

**THE HIGH COURT
COMMERCIAL**

[2022] IEHC 185
[2020/2194P]

BETWEEN
AVONCORE LIMITED AND CANMONT LIMITED T/A DOUGLAS SHOPPING CENTRE
PLAINTIFF

AND
LESSON MOTORS LIMITED, ADAM OPEL GMBH, OPEL AUTOMOBILE GMBH AND
VAUXHALL MOTORS LIMITED
DEFENDANT

AND
NAGHAM MOHSEN
THIRD PARTY

AND
THE HIGH COURT
COMMERCIAL
[2020/5895P]

BETWEEN

CALLISTOY LIMITED
AMARI SHOES LIMITED
SHEEHAN BROTHERS FAMILY BUTCHERS LIMITED
LAYERED APPROACH LIMITED
NEVILLE JEWELLERS LIMITED
PLAINTIFF

AND
OPEL AUTOMOBILE GMBH, ADAM OPEL GMBH, LESSON MOTORS LIMITED, NAGHAM
MOHSEN, CANMONT LIMITED AND AVONCORE LIMITED
DEFENDANT

Ex Tempore JUDGMENT OF Mr. Justice Twomey delivered on the 25th day of March, 2022

1. This case concerns an unusual application to have the discovery, which is being ordered in this case, done on a phased basis rather than the more usual manner in which discovery is done, i.e. at the one time with a reciprocal and uniform exchange of discovery between the parties.
2. The application was made at a For Mention hearing regarding the finalisation of orders for discovery as a result of this Court's decision in *Avoncore LTD T/A Douglas Shopping Centre & Anor v. Leeson Motors LTD & Ors* [2022] IEHC 34 ("Principal Judgment"). The terms used in this judgment are the same as the defined terms in the Principal Judgment.
3. There is general agreement between the parties that the timeframe for the discovery should be nine months. However, the Car Defendants seek to have certain categories of documents, which are readily identifiable and readily retrievable, discovered within three months in order to ensure that as much of the litigation as possible is progressed during the nine-month discovery period.
4. Having examined the various categories of documents which the Car Defendants claim are 'readily identifiable and readily retrievable' in this instance, this Court agrees with the Car Defendants that there are certain categories of documents which are readily

identifiable and readily retrievable and therefore capable of being discovered sooner than the nine-month period of discovery proposed.

5. However this is the case in many discovery motions. Despite this fact, the default position in discovery motions is that discovery is made at the one time and there is a reciprocal and uniform exchange of discovery between the parties, rather than there being phased discovery in relation to those documents which are more easily retrievable than others.
6. To depart from this position, in this Court's view would require compelling reasons.
7. The primary reason provided by the Car Defendants is that it would save on time and lead to the case being heard sooner rather than later. However, in many cases there will be one party who will wish to progress the case at a faster pace than the other party. Therefore, this Court cannot see how this is a compelling reason for there to be phased discovery in this case, since if it were, there would be phased discovery in a significant number of cases.
8. It is also of course the case that it is possible that phased discovery could end up being more expensive than normal discovery. For example, there may be documents that fall into the early category of documents *and* the latter category of documents, which would require analysis, which analysis would not be necessary in normal discovery.
9. In addition, if the early discovery is to be challenged on the grounds, say, of privilege or that the discovery is insufficient, but also the later discovery is to be challenged on similar grounds, there is a risk that the synergies which exist for settlement of all discovery issues between the parties are lost by not having them dealt with together.
10. Furthermore, there is a possibility that there could be duplication and additional cost which would not occur if those challenges to discovery were all heard together e.g. if one judge heard the challenges to the early category of documents and a different judge had to hear the challenge to the later category of documents.
11. Indeed, this latter point regarding the possibility of different judges having to hear challenges to an early and a later discovery also highlights the fact that phased discovery could impact negatively on court resources by using up more time than traditional discovery. This is a further factor, and an important factor, in this Court's decision to refuse phased discovery in this case, in light of the considerable strain on court resources at present.
12. As regards the costs of this application by the Car Defendants, which is being refused, the Car Defendants argued that costs should not be awarded against them as this was a well-intentioned application on a For Mention listing to seek to have the case progressed at a quicker pace.
13. However that application was resisted by the other parties and it took over an hour of court time (or 25% of a court's daily hearing time). In order to ensure that court resources are not unnecessarily used, it is important that there are negative costs

consequences for parties who end up making court applications which, with the benefit of hindsight, should not have been taken (in the sense of being unsuccessful). Accordingly, while there is no criticism of the Car Defendants and it is not disputed that the application was well intentioned, costs will be awarded against the Car Defendants in respect of the time taken for this For Mention application. As requested by the Car Defendants and not objected to by the other parties, a stay will be put thereon, until the finalisation of the proceedings.