183 as it does not materially plead a version of facts, it merely pleads a conclusion. IMS is required to provide the particulars requested of the “lawful means through which IMS accesses the TRREB MLS System” alleged in paragraph 40 of the Statement of Defence and Counterclaim in order to meet its requirements to plead the material facts.

[16] The allegation in paragraph 46 of the Statement of Defence and Counterclaim is sufficiently pleaded in the circumstances of this proceeding. In effect, the request for particulars regarding paragraph 46 of the Statement of Defence and Counterclaim is seeking information that TRREB already has – “how does TRREB leverage its influence over Toronto real estate agents and brokers”. This request for particulars of paragraph 46 of the Statement of Defence and Counterclaim is equivalent to a fishing expedition, to determine if there is a factual basis for a potential defence. It is not appropriate and shall not be ordered to be provided.

[17] Upon considering the oral submissions at the hearing that there should be no order as to costs if success on the motion was divided, there shall be no costs awarded for this motion.

ORDER

THIS COURT ORDERS that:

1. The Defendant/Plaintiff by Counterclaim shall provide to the Plaintiff/Defendant by Counterclaim the following particulars (paragraph references are to the Statement of Defence and Counterclaim):
 - a. the names of each of the “TRREB directors and/or presidents”:
 - i. alleged to have had direct knowledge of IMS’s activities (paragraph 5, second sentence);
 - ii. alleged to have referred other TRREB members to become new subscribers of REality™ (paragraph 5, third sentence and paragraph 11, third sentence);
 - iii. through whom it is alleged TRREB had direct knowledge of IMS’s activities (paragraph 7);
 - iv. alleged to have encouraged IMS’s business activities (paragraph 9 first sentence and paragraph 10);
 - v. alleged to have had personal subscriptions to REality™ (paragraph 11, third sentence).
 - b. the particulars of the lawful means through which IMS accesses the TRREB MLS System alleged (paragraph 40).

2. The particulars ordered to be provided in paragraph 1 of this Order shall be served by April 22, 2026.
3. The Plaintiff/Defendant by Counterclaim shall serve and file its Reply and Defence to Counterclaim within 20 days from the service of the particulars ordered in paragraph 1 of this Order.
4. No costs are awarded for this motion
5. The motion is otherwise dismissed.

"Michael D. Crinson"

Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-900-20

STYLE OF CAUSE: THE TORONTO REGIONAL REAL ESTATE BOARD
v IMS INCORPORATED C.O.B. RESTATS, ALSO
KNOWN AS REALITY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 2, 2025

ORDER AND REASON: CRINSON A.J.

DATED: APRIL 15, 2026

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