

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

Rolls Building
New Fetter Lane
London

Neutral Citation Number: [2020] EWHC 2374 (IPEC)
Date: 3 September 2020

Before:

HER HONOUR JUDGE MELISSA CLARKE
Sitting as a Judge of the High Court

B E T W E E N:

Claim No: IP-2019-000175

DPA (LONDON) LIMITED

Claimant

- and -

(1) ANDREA D'AGUANNO
(2) GRETTEL MULLER
(3) MUDA ARCHITECTURE
LTD

Defendants

Miss Nicole Bollard (instructed by **Protopapas LLP**) for the **Claimant**
Mr Kwabena Owusu (instructed by **Peter Lyon and Partners**) for the **Defendants**

Hearing dates: 14 and 15 July 2020

JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

Her Honour Judge Melissa Clarke:

INTRODUCTION

1. This is a claim in copyright and breach of contract brought by a firm of architects (“**DPA**”) against two architectural designers who previously worked for it in that capacity (Mr D’Aguanno and Ms Muller), and the firm that they later set up, MUDA Architecture Limited (“**MUDA**”).
2. Mr D’Aguanno worked with DPA as an architectural designer from 14 November 2016 (initially on a 3-month trial basis) until 27 December 2019. Ms Muller worked with DPA as an architectural designer from February 2015 (initially on a 3-week trial basis) to 31 December 2019. Both are fully qualified architects in their home countries of Italy and Argentina respectively, but not registered with the Architects’ Registration Board of the United Kingdom. They are entitled to work as architectural designers in the UK.
3. DPA initially claimed that Mr D’Aguanno and Ms Muller were employees of DPA. It now accepts that they were self-employed contractors. Nevertheless, there remains some dispute about the terms upon which they provided services. DPA claims that each was provided with, and agreed, a written contract. Each denies this. Of particular relevance is DPA’s claim that Ms Muller provided her services pursuant to a contract dated 28 December 2016, which contained the following restrictive covenants:

“6.1. The Sub-Contractor shall not, during the course of provision of the Work or for a period of 12 months following the termination or expiry of this Agreement, provide like services to any competitor of the Contractor within Hertfordshire.

6.2. The Sub-Contractor shall not, during the course of provision of the Work or for a period of 12 months following the termination or expiry of this Agreement, solicit any of the Contractor’s clients and/ or employees with which the Sub-Contractor Ltd has dealings during the time that have been with DPA London Ltd and prior to the date of termination or expiry or any other clients of which the Sub-Contractor has knowledge. The Contractor may waive this restriction entirely or on a per-client, and/or per-staff- member basis upon receipt of a written request from the Sub-

Contractor. No waiver may be given if it shall violate any prior agreement between the Contractor and the client in question as to the sharing of the client's details."

(the "**Restrictive Covenants**").

4. Ms Muller denies that she entered into any written agreement with DPA or that any such agreement was sent to her or shown to her at any time before or while she was working with DPA. She denies being bound by the Restrictive Covenants.
5. There is some measure of agreement between them, however. DPA claims, and Mr D'Aguanno and Ms Muller accept, that they provided services to DPA on the following implied terms:
 - i) DPA would be the owner of the copyright in any drawings, computer generated images ("CGIs") or models created by them during the period that they provided services to DPA;
 - ii) they would follow DPA's reasonable and lawful instructions;
 - iii) they would act in accordance with DPA's protocols including those relating to the storage of documents, including those in electronic form;
 - iv) they would not remove from DPA's possession documents, including those in electronic form;
 - v) they would return all of DPA's property, including electronic documents, when their contracts with DPA ended.
6. Both Mr D'Aguanno and Ms Muller accepted in cross-examination that they were made aware of DPA's protocol requiring them to store all electronic files on DPA's server and nowhere else. This was contained on a single A4 sheet of paper.
7. It is not disputed that during the period that Mr D'Aguanno and Ms Muller worked for DPA, they produced architectural plans and drawings for a number of DPA's projects, and Mr D'Aguanno also produced three-dimensional computer models ("**3D models**") and computer-generated images ("**CGIs**") for such projects. I will refer to the architectural plans and drawings, 3D models and CGIs together as "**Claimant Works**".

8. In pre-action correspondence, Mr D'Aguanno and Ms Muller, by way of a letter through their previous solicitors Richards Solicitors, stated that since they were self-employed consultants, they owned the copyright in any drawings, CGIs and models prepared by them for DPA. However, in their Defence, they accept that the copyright in the Claimant Works belongs to DPA. DPA asks me to draw adverse inferences about the First and Second Defendant based on that pre-action correspondence, but I decline to do so, as I accept their oral evidence that they simply followed the legal advice which they were given, which was wrong.
9. DPA claims that:
- i) the Defendants have infringed DPA's copyright in the Claimant Works; and
 - ii) Ms Muller has breached clause 6.1 and 6.2 of the Restrictive Covenants; and
 - iii) Mr D'Aguanno and Ms Muller have breached their contract by failing properly to store, and by removing when they ceased working for DPA, electronic files embodying Claimant Works.
10. In their joint defence, the Defendants denied breach of copyright or breach of contract as alleged, but Mr D'Aguanno admitted that he was in possession of "*one copy of some 3D models drawings*" belonging to DPA, which he offered to return. He later provided further particulars: that on ceasing to work for DPA he had stored on his personal laptop a 3D model from each of three of DPA's projects ('Bullsmoore Lane', 'Crawley' and 'Four Oaks') which he later transferred to a pen-drive storage device. In May 2020 he returned that storage device to DPA. He denies that he made any use of those models, which he says he kept only for the purposes of his portfolio. He says he does not have, and has never kept, any other Claimant Works.
11. At a case management conference before His Honour Judge Hacon on 4 March 2020 a number of issues were identified in the Schedule to the Order. Those which remain live are the following:

Copyright Infringement

1. Have the Defendants reproduced a substantial part of the Claimant Works, or any of them, in a material form, including storing the Claimant Work in any medium by electronic means?
2. Have the Defendants possessed the Claimant Works, or any of them, in the course of a business?
3. Have the Defendants reproduced a substantial part of the Claimant Works or otherwise used the Claimant Works in their ongoing work for Mr Simpson, including but not limited to in relation to the Wellington House project?
4. Have the Defendants or any of them authorised the acts set out at paragraph 1 to 3 above?

