



Claim Nos. HC-2016-000513 and HC-2015-001149 05 Jul 2016

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

THE HONOURABLE SIR KENNETH PARKER

HC-2016-000513

Tuesday 5th July 2016

BETWEEN:

AGENTS' MUTUAL LIMITED

Claimant

AND

**GASCOIGNE HALMAN LIMITED
T/A GASCOIGNE HALMAN**

Defendant

AND BETWEEN

AGENTS' MUTUAL LIMITED

Claimant

AND

MOGINIE JAMES LIMITED

Defendant

ORDER

UPON the application by the Defendant in Claim HC-2016-000513 ("**Gascoigne Halman**") dated 24 May 2016 to set aside the undertaking given by it to the Court ("**the Undertaking**"), as recorded in the recital to the order of Mrs Justice Asplin dated 23 February 2016, and for further case management orders ("**the Discharge Application**")

AND UPON Gascoigne Halman's application dated 20 June 2016 that the Claimant provide security for costs ("**the GHL Security Application**")

AND UPON the Claimant's application in Claim HC-2016-000513 dated 27 June 2016 for an interim injunction ("**the Injunction Application**")

AND UPON the Claimant's application in Claim HC-2016-000513 dated 30 June 2016 for permission to amend its Particulars of Claim ("**the Amendment Application**")

AND UPON hearing from Alan Maclean QC and Josh Holmes for the Claimant in both actions (“**the Claimant**”), from Paul Harris QC and Philip Woolfe for Gascoigne Halman, and from Thomas Grant QC and James Hall for Moginie James Limited (“**Moginie James**”);

AND FURTHER UPON Gascoigne Halman consenting to the Amendment Application upon the terms set out below;

AND UPON the application by Moginie James in Claim HC-2015-001149 dated 28 June 2016 that the Claimant provide security for costs (“**the MJ Security Application**”);

AND UPON the Court noting that evidence relevant to the GHL Security Application was filed by the Claimant on 4 July 2016 and observing that any evidence in relation to that application should be filed in good time prior to the next hearing of those applications, with which the parties agree;

AND UPON Gascoigne Halman no longer agreeing to the provision of an undertaking on a voluntary basis;

AND FURTHER UPON reading the written evidence filed.

IT IS ORDERED THAT:

Security for Costs

1. The Claimant provide a payment of security for Gascoigne Halman’s costs of these proceedings in the sum of £500,000 (“**the Security**”) by paying that sum into the Court Funds Office within 14 days of the date of this Order.
2. Unless security is given as ordered:
 - 2.1. The claim be struck out without further order; and
 - 2.2. On production by Gascoigne Halman of evidence of default, there be judgment for Gascoigne Halman without further order, with costs of the claim to be the subject of a detailed assessment if not agreed.
3. The Claimant have liberty to apply back to the Court for variation of the period for payment of security pursuant to paragraph 1 above, any such application to be made by in writing together with any supporting documents and on notice to Gascoigne Halman.

4. Save as aforesaid, the GHJ Security Application and the MJ Security Application be adjourned for hearing by the allocated judge to be assigned to these actions pursuant to paragraphs 14 and 15 below. For the avoidance of doubt, no party shall be entitled to challenge the jurisdiction of the Allocated Judge to deal, at that hearing, with the application for security for costs in respect of both the Competition Issues (before the CAT) and the Non-Competition Issues (before the Allocated Judge sitting as a judge of the Chancery Division).

Discharge Application

5. The Discharge Application be dismissed.
6. The Undertaking remain in force until judgment or further order of the Court or of the Competition Appeal Tribunal.
7. The Injunction Application is withdrawn.
8. The costs of the Discharge Application and the Injunction Application are costs in the case.

Fortification of Cross-Undertaking

9. The Claimant shall fortify the Cross-Undertaking by paying the following sum into the Court Funds Office:
 - 9.1. £250,000 to be paid within 14 days of the date of this Order; and
 - 9.2. a further £250,000 to be paid within 56 days thereafter.
10. Unless fortification is given as ordered, the Undertaking shall be discharged.

