



WEDNESDAY 7TH MAY 2008

Order No. 6799

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
HC05C01374



BEFORE LORD JUSTICE MUMMERY
MR JUSTICE DAVID RICHARDS
And SIR PAUL KENNEDY

BETWEEN

MATTHEW CHARLES FISHER

Claimant/
RESPONDENT

- and -

- 1) GARY BROOKER
- 2) ONWARD MUSIC LIMITED

Defendants/
APPELLANTS

COURT 70
Appeal No.

A3/2007/0157

ON READING the Appellant's Notice sealed on the 26th January 2007 filed on behalf of the Appellants on appeal from the order of Mr Justice Blackburne dated 20th December 2006

AND ON HEARING Mr John Baldwin QC and Ms Jessie Bowhill counsel for the Appellants and Mr Iain Purvis QC and Mr Hugo Cuddigan counsel for the Respondent

IT IS ORDERED that

- 1) the appeal against the grant of declaration 1 of the order of Mr Justice Blackburne dated 20th December 2006 be dismissed
- 2) the appeal against the grant of declarations 2 and 3 of the order of Mr Justice Blackburne dated 20th December 2006 be allowed
- 3) there be no order for costs of the appeal
- 4) there be no order for costs of the trial
- 5) the application for permission to appeal to the House of Lords be refused

By the Court

[The Court sat from 10:30 to 13:00 and 14:00 to 16:15 on 3rd October 2007
and
from 10:00 to 13:00 and 14:00 to 16:30 on 4th October 2007
and
from 10:01 to 10:07 On 4th April 2008]



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HIGH COURT OF JUSTICE
CHANCERY DIVISION

MATTHEW FISHER

- and -

- 1) GARY BROOKER
- 2) ONWARD MUSIC LIMITED

ORDER

Copies to:

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Royal Courts of Justice
Strand
London WC2A 2LL

Harbottle & Lewis LLP
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Mayfair
Ref: 131/338/265776/3

Messrs Jens Hill & Co
D 53317
Clerkenwell
Ref: F1007001 MDSD NN

* This order was drawn by Mr D Fallon (Court Associate) to whom all enquiries regarding this order should be made.
When communicating with the Court please address correspondence to: Civil Appeals Office, Room E328, Royal Courts of Justice
Strand London WC2A 2LL (DX44450 Strand) and quote the Court of Appeal reference number.
The Associate's telephone number is 020 7073 4831.



Neutral Citation Number: [2008] EWCA Civ 287

Case No: A2/2007/0157

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
INTELLECTUAL PROPERTY
MR JUSTICE BLACKBURNE
HC05CO1374

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/05/2008

Before :

LORD JUSTICE MUMMERY
MR JUSTICE DAVID RICHARDS
and
SIR PAUL KENNEDY

Between :

(1) GARY BROOKER
(2) ONWARD MUSIC LIMITED
- and -
MATTHEW FISHER

Appellant

Respondent

JUDGMENT ON CONSEQUENTIAL ISSUES

1. The Court has received written submissions on (1) issues on which the parties were unable to reach agreement before the judgments on this appeal were handed down; and (2) Mr Fisher's application for leave to appeal to the House of Lords.

Costs of the appeal

2. It was submitted on behalf of Mr Fisher that this was a case in which it would be fair to make no order for costs of the appeal. The appellants had failed on the issues of impossibility of a fair trial, proprietary estoppel and implied assignment, which took up most of the time in preparation and at the hearing. They had also failed in their bid to set aside the declaration of Mr Fisher's co-authorship.
3. The Appellants contend that they should have 90% of the costs of the appeal on the grounds that the appeal succeeded to the extent that Mr Fisher is not entitled to any relief in respect of the exploitation of the work. At the end of the day Mr Fisher has obtained nothing of monetary value. He has succeeded only on the issue of the declaration of co-authorship. The other two declarations relating to future exploitation have been set aside.
4. In our judgment, Mr Fisher is right on this point. Neither side is asking the court to make an order for costs of issues. Although two of the three declarations were set aside most of the time in submission at the hearing was spent on the points on which the Appellants have not succeeded i.e. the fair trial point, the implied assignment point, proprietary estoppel and co-authorship.

Cost of the trial

5. The judge awarded Mr Fisher 90% of the costs of the trial, reflecting his success on all points save the claim for restitution and for an injunction. It was submitted on behalf of Mr Fisher that the order should be that he recovers 75% of his trial costs, the reduction being a reflection of the overturning of the second and third declarations as to co-ownership and termination of the implied licence.
6. The appellants submit that they should have 75% of their trial costs, as they have succeeded on all of the financial aspects of the dispute.
7. In our judgment the judge's order on costs should be set aside and there should be no order for the costs of the trial. At the end of the day, Mr Fisher secured recognition of his contribution to the joint composition of the Work, although he has failed to secure a say in the financial exploitation of the Work. Half of the time at trial was taken up with evidence, which related to the authorship claim as well as to the various defences raised by the Appellants. Mr Fisher incurred a substantial proportion of the costs in successfully establishing his claim to authorship and the Appellants incurred substantial costs on fighting off the financial claims.

Leave to appeal

8. It was submitted on behalf of Mr Fisher that there are serious objections to the judgment of the majority. It is also contended that the issues raised are of public importance. They arise out of the conflict between the policy of discouraging stale claims and the protection of property rights and relate to such matters as the discretion

of the court to grant a declaration of title, the availability of the doctrines of laches and acquiescence to a defendant sued for damages for infringement of copyright, the scope of the requirements of detrimental reliance and unconscionability, and the circumstances (if any) in which a licence may become irrevocable.

9. In our judgment, this is a case in which it is for the Appellate Committee to decide whether there should be another appeal. It is an unusual case on the facts. The length of the delay in asserting a claim (nearly 40 years) and the circumstances in which the delay occurred are quite exceptional. It is very doubtful whether a case as extreme as this will ever occur again.