Breach of contract

5. Did the First and/ or Second Defendants fail to store the Claimant Works or any of them on the Claimant's server?
6. Did the First and/ or Second Defendants remove the Claimant Works or any of them from the Claimant's offices and/ or prevent the Claimant from having access to its files?
7. Does the Claimant have access to the Claimant Works which are in the possession of the Defendants?
8. Did the First and/ or Second Defendants fail to return all of the Claimant's property (including the Claimant Works or any of them) when their contracts with the Claimant ended?

Restrictive covenants

9. Were the Restrictive Covenants part of the Second Defendant's contract with the Claimant?
 10. Did the Second Defendant breach either or both of the Restrictive Covenants?
 11. In particular, has the Second Defendant provided like services to any competitor of the Claimant's in Hertfordshire in the 12 months following the termination of her contract with the Claimant?
 12. In particular, has the Second Defendant either during the provision of her services to the Claimant or in the twelve months following the termination of her contract solicited Edward Simpson or Jeffrey Benedyk?
12. I remind myself that the claim is for DPA to prove to the civil standard, i.e. the balance of probabilities.

PROCEEDINGS

13. Due to the COVID-19 pandemic, the trial was heard remotely over two days by means of the Cloud Video Platform. Miss Bollard appeared for the

Claimant and Mr Owusu for the Defendants. I thank them both for their skeleton arguments, helpful oral submissions and I thank all participants for their patience with the inevitable small technical frustrations which arose.

14. DPA relies on evidence from two witnesses of fact: (i) Mr Domenico Padalino, an owner and director of DPA. He filed two witness statements, was cross-examined and re-examined; and (ii) Mr Amarjit Gill, who began working for DPA as an architectural technician in February 2019, after Mr D'Aguanno and Ms Muller had left. Mr Gill filed a witness statement, was cross-examined and re-examined.
15. The Defendants rely on evidence from Mr D'Aguanno and Ms Muller. Each filed two witness statements and was cross-examined and re-examined.

THE FACTS AND FACTUAL FINDINGS

Terms of Employment

16. Mr Padalino's written evidence was that Mr D'Aguanno was offered a three-month probationary period, after which he offered him a "*permanent position*" at DPA. He says that he issued a contract to him after his 3-month probationary period and exhibits this purported contract to his second witness statement. It is not signed by Mr D'Aguanno.
17. Mr D'Aguanno says that DPA never provided this document to him and he had never seen it until the filing of Mr Padalino's second witness statement a few weeks before trial, to which it was appended. Mr D'Aguanno says that after his 3-month trial period ended in February 2017, he asked Mr Padalino for an employment contract, but Mr Padalino would not agree to this. After that, Mr D'Aguanno registered with HMRC as self-employed, invoiced DPA on a monthly basis, and paid his own taxes annually as self-employed. This continued throughout his employment. DPA now accepts that Mr D'Aguanno was not an employee, but always carried out work for DPA as a self-employed contractor.

18. Mr Padalino says that Ms Muller also worked at DPA pursuant to a contract which he says was drawn up on 22 August 2016 and issued to her on 28 December 2016. The copy that he relies on is signed by him, but not Ms Muller. In cross-examination he was unable to say if it had ever been signed by Ms Muller, saying it should have been, but that other DPA staff members were responsible for ensuring it was.
19. Ms Muller denies ever having been provided with a copy of the purported contract or signing it. Ms Muller says that after her trial period, like Mr D'Aguanno, she asked to have an employment contract, but Mr Padalino refused. Accordingly, she invoiced DPA monthly for the work she had done at an agreed hourly rate. She says that after that initial conversation there was never any mention of a contract and she was never provided with a contract, or restrictive covenants for her to agree or to sign. She says that even if she had been asked to agree to restrictive covenants she would have refused, as during the time she was working on a self-employed basis for DPA she also had some of her own local clients to whom she provided architectural services on her own account, and the restrictive covenants would have prevented that. She describes Mr Padalino's evidence on this point as "*an absolute fabrication*".
20. Ms Muller says on 28 December 2016, the date Mr Padalino says the contract was agreed between them, she was in the middle of annual leave (from 23 December 2016 to 2 January 2017) and was in London on a day out with her husband and young children. She shows a credit card statement showing the train ticket to London she bought that day. She says she certainly was not agreeing contractual terms with Mr Padalino.
21. I found Ms Muller to be a straightforward, credible and honest witness. I found her evidence that she never agreed or even saw the terms of the purported contract relied on by DPA to be compelling and supported by the evidence she provided about being on a day out in London during a period of annual leave. Conversely, Mr Padalino's evidence about the purported contract with Ms Muller was less than convincing. He could not explain why the document appeared to have been created many months before it was

purportedly agreed with Ms Muller, why Ms Muller had not signed it (or, if she had, why DPA had no evidence of a signed copy), and he could not provide any detail of the circumstances in which he purportedly agreed the contract with Ms Muller ready for signature on 28 December 2016.

22. I also find it both unsatisfactory and concerning that DPA also initially sought to rely on a contract with Mr D'Aguanno which he equally convincingly said he had never seen before these proceedings, and which DPA no longer relies upon.
23. I prefer the evidence of Ms Muller and Mr D'Aguanno and find that neither had been provided, or agreed, the purported contracts at any time. In particular, I do not believe that Mr Padalino's evidence about the purported contract with Ms Muller was honestly given. I think it is more likely than not that his evidence, and the document purportedly signed by him, were fabricated by Mr Padalino in order to seek to improve DPA's position in this litigation.
24. **Accordingly, I am satisfied that Ms Muller is not bound by the Restrictive Covenants and so it is not necessary for me to go on to consider whether she has breached them. That disposes of issues 9 – 12 inclusive.**

Storage of works created at DPA

25. Although the claim alleges that Ms Muller failed properly to store, and/or removed, electronic files including 3D models and CGIs, Mr Padalino accepted in cross-examination that Ms Muller did not use computers at all for her architectural work. She carried out all of her design work by way of free-hand drawing and delivered all her drawings to a DPA staff member to scan into DPA's server. Mr Padalino accepted that he had no complaints that Ms Muller failed to comply with DPA's storage protocol, which she complied with by providing her drawings to be stored in this way. He accepted that she did not carry out any 2D or 3D design work using AutoCAD, and that she did not carry out CGI work.