AND BY CONSENT IT IS ORDERED THAT

Amendments and Further Statements of Case

11. Pursuant to CPR 17.3 the Claimant shall have permission to amend its Particulars of Claim in Claim HC-2016-000513 in the form attached to its application dated 30 June 2016.
12. Gascoigne Halman shall file its Amended Defence by no later than 4 pm on Monday 11 July 2016.
13. The Claimant shall file any Reply in Claim HC-2016-000513 within 7 days of Gascoigne Halman filing its Amended Defence.

Track allocation and allocation to Judge

14. These claims be allocated to the following management track: Case management and trial by Judge (full docketing).
15. These Claims be assigned to an allocated judge to be identified ("**the Allocated Judge**") who is also designated and entitled to sit as a Chairman in the Competition Appeal Tribunal ("**CAT**").

Transfer of Competition Issues to Competition Appeal Tribunal for Determination

16. All the competition issues in both claims (that is, those issues relating to whether the agreement between the Claimant and Gascoigne Halman dated 16 January 2014 ("**the GHL Agreement**") and the agreement between Claimant and Moginie James dated 20 January 2014 ("**the MJ Agreement**"), or any actual or alleged terms thereof, or any wider agreements or concerted practices alleged to have been engaged in (or to be continuing) by the Claimant, infringe Chapter I of the Competition Act 1998, such issues expressly to include the correct construction and/or interpretation and/or meaning and/or effect of the second sentence of clause 6 of the GHL Agreement, read together with Appendix 4 of the GHL Agreement (together "**the Competition Issues**")) be transferred to the CAT pursuant to Regulation 2 of the Section 16 Enterprise Act 2002 Regulations 2015 for determination by a Tribunal chaired by the Allocated Judge as Chairperson.

17. The parties in both actions do liaise with each other and the CAT Registry without delay in order to seek to arrange the listing of a first case management conference by no later than Wednesday 27 July 2016 before the Allocated Judge in the CAT (“**the CAT CMC**”) with a time estimate of 1 day given the public interest in having the claims dealt with on an expedited basis. To that end, the Claimant shall by Friday 8 July 2016, file with the CAT Registry the documents required by Rule 72(2) of the Competition Appeal Tribunal Rules 2015.

18. For the avoidance of doubt the Allocated Judge in the CAT CMC will have jurisdiction to give directions in the respect of both the Competition Issues and the other issues raised in the statements of case in both actions.

Directions in Claim HC-2015-001149

19. The trial fixed by paragraph 7 of the order of Arnold J dated 19 April 2016 be vacated and, without prejudice to paragraph 21 below, the directions given in that order and the further order of Master Matthews by his order of 25 May 2016 be suspended pending review by the Allocated Judge at the CAT CMC.

Costs Management

20. The requirements for costs management under CPR 3.13 be dispensed with in Claims in Claim HC-2016-000513 (i.e. the Gascoigne Halman Claim).

21. The Costs Management conference ordered by Master Matthews in Claim HC-2015-001149 in paragraph 7 of his order dated 25 May 2016 do take place before the Allocated Judge not earlier than 14 days after the CAT CMC.

Costs

22. The Claimant do pay Gascoigne Halman’s costs of and occasioned by the amendment of the Particulars of Claim pursuant to paragraph 11 above.

23. Subject to paragraph 24 below, the costs of the GHL Security Application and the MJ Security Application are reserved to the Allocated Judge to be dealt with at the conclusion of the said application.

24. There be no order as to costs arising from the adjournment of the GHL Security Application.

Service of Order etc

25. This order shall be served by Gascoigne Halman, on the Claimant and upon Moginie James Ltd.

26. There be liberty to apply.

Dated: Tuesday 5th July 2016

Service of the order

The Court has provided a sealed copy of this order to the solicitors for the serving party:

Quinn Emanuel Urquhart & Sullivan, LLP
One Fleet Place
London
England EC4M 7RA