CITATION: 2026 NBKB 052

Docket: FC-333-2024

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

FOREST PROTECTION LIMITED,

Plaintiff,

-and-

AVONDALE CONSTRUCTION LIMITED, and EXP SERVICES INC.

Defendants.

DECISION

Date of Hearing:	January 15, 2026
Date of Decision:	March 16, 2026
Subject Matter:	**Demand for Particulars**
Before:	Justice Terrence J. Morrison
At:	Burton, New Brunswick
Appearances:	Hugh J. Cameron, K.C., and Adora Bustard, for the Plaintiff
	James D. MacNeil, for the Defendant, Avondale Construction Limited
	Ryan P. Burgoyne, for the Defendant, EXP Services Inc.

DECISION

Morrison, J.

I. INTRODUCTION

[1] This is a motion by the plaintiff, Forest Protection Limited ("FPL") for an order that the defendant, Avondale Construction Limited ("Avondale") provide further and better particulars in response to FPL's Demand for Particulars, dated July 15, 2025. In response to the Demand for Particulars, Avondale filed a Statement of Particulars on August 5, 2025. FPL submits that Avondale's Statement of Particulars is deficient and/or non-responsive and therefore seeks the within order.

[2] This motion arises from a dispute with respect to a construction contract. FPL entered into a contract with EXP Services Inc. ("EXP") for the design and construction management of the renovation and expansion of its airplane hangar located in Lincoln, New Brunswick. EXP recruited Avondale as the project contractor and construction manager. FPL, EXP and Avondale entered into a construction management contract whereby EXP was the architect/engineer and consultant and Avondale was the construction manager. FPL was unhappy with the results of the construction, in particular that the completed building leaks. FPL alleges that Avondale was negligent in constructing the roof, caused delays, and unilaterally increased the budget, scope and schedule of the project, resulting in increased costs to FPL. Avondale filed a Statement of Defence and Counterclaim. In its pleading, Avondale denies any negligence or breach of contract. It also asserts that it complied with the plans, specifications and drawings provided to it or approved by FPL/EXP, and that any changes to the project's scope/budget

occurred with FPL's knowledge and consent. Avondale also pleads that errors alleged by FPL were the result of either design issues or existing structural issues with FPL's facility and any delays were the result of FPL's failure to observe the schedule.

[3] It is against this background that FPL issued its Demand for Particulars and to which Avondale filed its Statement of Particulars. FPL alleges that the Statement of Particulars is deficient, and further particulars are required in order for it to plead to Avondale's Statement of Defence and Counterclaim.

[4] Attached as Schedule A is a table outlining the relevant paragraphs in Avondale's Statement of Defence and Counterclaim, FPL's Demand for Particulars with respect to each, and Avondale's response.

II. ANALYSIS AND DECISION

[5] Counsel for FPL submits that the referenced paragraphs in Avondale's Statement of Defence and Counterclaim are deficient and fail to comply with the rules of pleading, in particular rule 27.06(1) and rule 27.07(3). FPL submits that because of the deficiency in the pleadings it is entitled to fulsome particulars. What is at issue in this motion is the sufficiency of Avondale's Statement of Particulars.

[6] Rule 27.08 of the *Rules of Court* provides as follows:

27.08 Particulars

(1) Where a party files and serves a Demand for Particulars (Form 27L) demanding particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply sufficient particulars within 10 days after service of the demand, the court may, upon such terms as may be just, order that such particulars be filed and served within a specified time.

(2) Where a party demands particulars for the purpose of pleading, he shall have the same length of time

(a) after receipt of the particulars, or

(b) after failure to supply sufficient particulars as provided in paragraph (1),

to serve such pleading as he had when the demand was served, but such length of time shall not be less than 5 days.

(3) The Statement of Particulars (Form 27M) shall be served on all parties and filed with the clerk.