26. Mr D'Aguanno accepts that he was informed of DPA's protocol for storage of work on DPA's server when he started work, and says that he followed it at all times, including performing weekly backups of DPA's computers to the archive server from September 2017. Mr D'Aguanno says that in order to carry out CGI work on his personal laptop, he needed a link to DPA's server because the files he was using were so large and complex it would have been very difficult and time consuming to move them any other way. He says this link was installed by 'Nick', DPA's IT consultant, and enabled him to save everything he created on his laptop directly to DPA's server.
27. Mr Padalino appears to accept in his second witness statement at paragraph 14 that Mr D'Aguanno may have had a direct connection from his laptop to the server, but says if so, he (Mr Padalino) was not aware of it.
28. Mr Gill was asked if he knew how Mr D'Aguanno saved documents from his own laptop to the DPA server and he said, "*I assume that he saved it to a memory stick and then put that in the server*". He accepted that was merely an assumption as he was not working at DPA when Mr D'Aguanno was there, having arrived only after Mr D'Aguanno had left. Mr Owusu probed him in cross-examination, asking him whether, in investigating whether Claimant Works were missing, he did not investigate how Mr D'Aguanno had saved documents? Mr Gill replied, "*It came out as part of the investigation*", however I think his first two answers were the correct ones – that he merely assumed that Mr D'Aguanno was moving documents by use of memory sticks.
29. I will return to consideration of what work Mr D'Aguanno carried out on his laptop, but upon considering all of the evidence (including that which I set out later) I am satisfied on the balance of probabilities that, as Mr Padalino accepts was possible, Mr D'Aguanno did have a link installed between his personal laptop and the DPA server.

Software used at DPA at the relevant time

30. At paragraph 10 of his first witness statement Mr Padalino sets out the software provided by DPA to its employees when Mr D'Aguanno was working there, as follows:

- i) *“2D AutoCAD;*
- ii) *Microsoft 365 Office apps;*
- iii) *Some access to InDesign and Adobe Photoshop.*
- iv) *At that time, no other software was available through DPA hence [Mr D'Aguanno's] use of his own laptop which had the CGI software on it”*

31. Mr D'Aguanno accepts this list as accurate. His evidence was that DPA only had 2D AutoCAD on its computers, but he had a personal copy of 3D AutoCAD on his laptop, as well as another computer aided design (“CAD”) software package called Rhinoceros (“**Rhino**”).

32. In his second witness statement, Mr Padalino states that the 3D models produced by Mr D'Aguanno were not made using Rhino but were produced on DPA computers and software. This contradicts Mr Padalino's own evidence, reproduced above, that DPA only had 2D AutoCAD. It also contradicts Mr D'Aguanno's evidence that he only had access to 3D AutoCAD on his own laptop as it was not loaded onto DPA's computers. Mr Padalino also states at paragraph 10 of his second witness statement that Mr D'Aguanno only worked on his own laptop to produce CGI models using the Rhino software, and he should have saved those CGIs onto DPA's server. When Mr Owusu asked Mr Padalino about paragraph 10 in cross-examination, I noted him replying, *“Mr D'Aguanno also did 2D and other types of drawing work on DPA computers. It was CGI using specialist software that he did on his laptop”*. He then corrected himself, saying that Mr D'Aguanno did *“any type of AutoCAD”* work on the office computer, not just 2D as he had previously said.

33. Mr Padalino's evidence was therefore rather confused, in my view, about whether or not DPA provided 3D AutoCAD or only 2D AutoCAD to staff,

and whether or not Mr D'Aguanno did only 2D drawing work, or also 3D work, on DPA's computers. Mr Owusu sought to clarify his evidence, asking him directly in cross-examination whether DPA had a 3D AutoCAD licence at the relevant time and Mr Padalino said that it did. He resiled from his evidence that DPA had 2D AutoCAD but not 3D AutoCAD, saying that his first witness statement was not correct.

34. Mr Gill confirmed that he used both AutoCAD 2D and 3D in the DPA office, and that both were loaded onto the computer which he had been given by DPA to do his work. It was put to him by Mr Owusu that when he joined in February 2019 he only had access to 2D AutoCAD, per Mr Padalino's initial evidence in his first witness statement, but Mr Gill gave the rather ambiguous response that he had "*full*" AutoCAD, saying, "*Yes, but AutoCAD has basic versions of 2D and 3D within it. I have both 2D and 3D on my laptop*". He described it as "*a basic tool – we need this to be able to work, to be able to draw*". Again, when pressed by Mr Owusu to clarify what he meant, he said that 3D AutoCAD was available within the DPA office environment, for him to use, when he joined in February 2019. Of course, Mr Gill cannot assist the court with whether DPA's computers had 3D AutoCAD at the time that Mr D'Aguanno was working there, as Mr Gill arrived at DPA after Mr D'Aguanno had left.

35. It is Mr D'Aguanno's case that Mr Padalino was barely computer literate and needed assistance with even very simple tasks on his computer. Although this may be somewhat exaggerated (and I make no finding whether it is or not), the fact that Mr Padalino was not proficient with computers was, in my judgment, readily apparent from his confused oral and written evidence. It also appears to be supported by his own written evidence, as Mr Padalino states in his first witness statement: "*I do not enjoy using computer software and I do not have the time to detail my ideas and therefore I hand these designs over to my staff to finalise them and turn them into something that could be presented to the client*". I am satisfied on the evidence before me that Mr Padalino had little proficiency with, interest in, or understanding of computers or computer software.

36. Taking this and the confused and contradictory nature of Mr Padalino's evidence on the point into account, I prefer Mr D'Aguanno's evidence and find on the balance of probabilities that at the time that Mr D'Aguanno was working for DPA, it had only the programs listed by Mr Padalino in his first witness statement available for staff use on DPA computers, but Mr D'Aguanno also used personal copies of 3D AutoCAD and Rhino on his own laptop. Accordingly, I find that Mr Padalino is mistaken when he says that Mr D'Aguanno was using 3D AutoCAD to produce 3D models on the DPA computers. Rather, I find that it is more likely than not that he was using 3D AutoCAD to produce 3D models on his own laptop. I accept Mr Gill's evidence that after Mr D'Aguanno had left, by the time he started working for DPA in February 2019, DPA had licensed 3D AutoCAD for employees' use.

CGI work at DPA

37. Mr Padalino accepts that before Mr D'Aguanno started working for DPA, DPA's CGI work was generally sent out of house to a company in Italy called Comoglio Architetti ("Comoglio"). Mr D'Aguanno says that was because there was nobody internally who could do that specialised work, and also because DPA itself did not have the computing requirements needed to carry out the work. There is some dispute on the former point which I do not need to resolve - Mr Padalino in cross-examination said that they had previously had a member of staff who had carried out such work, who had left - but little dispute on the latter. Mr Padalino stated that DPA found it more cost-effective to send the work out, rather than buy software and train staff to use it. He described CGI software as expensive. Of course, 3D AutoCAD has CGI capability, and this perhaps provides additional support for my finding that DPA did not license 3D AutoCAD for staff use at the time Mr D'Aguanno was working there. In any event, Mr Padalino accepted in cross-examination that this was an unconventional approach to CGI work for a long-established architectural practice employing about 14 staff members working on a variety of projects large and small. He said that DPA had worked this way for the previous 20 years or more.

