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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
INTELLECTUAL PROPERTY ENTERPRISE COURT  
[2022] EWHC 1320 (IPEC)

No. IP-2021-000113

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Friday 6 May 2022

Before:

HIS HONOUR JUDGE HACON

B E T W E E N :

(1) JO RICHARDS  
(2) JO RICHARDS DESIGN LIMITED

Claimants

- and -

(1) LASER SAILBOATS LIMITED  
(2) LASERPERFORMANCE UNIPESOAL LDA  
(3) VELUM LIMITED

Defendants

MR D. IVISON appeared on behalf of the Claimants.

MR S. BENZIE appeared on behalf of the First and Second Defendants.

THE THIRD DEFENDANT was not present and was not represented.

J U D G M E N T

( v i a M i c r o s o f t T e a m s )

JUDGE HACON:

- 1 This is an application by the claimants for an order that the defendants disclose certain information in compliance with an Order made by me on 4 April 2022.
- 2 David Ivison appears for the claimants and Stuart Benzie for the first and second defendants. The third defendant neither appeared nor is represented today and has yet to file a defence.
- 3 The first claimant is a designer of sailing boats. He licenses his IP rights associated with his designs through his company the second claimant. The first defendant is a UK company which makes and sells sailing boats. The second defendant is a Portuguese company which also makes and sells sailing boats. The third defendant is a company incorporated under the laws of Antigua and Bermuda. The claimants say that the third defendant is used for the management of the IP rights of the group of companies of which all three defendants form part. This is not admitted in the first and second defendants' Defence, which is a curious because the first and second defendants must know. But in any event, it is also pleaded in that Defence that the third defendant is an independent company with its own management.
- 4 There was a UK company called Laserperformance (Europe) Limited which, when it existed, was part of the group of companies ("LPE") of which the first and second defendants form part. LPE conducted a business in the sale of boats. It went into voluntary liquidation on 22 June 2021. Four of the first claimants designs are relevant to this dispute. Those of boats named "Pico", "Vago", "Bahia" and "Bug". By four licence agreements, the first and second defendants were licensed by the claimants to make and sell those four models of boat. The first such agreement was dated 10 April 1995 and granted a licence in respect of the Pico model. The license was granted by the first claimant to the first defendant. The other licenses were granted by the first claimant to LPE on 18 October 2006 in respect of the Vago model, on 20 April 2008 in respect of the Bahia model, and on 20 April 2008 in respect of the Bug model.
- 5 The claimants' primary case against the first and second defendants is that they were in breach of these licence agreements for reasons I need not go into. The claimants say they were entitled to and did terminate the four agreements. The claimants further allege that the first and second defendants carried on business in relation to the four models of sailing boat after termination and therefore in breach of the claimants' IP rights.
- 6 The first and second defendants say that the agreements were not validly terminated and that consequently they have not infringed the claimants' IP rights. They also say that LPE's rights under the Vago, Baya, and Bug agreements were assigned to the second defendant via the first defendant and therefore the second defendant was and remains entitled to exploit the licences.
- 7 The first and second defendants' case is that by an undated assignment, stated on its face to be effective from 1 July 2019, LPE assigned its rights under the Vago contract to the first defendant. By an assignment dated 2 January 2020, effective as of 1 January 2021, the first defendant then assigned the rights to the second defendant. The first and second defendants' case is similar in relation to the Baya and Bug agreements. In each case, there was an undated assignment from LPE to the first defendant effective as of 1 July 2019 and then an assignment dated 20 January 2020 from the first to the second defendant. In the case of the Baya and Bug assignments from the first to the second defendant, the effective date is stated to have been 1 January 2022. Copies of all the foregoing assignments asserted by the first and second defendants have been provided to the claimants and were in the court bundle in this application.