[7] FPL submits that Avondale's Statement of Particulars provides very few substantive responses and the impugned particulars fall into two categories: (1) Responses where Avondale states that the requested particulars "relate to" various documents that FPL says are not in its care or control (Schedule "A", Items 1, 2, 3, 5, 8, 9, 10, 11, 12, 14, 15, 16, 20 &21); and (2) Where Avondale denied a response on the basis that the demand called for "evidence or a description of evidence contrary to the New Brunswick *Rules of Court* (Schedule "A", Items 4, 6, 7, 13 &17)

[8] At this juncture, it is useful to consider the purpose of particulars. The role of particulars is engaged at two stages in litigation: pleadings and post-discovery. Particulars will be ordered for purposes of pleading or later, if information cannot be obtained on discovery for purposes of preparing for trial (*Levesque v. Borrel*, 1997 CarswellNB (NBQB) 337, at para. 16).

Counsel for FPL referred to *City of Ottawa v. Cole and Associates Architects Inc et al.*, 2012 ONSC 3360, where the Court stated that particulars would be ordered at the pleadings stage only if (1) they are not within the knowledge of the other party; and (2) they are necessary to enable the other party to plead (para. 26). I note that this is a case where the party was seeking an order for particulars. As such, the sufficiency of the pleadings was at issue. In the present case, Avondale has provided particulars. It is the sufficiency of those particulars which are at issue here.

[9] FPL also referred the Court to the case of *Gulamani v. Shandra*, 2009 BCSC 1487, where the Court stated that the function of particulars is to enable the other side to know what evidence they ought to be prepared with for trial, to limit the issues and to "inform the other side of the nature of the case they have to meet as distinguished from the mode in which the case is to be proved" (para. 31).

[10] At this stage in the proceeding, the question is whether the particulars are necessary for FPL to reply to Avondale's Statement of Defence and Counterclaim. It is always possible to plead to a bald assertion by making a general denial. The question in this case is whether the particulars provided by Avondale allows the issues to be joined in a manner contemplated by the rules of pleading (*City of Ottawa*, at para. 28).

[11] Counsel for FPL also refers to *Wry v. Guimond*, 1980 CarswellNB 186, where Meldrum, J. stated at paragraph 20:

> The plaintiff says that the time for the particulars is after discovery. With respect I find no rule limiting time for demand for particulars in that manner. In fact, McRuer, C.J.H.C. in *Brennan v. J. Posluns & Co. Ltd.* 1959, O.R., 22 sets a warning,

> It is useful to set out some of the general principles of law applicable to discovery and to emphasize that these principles are not to be confused with principles applicable to particulars, which are required to be delivered before pleading in answer to the pleading of an opposite party or are required to be delivered after pleading and before trial. The purpose of particulars required to be delivered before pleading is for the intelligent pleading by the opposite party. Particulars before trial, on the other hand, are required for greater clarity in defining the issues to be tried. As distinct from these purposes, discovery is to enable the opposite party to know what case he is to be called upon to meet and in addition to simplify the trial by procuring admissions.

[12] There are some aspects of the *Wry* case which I wish to note. First, there was a demand for particulars issued by the defendants which was refused by the plaintiff. That is distinguishable from the present case. Parenthetically, although the case citation indicates it is a decision of the New Brunswick Court of Appeal, that is very unlikely. The presiding judge, Justice Meldrum, to my knowledge was never a Justice of the Court of Appeal. He was a Judge of the Court of Queen's Bench. Second, he's referred to as "Meldrum, J.", not "Meldrum, J.A.". Finally, I cannot envision a scenario where the New Brunswick Court of Appeal would be considering a motion for particulars in a civil action that had not progressed beyond the pleadings stage.