38. There is a little dispute about timing (upon which nothing turns), but it is common ground that once Mr D'Aguanno was working regularly at DPA, he took over the CGI work as he had both the skills to do so and a laptop with sufficient necessary software and computing power to do it.

The “missing” CGI works

DPA’s position

39. At paragraphs 12 – 19 of his witness statement Mr Padalino explains how 3D models and CGIs are created and why and how they are used. I do not think it is disputed that he obtained some of this information from Mr Gill: this level of technical knowhow was not within his own knowledge. The steps he highlights are:

- i) Surveying a site and drawing it up to show precisely how the current structure is mapped out on the site;
- ii) Drawing up the existing structure in 2D plans and elevations;
- iii) Producing a 3D AutoCAD model from 2D AutoCAD drawings and elevations. He describes this step as *“solely for the purpose of enabling further steps to be undertaken in the process using other software, as it extracts the dimensions and heights of the structure. You can then punch out the openings of the windows and doors only, but not in detail, or showing any of the intended materials to be used. The finished file, what is known as a “3D AutoCAD Model” and is the last stage on “AutoCAD software” before then having to be imported to a separate CGI software, such as “Rhino3D CGI software” to continue the process”*. He describes the 3D AutoCAD model as *“a crude wire model”*;
- iv) Once imported into CGI software such as Rhino, introducing all details of the finished building. Once this is done, the model can be spun to the desired angle/view, and then “rendered” to show all finishes and the correct lighting. This process takes several hours during which time the

software is left to run. The result of this is a static 3D image at the desired angle/view with the chosen finishes;

- v) Finally, the CGI is imported to Adobe Photoshop to add contextual surroundings to the building such as sky, trees, people, and/or cars.
40. Mr Padalino sets out in his first witness statement the documents he believes are missing from DPA's server as:
- i) CGIs, which he describes as "*the final representation drawings in 3D*";
 - ii) Rhino 3D Images, which he says are "*also referred to as CGIs*";
 - iii) .3DM files generated by Rhino software;
 - iv) AutoCAD drawings which he describes as "*.dwg file – a file type generated by Autodesk AutoCAD software. Can contain 2D and 3D plans and models and other information such as text notes and drawing layouts. 3D models can be created in AutoCAD*".
41. Although DPA's pleadings do not reference or mention Rhino at all, then, Mr Padalino's evidence is that what is missing for a number of projects is the 'Rhino3D CGI Model' from which CGIs can be created, rendered and then finished in Adobe Photoshop. He explains that he needs these in order to be able to produce CGIs showing different views/aspects of each project, different lighting, changing the finishes, etc. He does not detail exactly what DPA says is missing, as he says at paragraph 33 of his first witness statement, "*There is no way for us to be able to determine exactly what was taken, or for which projects. Ultimately this is something only the Defendants have first-hand knowledge of*". He says that he initially believed that the missing documents may have resulted from an oversight by Mr D'Aguanno in failing to save document files from his laptop to the DPA server. However, he now says that the Defendants' "*defensive and unhelpful*" manner, and the fact that Mr D'Aguanno and Ms Muller have set up their own practice, "*points to these items being removed*". He asks the court to infer that the timing of their resignations, within days of each other during

the Christmas holidays when few people were in DPAs offices, gave them the opportunity to copy and remove documents.

42. Mr Padalino describes the search for the missing documents in the following terms:

- i) at paragraph 45 of his first witness statement, *“I have also spoken to a number of members of staff... together with our IT Company, who also carried out a search on our behalf to find the CGIs. **None of these searches found the Rhino 3D CGI models.** In a very few cases we found alternative superseded CGIs which of course [are of] no use whatsoever... We have never denied having found on some of these projects, 2d images and on two projects, the 3D AutoCAD Model, which as explained at paragraph 12 – 19 is only part of a length process, and is a stepping stone only in the production of a finished CGI file, and although useful to have these, does not replace the missing files we are referring to and hence the necessity to have these reproduced”*;
- ii) at paragraph 2 of his first witness statement, stating that it has been prepared *“using first-hand accounts, of facts known to me, **discussions with current staff members involved in our comprehensive search of the server to locate the missing Rhinoceros3D CGI models**”*.

(my emphases).

43. These references make the point that what Mr Padalino thinks is missing, and what he says he instructed staff to look for, are CGI files produced using the Rhino software which at that time was found only on Mr D'Aguanno's laptop.

44. This is also made clear by Mr Gill, whose evidence is given on the basis of an understanding, set out in paragraph 7 of his witness statement, that the CGI work carried out by Mr D'Aguanno for DPA was created using Rhino software. Mr Gill refers to the *“CGI Rhino Models”*. Mr Gill's evidence (which is not disputed by Mr D'Aguanno or Mr Padalino) is that after Mr

D'Aguanno had left DPA and set up MUDA, DPA wanted Mr D'Aguanno to carry out some additional CGI work on projects and contacted him to discuss hiring him for that piece of work. There was a meeting between Mr D'Aguanno and Mr Padalino in February 2019 after which Mr Padalino was unhappy with demands being made by Mr D'Aguanno, who wanted to be paid upfront for carrying out changes to current DPA projects. Mr D'Aguanno says that he wanted half of his fees upfront. No agreement was reached. Accordingly, Mr Padalino asked Mr Gill to *“locate the necessary CGI projects which we needed to work on and at the same time look for all other CGI work in our server”* in order to carry out minor design changes in-house.

45. It was Mr Gill's evidence that he and his colleague Emma Slattery, a senior architectural technician at DPA, had looked for and found three *“CGI Rhino models”* for three projects. He obtained a free version of the Rhino software in order to open and inspect those files. He discovered that he could only open two of them since one was corrupted, and that in fact those were both from out-of-date earlier versions of the projects in question and so were not what he was looking for. He said *“All of the CGI Rhino models, apart from the three old versions I have referred to, were all missing. There were some 3D CAD models on the server but again these were not the final CGI Rhino models. Just to clarify, there is no other location these files could have been stored or saved. These are located in the specific job folder with dated sub folders to assist future use by others”*.

