IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
INTELLECTUAL PROPERTY ENTERPRISE COURT
[2022] EWHC 1154 (IPEC)

No. IP-2021-000016

Rolls Building
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Fetter Lane
London EC4 1NL
Court address

Wednesday, 4 May 2022

Before:

HIS HONOUR JUDGE HACON

B E T W E E N :

DAEMONLINKS LIMITED

Claimant

- and -

LUCY MARION BROWN

Defendant

MR DAVID E. GRANT QC (instructed by SA Law LLP) appeared on behalf of the Claimant.

THE DEFENDANT appeared as Litigant in Person.

J U D G M E N T

(via Microsoft Teams)

JUDGE HACON:

1 This is an application by the claimant ("DL") for summary judgment in an action in which the claimant seeks a declaration of ownership of copyright in two films and relief for alleged infringement of the copyrights concerned by the defendant, Ms Brown. David E. Grant QC appears for DL. Ms Brown appears as a litigant in person.

2 DL is a company dealing in, among other things, the hosting of web portals. It is the owner of a YouTube channel. The founder and moving force behind DL is Andrew Cooper.

3 Ms Brown has trained as a fashion photographer and, before the events relevant to these proceedings had also created more than one video for a YouTube channel which she describes as having explored politics, extremism, art, music, and online sub-cultures.

4 I should pause here to say that there are disputes in other tribunals between DL and Mr Cooper, on the one hand, and Ms Brown on the other. Ms Brown has brought a claim against DL for unfair dismissal, sexual harassment and victimisation in the Employment Tribunal and a claim for harassment against Mr Cooper in the Peterborough County Court. I mention this because a significant part of Ms Brown's evidence in the present application concerned Mr Cooper's behaviour towards her and her allegation that Mr Cooper is using the court to enact a vendetta against her. The evidence is not relevant to the issues I have to resolve so I will not mention it further. This should not be taken to mean that I either reject or accept this aspect of Ms Brown's evidence. I am not in a position to reach any view and I need not do so.

5 The relevant principles to be applied to an application for summary judgment were set out by Lewison J (as he then was) in *EasyAir v Opal Telecom Limited* [2009] EWHC 339 Ch at [15], approved by the Court of Appeal in *AC Ward & Sons Limited v Catlin (Five) Limited* [2009] EWCA Civ 1098 at [24]. In [15] of his judgment, Lewison J said this:

> "…The correct approach on applications by defendants is, in my judgment, as follows:
>
> i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 9;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
>
> iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001 EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

6 Between August and December 2020, Ms Brown acted as media manager for DL. She was responsible for films and other creative content made by DL. It is not in dispute that during her time at DL Ms Brown was involved in the making of two films. One was about illegal migrants crossing the English Channel ("the Dover Piece"), the other was about the efforts of the Crobar, a rock bar in Soho, to remain in business during the Covid lockdown ("the Crobar Piece"). On the pleadings it is not in dispute that Ms Brown was producer and principal director of the Dover Piece and that pursuant to s.9(2)(ab) of the Copyright, Designs and Patents Act 1988 Ms Brown is in law the author of the Dover Piece.

7 The Particulars of Claim allege that Ms Brown was the producer of the Crobar Piece and that a Mr Jeremy Wales was the director. If that was so, Ms Brown and Mr Wales would be joint authors: (see s.10(1A) of the 1988 Act.) It is further pleaded by DL that Ms Brown carried out her work on both the Dover Piece and the Crobar Piece in the course of her employment by DL within the meaning of s.11(2) of the 1988 Act. Accordingly, DL says,

DL is the owner of the copyright in the Dover Piece and was initially the joint owner of the copyright in the Crobar Piece.

8 The Particulars of Claim state that, on 1 February 2021, there was a written assignment of rights in the Crobar Piece from a company called Voodoo IT Services (UK) Limited ("Voodoo") to DL. Voodoo is a company of which Mr Wales is the sole director.

