



Neutral Citation Number: [2018] EWHC 2933 (Ch)

Case No: IL-2018-000060

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INTELLECTUAL PROPERTY LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Thursday, 8th August 2018

Before:

MR. JUSTICE HENRY CARR

Between:

GENERAL HOTEL MANAGEMENT, LTD
(a company incorporated in the British Virgin
Islands, registration no. S91UF0500H)

Applicant

- and -

(1) THE WAVE STUDIO PTE LTD
(a private limited company incorporated in
Singapore)

(2) THE WAVE STUDIO, LLC
(a limited liability corporation registered in New
York, USA)

(3) MS LEE KAR YIN
(an individual resident in Singapore, a.k.a. Junior
Lee)

Respondents/
Claimants

- and -

THAMES & HUDSON LIMITED
And 161 Other Defendants

Defendants

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MR. JEREMY REED (instructed by **Potter Clarkson LLP**) for the **Applicant**

THE RESPONDENTS/CLAIMANTS AND DEFENDANTS did not appear and
were not represented

Approved Judgment On Application

MR. JUSTICE HENRY CARR:

1. I am going to deal first with the application by General Hotel Management Limited to be joined as a party, in particular a defendant, to this claim. The application is made pursuant to CPR rule 19.2(2)(b) which provides that:

“The court may order a person to be added as a new party if – ...

or;

(b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.”

2. The background to this case is that the claimants have sued a large number of defendants. It appears that 61 defendants have been served and 162 are named in the pleadings as potential defendants but have not yet been served. The applicant owns and operates a number of hotels around the world. The applicant claims (and it may be common ground) that several years ago it commissioned photographs of their hotels for promotional use. The claim against these numerous defendants concerns the use of these photographs in advertisements. The claimants say that this use infringes their copyright.
3. I should say that the claimants have also brought parallel proceedings in both the United States and in Singapore which proceedings also include a large number of defendants but in respect of which the applicant was named as a defendant as well.
4. The applicant’s case is that since it commissioned the photographs it had a licence to use them and a sub-licence to allow numerous others (who are named as defendants) to use the photographs.
5. It seems to me, in these circumstances, that it is appropriate to accede to the applicant’s application to be joined as a defendant. Plainly, it is the best party to say whether or not such a licence existed. This is clearly an issue which is connected to the matter in dispute if such a licence, including a right to sub-licence, did exist, then this may be a complete answer to the claim against all of the defendants. Furthermore, if such a licence did not exist and the copyright claim is established, then it may be that other defendants will look to the applicant for an indemnity for the losses that it has incurred.
6. For these reasons I will accede to the applicant’s application to be joined as a party.

(For continuation of proceedings: please see separate transcript)

7. The applicant is now a party to this claim pursuant to the order that I have just indicated that I will make. It now applies as a party for a stay of these proceedings against all defendants pending an order on common issues.
8. The background, which I have briefly indicated, is as follows. Because 61 defendants have already been served and Mr. McDonald of Potter Clarkson (who is a solicitor acting on behalf of the applicant) has explained that, as might be expected, many of these defendants have instructed major firms of solicitors including Reed Smith,

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Harbottle & Lewis, Cameron McKenna and many others. Very substantial costs are being incurred, much of which may be duplicative. Mr. McDonald has given a rough estimate which, as he says, requires a degree of conjecture, but given the ratio of firms to defendants to date it would appear that on a pro rata basis the 61 defendants could instruct 49 or so firms of solicitors. He also explains at paragraph 10 that, again based on rough estimates which I consider, I have to say, to be very reasonable, that the costs of this case could be staggering even at an early stage and could exceed £1.2 million. If each defendant were to spend £10,000 in the preparation of their defence, which I regard as a modest sum, then the costs to defend for the 61 defendants would be estimated at £610,000.

9. It seems to me that in these circumstances it is urgent to grant a stay given that it may be that the issue of whether the applicant has a licence, which includes a licence to sub-license others, may resolve the claim. Even if it does not, and even if it is not appropriate to order that as a preliminary issue, I still think that it is appropriate to grant a stay.
10. However, I am concerned, for the reasons which I have touched on, that I have not heard from the claimants, although I was reassured by an e-mail from the claimants' solicitors dated 8th August 2018 where Ms. Cassandra Hill explains that:

“... in principle our clients are not objecting to a stay in order that we can discuss the issues raised in your client's application and, if appropriate, agree case management steps. However, for the reasons set out in our previous correspondence, we cannot agree to a stay with your clients in circumstances where they are not party to the proceedings and, therefore, do not have locus to do so.”

Ms. Hill continues:

“Further, not all of the defendants have agreed to the stay and our clients are concerned that any such stay will affect deadlines which it has to meet in these proceedings, including responding to an RFI and serving defendants who are outside the jurisdiction. Any stay, if ordered by the court, will need to provide for an extension in relation to these issues.”

11. I think that the best course is for me to order a stay for 21 days. That will have the effect that no defendant will have to serve any pleadings or take any step in the action. Furthermore, nor will the claimants have to meet any existing deadlines. But I do want to give the claimants the opportunity to be heard on this issue if they object. Therefore what I intend to do is to order a stay for 21 days but provide that the defendants or the claimants may apply on two days' notice within the next 14 days to set aside or vary this order.
12. I have not yet decided whether to order what is called the “Common Issues” which means the question of a licence as a preliminary issue. I would like to hear, if that is objected to, from other parties. There are pros and cons to preliminary issues and it is not a decision to be made lightly.

Approved Judgment

13. Therefore all I intend to do at this stage is, as I have said, to grant a short stay with the opportunity for other parties to apply. If they do not object, and if they do not object to the Common Issues being heard as a preliminary issue, then that can be done by consent.
14. So I shall provide for return date for this application in 21 days' time where the issue can be discussed further if it has not been resolved by consent.

(For continuation of proceedings: please see separate transcript)

This transcript has been approved by the judge