A. *Documents Referenced*

[13] With respect to the first category of particulars which FPL submits is deficient, FPL raises two arguments. First, it points to the responses where Avondale refers to specific documents using the term "relates to". For example, in Schedule "A", Item 3 (Demand 2(b)), FPL demanded particulars of the cost estimates initially provided by Avondale. In its response, Avondale says that the cost estimates "relate to the Construction Budget dated 03-17-2022 which forms part of

CCDC 5B and listed under Article A-4 Contract Documents". FPL argues that use of the phrase "relate to" (or similar language) is imprecise and vague and therefore does not permit FPL to be confident in the response. Avondale, on the other hand, submits that there is no obscurity or ambiguity in its use of the phrase "relates to". Counsel for Avondale suggests that FPL's position is "mere semantics".

[14] I agree with Avondale's position in this regard. I see no merit in FPL's argument that the particulars provided by Avondale are deficient because the specific document is identified as "relating to" the allegation in the pleading. I can find no fault in Avondale's particulars by reason of their use of the term "relates to".

[15] The second argument advanced by FPL is that the particulars provided by Avondale reference documents outside of FPL's care and control.

[16] The first question which must be addressed is, what documents are in the care and control of FPL? FPL filed an affidavit sworn by Zachary Morrow, FPL's Senior Director of Operations. In that affidavit, he deposes that he has no knowledge of "most" of the plans, drawings, meetings, design errors, structural issues or scheduling delays referenced in Avondale's Statement of Defence and Counterclaim (see para. 12, Record, p. 3). Initially, during argument, it was suggested that FPL did not have the plans and specifications referred to in Avondale's pleadings. Counsel for Avondale pointed out that FPL's Statement of Claim is rife with references to "plans and specifications" which form part of the Contract Documents. Counsel for FPL conceded that their client "of course" has the 30-page CCDC contract, which would include the

plans and specifications (which were the responsibility of EXP). The issue appears to be the ability of FPL to access and understand a project management software program utilized by Avondale called Procore. It appears that Procore was utilized, among other things, to track changes in the project scope and budget through documented "Change Events". It is clear that FPL had access to Procore from April 2024 (Morrow affidavit, paragraphs 18-22, Record, p. 14-15).

[17] The first issue raised by Mr. Morrow's affidavit is, what documents did FPL have in its possession or control? It is clear from the record and comments from FPL's counsel that FPL has in its possession and control most, if not all, of the documents referenced by Avondale in its Statement of Particulars. (There is an issue regarding FPL's ability to extract relevant information from Procore, which I will address later in these reasons.)

[18] FPL submits that Avondale's response amounts to it saying to FPL, "You have the documents". FPL points out that simply because the party requesting the particulars has possession of documents does not impute knowledge of the requested particulars. FPL refers specifically to *SAP Canada Inc. v. Bata Industries Ltd. et al.*, 2004 CanLII 34334, and *Montreal Trust Co. of Canada v. Hickman*, 2001 NFCA 42, for the proposition that it is no answer to a Demand for Particulars that the requesting party already has all of the documents and/or information in its possession, and therefore particulars are not required. However, in my view that is a mischaracterization of Avondale's response. In its Statement of Particulars, Avondale does not merely make a bald assertion that FPL has possession of the documents. It goes further. The Statement of Particulars in most, if not all of the particulars, makes pinpoint reference to specific documents.

[19] On their face, the particulars appear to be responsive. The issue with the referenced documents appears to center around whether Avondale's Statement of Particulars which references documents and/or entries in Procore properly and adequately responds to FPL's Demand. Mr. Morrow, in his affidavit, deposes that he accessed Procore and reviewed what he believes are the references made to the Procore documents in the Statement of Particulars and cannot discern any meaningful details or explanation regarding Avondale's pleading and/or its Statement of Particulars. Avondale, on the other hand, submits that the Procore references contain the information which FPL seeks.

[20] Determining whether Avondale's references to Procore and other documents are responsive to the Demand for Particulars would require the Court to review the software program and documents in issue. That, of course, is a task that the Court will not undertake. It is therefore impossible for the Court to resolve this particular dispute. In essence, Avondale is saying to FPL that it has told it where to find the answers it seeks in the documents, and FPL is saying that the references do not provide and answers and that there must be other documents that respond.

