

Neutral Citation Number: [2023] EWHC 296 (Ch)

Case No: IL-2022-000041

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

Royal Courts of Justice,
The Rolls Building,
7 Rolls Buildings,
Fetter Lane,
London,
EC4A 1NL

Date: 17/01/2023

Before:

MR JUSTICE MILES

Between:

**THE FOOTBALL ASSOCIATION PREMIER
LEAGUE LIMITED**

Claimant

- and -

**(1) CLAIRE PATTIE
(2) KEVIN GRICE
(3) FOREST HALL CLUB AND INSTITUTE LIMITED**

Defendants

MS ASHTON CHANTRIELLE (instructed by **DLA Piper UK LLP**) for the **Claimant**
THE DEFENDANTS did not attend and were not represented

APPROVED JUDGMENT

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE MILES:

1. I am satisfied that it is appropriate to grant judgment in this case essentially for the reasons advanced by counsel for the claimant. I have been taken through the particulars of claim where the claimant sets out its ownership of the various relevant works, which consist essentially of logos and graphics used in television broadcasts of Premier League football matches and films of matches. The particulars of claim also contain the allegations that the first and second defendants are persons responsible for the management of the third defendant which is a club. The particulars of claim also allege that the first and second defendants as well as the third defendant have been responsible for infringements of the alleged copyright works. The particulars of claim set out the allegations against the defendants and are sufficient to make out a case of infringement of copyright.
2. The evidence shows that the claim form with the particulars of claim and response pack was served on various dates in 2022. In the case of the third defendant the deemed date of service was 25 May 2022, in the case of the first defendant the deemed date of service was 20 September 2022 and in the case of the second defendant the deemed date of service was 26 October 2022. The time for service of an acknowledgement of service or defence has expired in each case without any acknowledgement of service or defence being served. I have been taken to the relevant certificates of service both in respect of the claim form and particulars of claim and in respect of the application notice seeking default judgment. Again, it is clear from that evidence that the deemed date for service of the application documents was 19 December 2022, which is more than three days before the date of this hearing.
3. The order sought is in similar form to orders which have been granted previously by this court. I was taken to examples of orders made in proceedings by Marcus Smith J on 9 October 2017, Nugee J on 8 February 2018 and Sir Geoffrey Vos C on 8 March 2018. The order which is sought is in substantially similar terms to orders granted by those other judges. I was specifically taken to paragraph 3 of the draft order which concerns the provision of a witness statement by the defendants. Orders of this kind have been granted by a number of judges in earlier cases. It is supported by paragraph 75 of the particulars of claim which sets out the pleaded basis for this particular form of relief. In the circumstances, I shall make an order in the form sought by the claimant.
4. I now come to the question of costs. It does seem to me appropriate that the claimant should have an order for costs in its favour. I also think it is appropriate to summarily assess the costs. I was taken to a decision of Marcus Smith J, the neutral citation number of which [2017] EWHC 2567. He was dealing with some six cases. He explained in some detail his approach to the summary assessment of costs and one of the points he made was that had the case been brought in the Intellectual Property and Enterprise Court there would have been a schedule of fees which would have applied and, in particular, the claimant would have been entitled to fees for filing particulars of claim and making an application which would have led to a maximum amount, an award of costs of some £10,000.
5. He noted that the claim had not been brought in the IPEC but, in exercising his discretion, said that the defendants should not altogether lose the benefit of the IPEC fixed costs regime, and that he would take into account a maximum sum that would

have been recovered in assessing questions of proportionality. He referred to what he called “standard cases” where he reduced the costs being claimed to £8,000. He then said that there were three non-standard cases with particular features where he awarded costs greater than £8,000. In one of them he awarded costs of £17,661.60. He described that as a case where the defendant had been evasive and uncooperative.

6. In a later case between the same claimant and different defendants with the neutral citation number [2018] EWHC 306 (Ch), Nugee J broadly followed the approach taken by Marcus Smith J in the earlier case. He noted that the court has discretion in respect of costs and that he had rather more information about some elements of the costs than had appeared to be before Marcus Smith J. He described the cases before him as standard cases but, in the light of further information he was provided with, awarded costs of £8,500 in one case and £9,500 in the other to allow for extra investigative costs.
7. A similar approach was also taken by Sir Geoffrey Vos CHC in a case in 2018, the neutral citation number of which is [2018] EWHC 944 (Ch). The Chancellor referred to the two earlier cases. He thought that the case before him was a standard one. He had a similar level of information as Nugee J had had and awarded costs of £8,500.
8. What these cases show is that the court always has a discretion in respect of costs. If the case is a standard one, then the court is likely to take into account the position that would have applied had the case been before IPEC, but the court is not constrained by the maximum that would have been available in that court. Each case turns on its own facts and depends on the evidence which is before the court.
9. The statement of costs in the present case claims £41,179.20. The solicitors’ costs have been discounted by ten percent and come to a total of £32,155.20. There are then counsel’s fees, investigators’ fees of £5,301 and court fees of £1,448. The hourly rates charged in the statement of costs are somewhat higher than the guideline hourly rates. In some cases the rates are about 50 percent higher than the guideline hourly rates and in other cases the differential is rather less. As I have already explained, the solicitors’ fees have been discounted by ten percent, so the excess over the guideline hourly rates is reduced. It seems to me that some of the hours spent appear to be on the high side. This includes the hours spent on attendance on others which amount in monetary terms to around £10,000. I also think that the overall total of work done on documents at some £19,000 is on the high side.
10. Against that, as counsel for the claimant has explained, this is not an entirely standard case. It was necessary for the claimant to apply for orders for alternative service against the first and second defendants because of difficulties they met in seeking to effect service. The evidence showed that in the case of the second defendant, an attempt was made to effect personal service at the premises of the third defendant and that the second defendant told the relevant agent to leave the club and the relevant agent considered that there was a risk of violence and left without effecting personal service. Counsel for the claimant also points out that the claimant has put the defendants on notice of its contention since 2019 and that there has been no real engagement. This is also a case where since the complaints were originally communicated by the claimant, the Covid-19 pandemic has intervened which has led to the process being longer than would otherwise be the case.

11. The claimant says that the lack of cooperation on the part of the defendants has led to higher costs at a number of stages in the proceedings. It has necessitated two applications to Masters for alternative service and has also led to the investigators' fees being higher than would otherwise be the case as it has been necessary for there to be repeated visits both in order to seek to effect service and in relation to the underlying complaints of infringement of copyright.
12. To recap, the first thing the court must do is approach the statement of costs and ensure that costs are reasonable and proportionate. Second, albeit this is perhaps not an entirely standard case, it is appropriate nonetheless to take into account factors referred to by Marcus Smith J and followed by Nugee J and the Chancellor concerning applications of this kind. That is something I should keep in mind. Doing the best I can on the evidence before the court, the overall amount that I shall order by way of costs is £25,000.

(This Judgment has been approved by Mr Justice Miles.)