9 The Defence pleads that Ms Brown alone created the Crobar Piece. The Defence, which was drafted by Ms Brown herself, also says:

> "32. All administrative documents such as call sheets, pre-production notes, talent forms and invoices were ascribed to either myself or PLATFORM Media, and were shown to Mr Cooper, who raised no issues over publishing or copyright. This further supported my understanding of the agreement. Mr Cooper would later go on to say that I understood that these pieces of work were for Daemonlinks, which was not my understanding or else the paperwork would have reflected this and I would have been aware of these terms. **[Video - 7. Confusion over Ownership]**."

Thus, at least between DL and Ms Brown, the issues on the pleadings regarding ownership of the Dover Piece and the Crobar Piece are: (a) whether Ms Brown was employed by DL; and (b), if so, whether she carried out her work on the two films in the course of her employment.

10 The waters have become muddied somewhat since then. In her skeleton argument dated 24 March 2020 filed for this hearing Ms Brown says that an individual called Andrew Wildey was significantly involved in the filming and editing of the two films in issue. Mr Wildey and his company, Zeyus Media Limited, are referred to in the Particulars of Claim but only to deny that Mr Wildey had anything to do with the films and that, if he did, he assigned his rights to DL.

11 The other way in that the issues have become more complicated than suggested in the pleadings comes from a suggestion made for the first time in Ms Brown's witness statement of 22 November 2021 that before she became media manager for DL, she was given a verbal assurance by Mr Cooper that all her work and the intellectual property rights would belong to her and not to DL. I will return to this in a moment.

12 I turn to the question of Ms Brown's alleged employment. Ms Brown has sometimes been ambivalent about whether she was employed by DL at the relevant time. I have no doubt that she was. Annexed, in fact, to the particulars of claim, there is a written contract of employment between DL and Ms Brown. It includes this:

> "2. **Duties and Job Title**
>
> 2.1 You are employed by the Company in the capacity of **Media Manager**. In addition to the duties set out in Schedule 1, You will be required to undertake such other duties and responsibilities as may be determined by the Company from time to time.

2.2 The Company reserves the right to vary your duties and responsibilities at any time and from to time according to the needs of the Company's business.

…….

Schedule 1

Ongoing responsibilities and activities

1. Maintain current awareness of events and activities on notified topics, including identifying and contacting suitable people to interview.

2. Creation of Videos on agreed topics; quantity dependent on length and subject matter. Typically 2-4 Videos each month."

13 In her pleaded Defence, which I understand was drafted by Ms Brown herself and which has a statement of truth signed by her, she says this:

> "9. The Defendant entered into an employment contract with the Claimant in the circumstances set out below. The Defendant puts the Claimant to proof as to the terms and conditions of the said contract."

The Defence also pleads this at para.34:

> "The Defendant admits that her contract the employment was terminated on December 2020."

This is para. 28 of the Defence:

> "The Defendant further avers that the contract of employment entered into in August 2020 was a sham contract and that the Claimant through Mr Cooper well knew that to be so. Insofar as the Claimant sets out the terms of employment the Defendant admits that those terms are set out in the contract but denies that she breached any terms of the said contract as alleged or at all, and the Claimant is put to proof of each and every allegation set out in the Particulars of Claim."

It is not clear to me what Ms Brown meant by a "sham" contract.

14 The present application for summary judgment first came before me on 1 November 2021. At that hearing Ms Brown was represented by counsel. I was told by counsel that she and Ms Brown had understood that the hearing was a case management conference only and that Ms Brown was not prepared to respond to an application for summary judgment. I took the view that Ms Brown should be given time to serve evidence in response to that filed in support of DL's application for summary judgment. She did so on 22 November 2021. The application was adjourned and comes back before me today.