Defendants' position

46. Mr D'Aguanno takes issue with Mr Padalino's description of the CGI creation process, saying that the 3D model does not have to be imported into a separate CGI software package in order to carry out the rendering process which produces a CGI, because it can be rendered and finished in 3D AutoCAD. He says that although he had Rhino software on his laptop, and although he did try and create some CGIs with it (which were the early-stage CGIs of a few projects found by Mr Gill), he didn't get on with it very well and found it was taking him too long. Accordingly he reverted to using 3D

AutoCAD for both creating 3D models and rendering and finishing CGIs, because he was familiar with it, had facility with it, and had used it for some time. Mr D'Aguanno's evidence is that for each project identified by Mr Padalino, he carried out the production of a 3D wire-frame model, and the rendering and finishing required to produce CGIs, all within 3D AutoCAD on his own laptop, not using Rhino.

47. Mr D'Aguanno says he saved those 3D models to DPA's computer, which was backed up weekly to its archive server, as required by the DPA protocol notified to him when he first started working at DPA. If DPA wanted to recreate the CGIs or produce CGIs of different views and aspects of those models, he says, it could do so using the 3D models on its server. Nothing, he says, is missing.
48. Mr D'Aguanno says he received a phone call in February 2019 from a DPA employee, Mr Dariusz Luszcz, asking him where the 3D models for various projects could be found. Mr D'Aguanno told him which folders to look in. He says that Mr Luszcz later told him that he found all the 3D AutoCAD models saved within DPA's server. At Paragraph 44 of his witness statement, Mr D'Aguanno says that the 3D AutoCAD models Mr Luszcz found were the files DPA needed to make amendments to the projects and to create new CGIs, and accordingly all the 3D models and CGI works were and are in DPAs possession. He reiterated this forcefully in his oral evidence. He says although DPA could not originally find the 3D AutoCAD Models, they now have done so, and they were always there; those 3D models can be opened with AutoCAD 3D, and can also be used to render and finish CGIs. There are no separate CGI Models or files to be found, because he did not create CGIs by exporting the 3D AutoCAD Models into Rhino or any other specialised CGI software.
49. On Mr D'Aguanno's case, therefore, DPA's whole case about missing or unsaved documents arises: (a) because it has focussed on looking for Rhino files in a mistaken belief that he carried out CGI work in Rhino, not 3D AutoCAD; and (b) from a lack of understanding by anyone at DPA of what

can be achieved in the production of CGIs using the 3D models which at all times were in DPA's possession on its server.

50. Accordingly, in my judgment I need to make findings in answer to the following questions: (i) Is DPA missing any 3D models for any of the named projects from its server? (ii) Did Mr D'Aguanno create the CGIs DPA seeks from the 3D models found on DPA's server in 3D AutoCAD or using Rhino software? (iii) Did Mr D'Aguanno produce any other CGIs for the named projects which he failed to save to DPA's server or removed from DPA's server?

Is DPA missing any 3D models from its server?

51. Although DPA stated in its Reply to Defence at paragraph 6.2 that it had searched its server and was unable to find any CGI work or 3D models, Mr Paladino accepted at paragraph 11 of his second witness statement that with Mr D'Aguanno's guidance, Mr Dariusz Luszcz had found "*AutoCAD Models*". He said: "*These form the early part of creating the CGI RHINO models or other software, these were not the completed RHINO models...*". Mr Padalino again accepted in oral evidence that "*some*" 3D computer aided designs were found by DPA on their server but said "*what we found were 2D AutoCAD models, not completed CGI models*". In my judgment, it is inherently contradictory to describe 3D CADs as 2D. Mr Owusu pressed Mr Padalino on this in cross-examination and my note of his evidence is that he said "*I'm referring to the finished article. I found some 3D wire models, basic models not completed ones. We were looking for completed models we could use to take forward the various projects*". He said, "*All we had was fixed pdf images which are like a camera shot*". It seems to me that what Mr Padalino was referring to as "*basic*" 3D models, not "*completed*" ones were in fact 3D AutoCAD models, and not the Rhino CGIs that he was looking for. Of course, Mr D'Aguanno's evidence is that there were no Rhino CGIs for these projects, as the CGIs he had produced were rendered from the 3D AutoCAD models. Those were, necessarily, like a 'screenshot' or 'camera shot', as each view and aspect had to be chosen and then rendered and finished to produce a CGI image, as Mr D'Aguanno explained and as I

accept. Mr Padalino's confused evidence on this point appeared to me merely to emphasise how little he understood the process of creation of CGIs from a 3D model.

52. Mr Gill was responsible, in part, for carrying out the initial search which failed to turn up the 3D models that Mr Luszcz later found in the project folders in DPA's server, where Mr D'Aguanno had said they would be found. Mr Owusu put it to Mr Gill in cross-examination that although Mr D'Aguanno was originally told that 3D AutoCAD models were missing after he left DPA, those were all found to be on the server where they should have been filed. Mr Gill said "*No, previous versions of the files were found*". I understood his reference to "*previous versions*" to be a complaint that the 3D models which were found were not the missing CGIs that he had been instructed to find. I did not understand him to be saying that the 3D models which had been found were out-dated or previous iterations of ongoing projects. Indeed, they cannot have been, as these were the models which were later sent to Comoglio in Italy from which they produced the CGIs that DPA needed. I will come back to that.

53. What I think I can take from Mr Padalino's evidence, is that DPA's claim that Mr D'Aguanno either failed to save to, or removed from, the DPA server all of the 3D models for the various named projects is ill-founded, as he accepts that "some" were found there by Mr Luszcz. However, neither Mr Padalino nor Mr Gill gives clear evidence about which 3D models for which projects have been found on DPAs servers and which, if any, have not. Neither pointed to any missing 3D models in oral evidence. It is for DPA to prove its case and it would be easy for either of those witnesses to produce a list of those 3D models which had not been found by Mr Luszcz, if indeed there were any. In the absence of such evidence, and in light of the evidence that 3D models for all the named projects were sent to Comoglio in Italy for CGI production, I prefer Mr D'Aguanno's evidence that Mr Luszcz found all of the 3D models for the named projects. I find on the balance of probabilities that DPA is not missing any such 3D models from its servers.

Did Mr D'Aguanno create the CGIs DPA seeks from the 3D models in 3D AutoCAD or using Rhino software?