[21] As mentioned, this is not a dilemma which the Court is in a position to adjudicate. It seems to me that FPL needs assistance in navigating and understanding the Procore program or it requires additional documentation. Rule 31.04 provides a remedy. That Rule provides that any party to a proceeding may, at any time, demand that documents be produced for inspection. As far as I know, FPL has not pursued this remedy.

B. *Demand Seeks Evidence*

[22] The second tranche of responses with which FPL takes issue are those where Avondale responds that the Demand for Particulars seeks evidence which is not permissible under the rules of pleading. The distinction between what constitutes "material facts", "evidence" and "particulars" is not a bright line. In *Rofe v. Kay Aviation b.v.*, 2001 PESCAD 7, the PEI Court of Appeal stated, at paragraph 11:

> 11 **It is not always easy to distinguish between what constitutes "material facts," "evidence" and "particulars" in the context of pleadings.** In addition to the requirement to provide particulars under Rule 25.06(8), a defendant may demand particulars of certain material facts pursuant to Rule 25.10. In *Copland v. Commodore Business Machines Ltd.* (1985), 52 O.R. (2d) 586 (Ont. Master), Master Sandler has this to say at p.588 with respect to the distinction between these concepts in the context of Rule 25.10.
>
> > ...**Material facts must be pleaded; evidence must not be pleaded. In between the concept of 'material facts' and the concept of 'evidence,' is the concept of 'particulars.' These are additional bits of information, or data, or detail, that flesh out the 'material facts,' but they are not so detailed as to amount to 'evidence.'** These additional bits of information, known as 'particulars,' can be obtained by a party under new rule 25.10, if the party swears an affidavit showing that the particulars are necessary to enable him *to plead* to the attacked pleading; and that the 'particulars' are not within the knowledge of the party asking for them. An affidavit is not necessary only where the pleading is so bald that the need for particulars is patently obvious from the pleading itself. New rule 25.10 is substantially the same as former Rule 140, and in my view, the law on this subject has not changed by reasons of the change from the Rules of Practice to the Rules of Civil Procedure.[Emphasis added]

(See also *City of Ottawa*, at para. 23.)

[23] In its submission, FPL referred to cases from other courts where particulars have been ordered. Specifically, FPL submits that *City of Ottawa* is similar to the present case in that it involved an action concerning the installation of a roof that developed leaks. FPL says that many of the allegations raised in that case are similar to those in the present case. The Court ordered particulars.

[24] As mentioned earlier, the *City of Ottawa* case is distinguishable from the present case in that no particulars had been provided. More important, however, is that cases involving particulars are very nuanced and fact specific. Other cases are of little jurisprudential value. Indeed, one could point to New Brunswick cases *Hasson v. Hughes Development Inc.*, 2006 NBQB 60 (a construction case), and *Levesque v. Borrell*, [1997] CarswellNB 337, as examples of where the Court denied motions for particulars on the grounds that what was being sought was evidence. However, these cases, too, are of little value. As mentioned in *Gulamani*, the decision to order particulars is extremely discretionary and heavily fact dependent (par. 28)

[25] The impugned particulars dealing with Avondale's response that what is sought is evidence are in response to specific details of delay in the schedule and changes in project scope and budget. In construction cases, determination of delays, scope changes and related budget impacts are nuanced and often require the assistance of experts. While the line between particulars and evidence may not be a bright one, in my view, the further particulars sought by FPL are in the nature of evidence.

[26] I must point out that Avondale's response to these demands was not a mere denial. Although Avondale's response to these items was that they called for evidence, in four of the five responses it did in fact identify documents or other evidence that it says are responsive (Schedule "A", Items 6, 7, 13 & 17).

III. CONCLUSION

[27] FPL's motion for an order that Avondale provide further and better particulars is dismissed with costs payable to Avondale which I fix at $2,000.00 and payable forthwith.

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Terrence J. Morrison
Justice of the Court of King's Bench