- 8 The claimants assert (and the first and second defendants do not dispute) that a key issue in the case is the date on which the written assignments from LPE to the first defendant and from the first to the second defendant were signed, particularly given the dissolution of LPE on 22 June 2021. There was correspondence about this which led to a Part 18 request by the claimant dated 9 March 2022. After about two weeks, this elicited no response. So the claimants applied to the court by an application notice dated 25 March 2022 for an order that further information about the dates of the documents be provided. The notice was served on 25 March 2022.
- 9 Pursuant to CPR 63.25(1), the first and second defendants were required to respond within five working days which, in this instance, meant by the end of 1 April 2022. The first and second defendants did not respond. An order dated 4 April 2022 was made on the claimants' application. Paragraph 1 of the order was in the following terms:
- “1. The First and Second Defendants shall, within 7 days of the date of service of this Order, serve on the Claimants a response to the RFI verified with a statement (or statements) of truth signed by a person (or persons) with knowledge of all the facts alleged stating, in relation to each of the assignments relating to the BUG Contract, the VAGO Contract, and the BAHIA Contract referred to in paragraph 39 of the First and Second Defendants' Defence, the date upon which each document constituting the said assignment (to include each counterpart where applicable) was signed by the person identified as the authorised signatory of each party.”
- 10 The first and second defendants did not apply to vary or set aside the order. Instead, on 8 April 2022, they served a response to the claimants' Part 18 request of 9 March 2022 and the response was dated 5 April 2022:
- “1. The First and Second Defendants are unable to recall the precise dates upon which each of the assignments (and any counterparts) were signed (though it may be that the disclosure process will elicit materials which will assist in this regard):
- 1.1 Each of the assignments made between Laser Performance Europe Limited and Laser Sailboats Limited contain a recital that sets out the date upon which the agreement was made (being 1<sup>st</sup> July 2019) and the said date is thereafter defined as the “*Effective Date*”.
- 1.2 The BAHIA and BUG assignments between Laser Sailboats Limited and Laser Performance Unipessoal Lda each contain a recital that sets out the date upon which the agreement was made (being 2<sup>nd</sup> January 2020) and the said date is thereafter defined in the recital as the “*Effective Date*” (“***the LPU BAHIA and BUG Agreements***”). Clause 2 of the LPU BAHIA and BUG Agreements state that “*The Effective Date for this Assignment and Transfer Agreement shall be 1 January 2022*”. For clarity, it is the First and Second Defendants' position that the Effective Date pursuant to the LPU BAHIA and BUG Agreements was 1 January 2022).
- 1.3 The VAGO assignment between Laser Sailboats Limited and Laser Performance Unipessoal Lda contains a recital that sets out the date upon which the agreement was made (being 2<sup>nd</sup> January 2020) and the said date is thereafter defined in the recital as the “*Effective Date*” (“***the LPU VAGO Agreement***”). Clause 2 of the LPU VAGO Agreement states that “*The Effective Date for this Assignment and Transfer Agreement shall be 1 January 2021*”. For clarity, it is the First and

Second Defendants' position that the Effective Date pursuant to the LPU VAGO Agreement was 1 January 2021).

1.4 Typically, agreements such as those referred to in this document are required to be signed by individuals in different jurisdictions and as such it is the usual practice for an individual to sign an agreement before sending it to the next relevant individual, with at least one signature generally conforming to the date the agreement is stated to be made.

1.5 While the First and Second Defendants are unable to state the precise date upon which any of the agreements were signed, they would have been generally contemporaneous with at least one signature likely conforming to the date of the agreement.”

11 The claimants took the view that this response was not in compliance with my order of 4 April 2022. They have therefore applied for an order specifying in more detail the steps that the first and second defendant must now take in relation to identifying the dates of signature of the various written assignments in issue.

12 The principal argument, advanced by Mr Benzie, was that the claimants' application is correctly characterised as an application for early specific disclosure; this is not a case in which early disclosure is appropriate.

13 In my view, that ship has sailed. Had the first and second defendants responded to the claimants' application of 25 March 2022 in due time and argued that early disclosure was not appropriate in this case, I may have been receptive to that argument. They did not. The application was unopposed and the order of 4 April 2022 was made. If at that stage the first and second defendants had applied to set aside or vary the order of 4 April 2022, I may have been sympathetic to such an application. I need state no view. Alternatively, the first and second defendants might have said that, contrary to what one might expect, they were unable to state the dates on which the relevant documents were signed and that it should be sorted out by disclosure in due course. However, the first and second defendants made no such applications. The order stands.

14 When a court makes an order, it is a serious, not a trivial matter. The party subject to the order has a choice. It may appeal. Where appropriate, it may apply to set aside or vary the order. If it does none of these things, it must comply with the order. Compliance is not optional. In particular, the party may not act as if the order had never been made and reopen argument directed to the grounds on which the order was sought and made.

15 The issues before me today are, first, whether the first and second defendants are in breach of my order of 4 April 2022. Secondly, if they are in breach, what order should be made today as a consequence of the breach?

16 I should also make another matter clear. In his skeleton argument, Mr Benzie argued that these proceedings are not appropriate for this court. That may or may not be right, but no application has been made to transfer this case to the general Chancery List. Whether or not the trial should be heard in this court is irrelevant to today's hearing.

17 It seems to me that the first and second defendants are in breach of the order of 4 April 2022. That order required them within seven days to state the date on which each of the relevant documents were signed. The first and second defendants have not stated the dates and have not said that it is impossible to identify the dates. Instead, they take the position

that disclosure should take place in the usual way and that rather than take the trouble to attempt to deduce the dates now, that task should happen later.

- 18 The agreements concerned must all have been signed by individuals empowered to bind either the first or second defendant or its sister company LPE. It is not easy to see why identifying those individuals should be difficult or why those individuals are unable to do their best to state the dates on which they signed the documents. At the least they must be able to state what they have done in order to find out the relevant dates and set that out in evidence. They must also be able to state what they have done to find documents which may well contain underlying metadata which would reveal the relevant dates. I can see why the claimants are suspicious.
- 19 On the other hand, I am not prepared to make an order today which, at least on any plausible contention advanced by the first and second defendants, will result in the first and second defendants being almost inevitably in breach of the order.
- 20 I will therefore hear counsel on the appropriate terms of the order I should make, given what I have said.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.