54. The fact that Mr Gill was looking for separately identifiable CGI files, or models, is clear from his written and oral evidence. Mr Gill's view in oral evidence was that the inability of DPA to locate the "*missing CGI files*" was "*not about software*". He said there were systems and protocols in place for storing files, which he and everybody now working at DPA was able to use without difficulty, and the missing CGI files were not there on the server. He agreed that regardless of the software used to create them, and whether or not DPA had a licence to use the software they were created in, they could and should have been stored in the correct project folder and there to be found. However, that assumes there is a document or electronic file for a "CGI model" which is separate to that of the 3D model. It is Mr D'Aguanno's evidence that there is not.
55. In his witness statement Mr Gill said, "*In view of the fact that we could not find the CGI Models for these projects on the server and the time it would take if we were to recreate these works in house, it was decided that they would be outsourced*". He said that he had been brought into DPA to work on specific new projects and did not have time "*to recreate the CGI Rhino Models which had been taken by the Defendants and which were missing from our server*". In oral evidence it was put to him that he did not have expertise as a producer of CGI images to do it himself, and he denied that. He said that he used CGI for university work and also in practice outside university. He said, "*I'm pretty familiar with most programs out there*".
56. Once again, this evidence highlights, in my view, that Mr Gill considered that the CGI images had been created by Mr D'Aguanno in Rhino software, and therefore a "CGI model" should have been saved as a separate file to the 3D models created in 3D AutoCAD, within the relevant project folder for each project. However, there is very little positive evidence put forward by DPA that the 'missing' CGIs were created by Mr D'Aguanno in Rhino, to set against Mr D'Aguanno's evidence that they were rendered and finished in 3D AutoCAD from the 3D models. The only positive evidence that DPA can

point to is the three Rhino files found in the DPA servers, one of which was corrupted, and two of which contained out-of-date earlier iterations of two of the projects. In my judgment, Mr D'Aguanno's explanation in cross-examination that he tried to use Rhino for a few projects, but he didn't know how to use it and it took too much time, so he continued in 3D AutoCAD, provides a credible explanation for the existence of those files.

57. The second piece of evidence relied on by DPA is the fact that it commissioned Comoglio in Italy to recreate the CGIs. Mr Gill says that a new colleague, Ben Webb (a trainee architect who had recently graduated from university in July 2018), went through the CGI projects list and sent the necessary files to external consultants Comoglio by email on 15th February 2019 to produce new CGI. Mr Gill confirmed in oral evidence that files sent to Comoglio were the 3D models located by Mr Luszcz. He described these as “... *the early part of creating the CGI RHINO models or other software, these were not the completed RHINO models...*” and says they were sent “...*as it saved the Italians to not have to start at the beginning and could then jump onto the CGI model making part of the exercise.*” Of course, they were not Rhino files at all. It is common ground that what was sent to Comoglio were 3D models created in 3D AutoCAD. Mr Padalino's evidence is that Comoglio carried out the work and returned the CGIs in return for invoiced fees amounting to some £17,689.
58. Mr D'Aguanno says that all that Comoglio would have had to do would be to choose the aspects and views of the 3D models sought to be portrayed in the CGIs, and set 3D AutoCAD to render and finish. Apart from the minor amount of photoshop work afterwards, he says that Comoglio would not have needed to carry out any substantive work to create the CGIs as all the work needed was incorporated within the 3D models. In fact, he says, the CGI works carried out by Comoglio are identical to those carried out by him, except that it made some changes to the photoshopped cars and landscapes around to the buildings (but not the buildings themselves). I have seen some of the original CGIs produced by Mr D'Aguanno side by side with those produced by Comoglio and in my judgment they are as similar as he

describes. Of course, I bear in mind that DPA's instructions were to reproduce what had gone before.

59. Ms Bollard says that if the court accepts Mr D'Aguanno's evidence, then it will be accepting not only that Mr Padalino and his staff are unable to work out what DPA has on its own server, but also that Comoglio did not tell DPA that the substantive work had already been done in the 3D models, which just required re-rendering and finishing. She submits this is unlikely, given the ongoing and longstanding relationship between Comoglio and DPA, and for those reasons asks me to find that Mr D'Aguanno failed to save the CGI works to the DPA server irrespective of what software program he used to create them.
60. I am not satisfied that there is any credible evidence that Mr D'Aguanno carried out the CGI work that he did for DPA in Rhino. I accept his evidence that he did it in 3D AutoCAD, and that the 3D models that were found to be on DPA's server, despite Mr Gill and others looking for them and failing to find them, were sufficient to enable DPA to carry out further rendering and finishing of CGI images, if anyone in the DPA office had the skill and knowhow to do so. However, I find that nobody within DPA did have that skill. Mr Gill says he could have done it, but it is notable that DPA originally asked Mr D'Aguanno to carry out additional 3D work, and when he could not do it, sent it to Comoglio. Mr Gill says that is because he was busy on other projects, but the confused nature of his evidence, and the fact that he does not seem to understand that 3D AutoCAD can be used for producing CGIs, makes it more likely than not, in my judgment, that he was not able to carry out this specialist work.
61. I do not accept Ms Bollard's submission that if the 3D models contained what was needed to produce CGIs in 3D AutoCAD, Comoglio would have told DPA they could do it in-house. I cannot see that it is probable that they would have turned away work in this manner. I am satisfied that there was still work to be done to produce new CGIs from the 3D models – in rendering, finishing and photoshopping context to the buildings – and there is no reason why Comoglio wouldn't have carried out this work and charged

what it thought DPA as the client would bear. However, I accept Mr D'Aguanno's evidence that this is work that would have been required in any event, even if Mr D'Aguanno was still working at DPA. His evidence is that for every new aspect or view which required rendering in CGI, or for any CGIs of the same views where there were design changes to the underlying design, this process would have to be undergone in AutoCAD 3D and then in Photoshop. I accept that evidence, as I am satisfied that he is the only witness I have heard from who understood how to carry out that work, DPA has not put forward any evidence to gainsay it, and it accords with my understanding of how CGIs are produced.

62. Accordingly, I am satisfied on the balance of probabilities that Mr D'Aguanno created the CGIs DPA was looking for from the 3D models in 3D AutoCAD on his computer and saved them over the link installed by Nick to the DPA server, where Mr Gill failed to find them but Mr Luszcz succeeded.

Did Mr D'Aguanno produce any other CGIs for the named projects which he failed to save to DPA's server or removed from DPA's server?