15 I have been shown a note of the hearing of 1 November 2021 taken by DL's solicitors. At the hearing Ms Brown's counsel told me, on instructions, that Ms Brown did not dispute that

she had been employed by DL and that the issue between the parties was whether the two films were created by her in the course of her employment. That seems to me to be correct, at least so far as the pleaded case is concerned. The duties of Ms Brown as DL's employee are set out in the contract of employment, as I have said. It strongly suggests that her work on the two films fell squarely within her duties as an employee. Ms Brown has not given any reason to suppose that her work did not fall within her duties and that, accordingly, she carried out that work in the course of her employment by DL. I take the view that there is no real prospect of the trial judge finding otherwise.

16 I return to the suggestion raised in Ms Brown' witness statement of 22 November 2021 regarding Mr Cooper's verbal assurance. She puts it in this way:

> "13. Andrew Cooper agreed to numerous verbal conditions that would apply to the agreement I would go on to sign, which he would not honour. They were as follows:
>
> i) That any contract signed was purely a technicality to facilitate payment and accounting.
>
> ii) That all my work would belong to me, and not the Claimant.
>
> iii) That I would not associated with Daemonlinks Ltd."

17 Shortly before this hearing, Ms Brown supplied the court with several videos showing discussions between her and Mr Cooper. She told me today that the fifth of those, which I looked at again during the hearing, shows Mr Cooper stating that he would not uphold his verbal assurance that Ms Brown would not be linked with DL. The video is not clear, but it may be that is what Mr Cooper was saying. However, I am not convinced it shows the existence of a verbal contract. Even if it did, it did not concern the ownership of copyright.

18 The allegation that Mr Cooper agreed that all Ms Brown's work would belong to her not to DL is, on its face, surprising. It is not in dispute that Ms Brown received payment from DL for her work, as well as pension rights, sick pay and holiday payment. If DL did not own the product of her work, it is not clear what they were paying for.

19 Today, Ms Brown told me that Mr Cooper had offered to provide those benefits out of an act of kindness. That is in theory possible, but I find it difficult to believe. More than that, Ms Brown's allegation that Mr Cooper agreed that she would own all the product of her work is inconsistent with the case she advanced in her pleaded Defence, which included this:

> "10. The Defendant avers that:
>
> …….
>
> (b) the issue of copyright in material produced by the Defendant after the date of the contract was not discussed between Mr Cooper and the Defendant at those meetings."

20 The Defence also says this:

> "14. The subject of copyright in any material was not discussed by Mr Cooper and the Defendant. Mr Cooper stated on numerous occasions that the Defendant's job was for her to decide and he was simply providing me financial support in order to realise her creative endeavours."

That last part is consistent with what Ms Brown told me today, but the pleaded lack of any discussion about copyright is not consistent with the suggestion that Mr Cooper and DL were abandoning any claim to ownership of the product of the work of Ms Brown while she was employed by DL. The Defence contains a statement of truth signed by Ms Brown.

21 Finally, even if there were discussions along the lines alleged by Ms Brown before she entered into her contract of employment, it seems to me that that such discussions were overtaken and replaced by the terms of the written contract itself.

22 I cannot take at face value what Ms Brown says in her witness statement of 22 November 2021 regarding assurances by Mr Cooper that she would own the product of her work for DL. It seems to me that Ms Brown has no real prospect of establishing the truth of this allegation at trial.

23 The upshot is that, as between DL and Ms Brown, DL is at least the owner of the copyright in the Dover Piece and at least co-owner of the copyright in the Crobar Piece. Ms Brown owns no rights in the copyright in those two films. It would follow that, whether DL is sole owner or joint owner of the copyrights, it is entitled to restrain Ms Brown from infringing the copyrights: (see *Powell v Head* (1879) 12 Ch D 686).

24 The Particulars of Claim also allege that Ms Brown's contract of employment contained implied terms. I take the view that the factual circumstances of the contract would have to be explored further in order to make good that allegation and any allegation of breach of such terms and I make no finding of summary judgment in relation to them. Similarly, I am not, at present anyway, convinced that I can make a finding of summary judgment in relation to DL's rights as against Mr Wales or Mr Wildey. Neither was represented before me today. However, I will hear Mr Grant on that and on the nature of relief to which DL is entitled.