63. There is no evidence before me that he did.

Wellington House

64. In May 2016 DPA was appointed as architect to work on a large-scale residential apartment complex called Wellington House by its client Mr Simpson. This was a project in which it was envisaged that the existing building would be demolished, and an entirely new apartment block built on the site. It is common ground that both Mr D'Aguanno and Ms Muller, while working with DPA, carried out design work on this project, including producing hand-drawn sketches (Ms Muller), 2D and 3D drawings and CGI images (Mr D'Aguanno) (together, the "**Wellington House Works**").

65. After Mr D'Aguanno and Ms Muller left DPA, they set up the offices of MUDA within office space rented from Mr Simpson in one of his properties in Essex. Mr Simpson disinstructed DPA and appointed MUDA as architects

to the Wellington House project. DPA alleges in the particulars of claim that: (i) Mr D'Aguanno and Ms Muller have removed copies of the Wellington House Works; and (ii) in providing services to Mr Simpson for the Wellington House project, they used the Wellington House Works and so infringed DPA's copyright. The Defendants deny this. Although the Claimant's pleaded case alleges wider commercial use infringements, this is the only allegation that was proceeded with at trial.

66. Mr D'Aguanno's and Ms Muller's evidence is that they did not use or need to use the Wellington House Works, as the Wellington House project was begun again from scratch and they, through MUDA, produced an entirely new scheme. I have seen the drawings of the new MUDA scheme and compared them to the old DPA scheme and I am satisfied that it is an entirely new scheme. DPA did not attempt to argue the contrary at trial.

67. They also say that as part of starting the design process from scratch with new architects, Mr Simpson commissioned a new survey of the site, including the existing building, from a third-party surveyor. Again, I am satisfied that he did do so, as I have seen the survey dated 15 January 2019 by SJ Geomatics which is contained in the bundle.

68. DPA makes the following submissions in support of its allegations of possession and use of the Wellington House Works:

- i) In pre-action correspondence in March 2019 Mr D'Aguanno and Ms Muller did not deny having them in their possession or deny their entitlement to make use of them, saying that if DPA had an issue, it should take it up with Mr Simpson;
- ii) It was only after proceedings were issued that their position shifted and they denied being in possession of the Wellington House Works;
- iii) Mr D'Aguanno and Ms Muller had the opportunity to copy or remove files as they both gave notice to leave over the Christmas period when Mr and Mrs Padalino were away from the office and there were few employees around;

- iv) There were sketches of Wellington House on the Third Defendant's website at www.mudaarchitecture.com;
 - v) The Defendants' disclosure contains very few documents relating to Wellington House which is surprising given that this is an ongoing project. In particular, they have not disclosed any hand drawn sketches;
 - vi) The Defendants disclosed further documents in their second witness statements, namely a survey by a firm called SJ Geomatics, which Ms Muller says was provided to them by Mr Simpson. The Defence makes no reference to using a third-party survey and it was not disclosed in the initial disclosure;
 - vii) The design documents disclosed by the Defendants reproduces DPA's own plan, or a substantial part of it. In order to do this, the Defendants would have to be in possession of DPA's own CAD drawing.
69. Dealing with these shortly: I do not infer anything adverse in the Defendants directing DPA to speak to Mr Simpson in the first instance. Both Mr D'Aguanno and Ms Muller said that they knew that Mr Padalino would be angry that they had left DPA and were working with Mr Simpson, and in the particular circumstances (which include that Mr Simpson and Mr Padalino's working relationship had acrimoniously broken down before Mr D'Aguanno and Ms Muller left DPA at the end of December 2018) it seems to me understandable that they would do so.
70. In relation to the timing of Mr D'Aguanno and Ms Muller leaving DPA, much of the correspondence between the parties, Mr Padalino's evidence and submissions makes apparent Mr Padalino's displeasure that they gave very little notice of their intention to depart and did so during a holiday period. It seems that Mr Padalino was happy to obtain all the benefits of not putting them on his payroll as employees – reduced tax burden, no requirement to pay holiday pay, sick pay, parental leave etc – but failed to appreciate that the flipside of this was that they could walk out with little or no notice, which is what they did, albeit only after writing full handover notes on all of their projects. This is not a basis, without more, for the court to infer that in

doing so they showed *mala fides*, or that they timed it so that they could remove documents from the DPA server and I am satisfied that I should not draw such an inference for the following reasons:

- i) Mr D'Aguanno had sufficient facility with computers to be trusted with archive backups. I am satisfied that he could have copied and removed electronic documents at any time if he had wanted to do so. He did not need to wait for Mr Padalino to be out of the office.
 - ii) If they had *mala fides* towards DPA then I think it is unlikely that they would have bothered writing the comprehensive handover notes that I am satisfied they did write, and which are in the bundle.
 - iii) Mr D'Aguanno's and Ms Muller's evidence was that they had been planning to set up their own firm for some time and they chose to leave DPA at Christmas in order to set up MUDA at the start of 2019, when they had the opportunity to take cost-effective office space from Mr Simpson. This seems to me as good a reason as any and I accept it.
71. I understand the sketches on the MUDA website were of the new scheme designed by MUDA. I see no reason why they should not have put them there.
72. Whether or not the SJ Geomatics survey was disclosed in these proceedings in the Defendants' initial disclosure or later, I am satisfied that it was commissioned by Mr Simpson and produced by SJ Geomatics in January 2019 and provided to the Defendants in order to start their design work on the new Wellington House scheme.
73. The design document that DPA says reproduces DPA's own plan or a substantial part of it, is the plan of the existing building on the Wellington House site. Mr D'Aguanno says, fairly, that it is not surprising that two surveys of the same site and existing building are similar, as the aim is to capture accurately what is already there. However, he points out a number of minor but real differences between the plans which I agree do not support an inference of copying. He also asks why on earth the Defendants would use

DPA's plans to describe an existing building when they have a professionally produced measured survey from SJ Geomatics, produced for the purpose, to use instead. I find that it is highly improbable that they would do so, and on balance I am satisfied that the Defendants did not. It was also put to Mr D'Aguanno that he used DPA's 3D model of the Wellington House site to produce 2D plans of the site, and I agree with Mr D'Aguanno that this is highly improbable: he said it would be useless to use 3D drawings as a basis for tracing or describing a building and I accept that. It seems to me that there would be no purpose to using the design or tracing of a 3D model in this way particularly when one has a detailed measured survey.

74. Given the existence of the third party survey, and the fact that the Defendants were instructed to and did come up with a wholly different scheme, and the absence of any other evidence of possession, use or reproduction of the Wellington House Works, the Claimant has failed to satisfy me that the Defendants or any of them have possessed, used or reproduced the whole or a substantial part of the Wellington House Works for any reason.

Use made by Mr D'Aguanno of 3D models removed from DPA

75. Mr D'Aguanno has admitted that he has copied and stored 3D models from three of DPA's projects entitled 'Bullsmoore Lane', 'Crawley' and 'Four Oaks' ("**ADA Stored Works**"). In his first witness statement, and in oral evidence, he said that he kept them for use in his portfolio to show the quality of work that he had carried out while he was at DPA, and for no other reason. In his first witness statement he said that he had asked Mr Padalino if he could put them in his portfolio and Mr Padalino had agreed. By the time of trial, he appeared to have resiled from that evidence as he accepted that his storage of the ADA Stored Works was both in breach of contract and copyright infringement. In oral evidence he said that he had not, in fact, done anything with the ADA Stored Works save move them onto a storage device from his laptop: he said he had not put them in his portfolio, shown them to anyone or used them for any purpose.

76. Ms Bollard submits that DPA can only speculate why he took the ADA Stored Works: she submits that perhaps it was useful for Mr D'Aguanno to rely on them for building business for MUDA's portfolio, rather than his own personal portfolio; or perhaps he took them out of spite or bad feeling; or perhaps he mistakenly kept them on his laptop and did not save them to the server.
77. The difficulty with these latter two submissions is that DPA has not satisfied me that the ADA Stored Works are not to be found on DPA's server – i.e. that they were removed or not stored rather than copied. I have found on the balance of probabilities that Mr D'Aguanno did store what he was required to store. There is also no evidence that Mr D'Aguanno used them or intended to use them for building MUDA's portfolio, to set against his assertion that he did nothing with them and intended to use them only for his personal portfolio, and Ms Bollard did not put this to him in cross-examination. That he did nothing with them is to some extent supported by Ms Muller's evidence, which I believe was truthfully given, that she did not know that Mr D'Aguanno had the ADA Stored Works. I do not believe he could have used them to support building MUDA's business without Ms Muller knowing about it.
78. It is difficult for me to see what other use Mr D'Aguanno could have made of the ADA Stored Works, as they are necessarily site- and job-specific to DPA's projects, and at least two of the three were from completed projects. On balance, I accept Mr D'Aguanno's evidence that he kept them for his personal portfolio and did not put them to any use during the period that they were in his possession, save that he moved them from his laptop to a pen-drive storage device.

DETERMINATION OF THE REMAINING ISSUES ON LIABILITY

Copyright Infringement

Issue 1 – Have the Defendants reproduced a substantial part of the Claimant Works or any of them, in a material form?

79. Yes, on Mr D'Aguanno's admission he has copied and stored the ADA Stored Works.

Issue 2 – Have the Defendants or any of them possessed the Claimant Works or any of them in the course of a business.

80. Yes, I am satisfied that in copying and storing the ADA Stored Works for the purposes of his portfolio Mr D'Aguanno has possessed them in the course of his business as an architect/architectural designer.

Issue 3 – Have the Defendants reproduced a substantial part of the Claimant Works or otherwise used the Claimant Works in their ongoing work for Mr Simpson?

81. No, I have found that they have not.

Issue 4 – Have the Defendants or any of them authorised the acts set out at paragraphs 1 to 3 above?

82. There is no evidence before me that Ms Muller knew of or authorised Mr D'Aguanno's actions in relation to the ADA Stored Works and I have accepted her evidence that she did not know he had them. He must have copied them in or before December 2018 when he was working at DPA and MUDA was not incorporated until January 2019, so it cannot have authorised them. Mr D'Aguanno accepts that his actions in respect of the ADA Stored Works amounts to copyright infringement.

Breach of Contract

Issue 5 – Did Mr D'Aguanno or Ms Muller fail to store the Claimant Works or any of them on DPA's server?

83. DPA accepts that Ms Muller did not, and it has failed to satisfy me on the balance of probabilities that Mr D'Aguanno did not.

Issue 6 – Did Mr D'Aguanno or Ms Muller remove the Claimant Works or any of them from DPA's offices and/or prevent DPA from having access to its files?

84. Yes, Mr D'Aguanno removed the ADA Stored Works. DPA has failed to satisfy me on the balance of probabilities that Ms Muller removed any of the Claimant Works.

Issue 7 - Does DPA have access to the Claimant Works which are in the possession of the Defendants?

85. Yes, Mr D'Aguanno has returned the storage device containing the ADA Stored Works to DPA and I accept his evidence that he has no further copies of those or any other Claimant Works.

Issue 8 - Did Mr D'Aguanno or Ms Muller fail to return all of the Claimant's property when their contracts with DPA ended?

86. Yes, Mr D'Aguanno failed to return the ADA Stored Works. DPA has failed to satisfy me on the balance of probabilities that Ms Muller failed to return any of the Claimant's property when she left DPA.

87. Mr D'Aguanno accepts that his actions in relation to the ADA Stored Works amount to breach of the implied terms of his contract with DPA not to remove documents from DPA's possession and to return all of DPA's property when he ceased working with DPA.

QUANTUM

88. Although the trial before me was liability only, by order of HHJ Hacon, both parties agreed at trial that: (i) if I was to conclude, as I have done, that the only copyright infringement/breach of contract by the Defendants or any of them was that admitted by Mr D'Aguanno in relation to the ADA Stored Works; and (ii) if I accepted his evidence, as I have done, that he had made no further use of the ADA Stored works; it would be disproportionate to have a full quantum trial, and I should assess damages now.

89. Ms Bollard for the Claimant accepted in closing submissions that any damages would be of limited scope, as there is no suggestion that Mr D'Aguanno's actions in respect of the ADA Stored Works gave rise to the specific cost of requiring Comoglio to recreate the missing CGIs. She

submits that it would not be appropriate for the court to award no damages, but accepts they will be limited.

90. The Defendants' primary submission is that Mr D'Aguanno's retention of material for his portfolio caused no loss to the Claimant as the material was put to no commercial use.
91. I agree that there is no loss to DPA arising from the actions of Mr D'Aguanno in respect of the ADA Stored Works. Nevertheless, it amounts to copyright infringement and breach of contract, so I award nominal damages of £1 to be paid by Mr D'Aguanno to DPA.

CONCLUSION

92. Mr D'Aguanno shall pay DPA £1 damages for the admitted breach of copyright and breach of contract in respect of the ADA Stored Works.
93. The remainder of the claim shall be dismissed.