L a t e r

25 Following the part of the judgment I gave a few moments ago, Mr Grant, apparently in error, drew my attention to a document dated 17 January 2021. Error or not, it is certainly unfortunate that this was not shown to me earlier, particularly given that Ms Brown is not professionally represented. It is a document headed "Agreement of Assignment of Copyright" and appears, on its face, to be an assignment by Mr Wildey and his company, Zeyus Media, of "all proprietary rights in and to the copyrightable and/or copyrighted works described in this agreement to Client." The Client is Ms Brown. The document also states that the owner, that is to say Mr Wildey and Zeyus Media, "also transfers all usage and licence agreements for any third party content included in the works to Client." The document goes on to say:

> "Owner remains the creator of the works and reserves the right to use any of the media assets described in the works for promotional purposes.

> Having transferred copyright the Owner no longer accepts any legal responsibility for the works."

26 The works are defined as:

> "1. 'Dover: Make Yourself at Home.'
>
> 2. All original media assets included within 'Dover: Make Yourself at Home' created by Owner.
>
> 3. 'Crobar: Music When The Lights Go Out.'
>
> 4. All original media assets included within 'Crobar: Music When The Lights Go Out' created by Owner.
>
> 5. All agreements pertaining to any third party media assets used within 'Crobar: Music When the Lights Go Out.'"

27 On the face of that document, Mr Wildey believes that he had creative input with regard to both the Dover Piece and the Crobar Piece such as to give him rights in the copyrights in those two works. It also suggests that he was assigning all such rights to Ms Brown.

28 I have also been shown a letter dated 2 March 2021 from solicitors acting for Mr Wildey to the solicitors acting for Mr Cooper and DL. It reads:

> "We have been instructed by Andrew Wildey/Zeyus Media and refer to previous correspondence between your firm and our client, resting with your letter 1 March 2021 requiring an answer to your letter of 19 February 2021.
>
> Our client carried out two pieces of film/edit work as a freelancer for Lucy Brown, with no discernible contract existing between the two parties. Our client invoiced Lucy Brown for £700 and £790 in September and October 2020 and the first invoice was, we understand, paid by your client, the second by Lucy Brown. It is not our client's concern as to the nature of Lucy Brown's relationship with your client.
>
> Our client makes no claim whatsoever to any intellectual property rights over any of the work completed by him. He has relinquished all rights to any raw footage and/or edits.
>
> Our client does not wish to involve himself in any dispute your client may or may not have with Lucy Brown or any other entity or person, nor should he be involved. Your client has no cause of action against ours and we therefore look forward to your confirmation by return that that is your client's understanding."

29 As I have said, Ms Brown's case is that that Mr Wildey was significantly involved in the creation of the two films such as to qualify as a director of each of them. It is consistent with the apparent assignment to Ms Brown of Mr Wildey's rights. If both propositions are correct, it would follow that Ms Brown is co-owner of the copyright in the two films.

30 Mr Grant has made two points in response to this. First, that this is contrary to his clients' case. His clients deny any involvement until creation of the film by Mr Wildey. Secondly, Mr Grant points out that this allegation of Mr Wildey's involvement is not part of Ms Brown's pleaded case.

31 As far as Mr Grant's first point is concerned. I accept that there is a dispute, but I am not in a position today to resolve disputed issues of fact, namely the extent of Mr Wildey's involvement in the creation of either of the two films, whether in consequence he was at one point the joint owner of copyright in either of the films and whether he assigned such ownership to Ms Brown.

32 As to Mr Grant's second point, had Ms Brown been professionally represented throughout, there may have been greater force in the suggestion that it is late, at this stage, to introduce a defence which is not pleaded. Even then I may well have been persuaded that Ms Brown is entitled to amend her pleaded case to run a point which she strongly avers. As it is, I will allow an amendment to the Defence to introduce an allegation dealing with Mr Wildey's involvement with the films.

33 I am not able to conclude that Ms Brown's Defence, so amended, has no prospect of succeeding at trial. The application for summary judgment is dismissed.

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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