

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INTELLECTUAL PROPERTY LIST (ChD)

Royal Courts of Justice
7 Rolls Building, Fetter Lane
London, EC4A 1NL

Date: 20 February 2025

Before:

HIS HONOUR JUDGE KEYSER KC
(Sitting as a Judge of the High Court)

Between:

(1) PHONOGRAPHIC PERFORMANCE LTD

Claimants

(2) DRS

- and -

(1) DARE TO CLUB LTD

(2) CHERYL LOUISE BRICE

Defendants

Gwilym Harbottle for the Claimants

The Second Defendant, as a director, for the First Defendant

Martin Scott for the Second Defendant

JUDGMENT

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HIS HONOUR JUDGE KEYSER KC:

1. This is the claimants' application, by a contempt application notice dated and filed on 18 October 2024, for the committal of the first defendant, Dare To Club Limited, and the second defendant, Cheryl Brice, for breach of an order made in these proceedings by Miles J on 19 January 2023.
2. The application is supported by two affidavits of Martin Ochs, a solicitor and partner in Hamlins LLP, and an affidavit of Peter Catchpole, an investigator instructed by the claimants. In response, Ms Brice has filed an affidavit of her own.
3. At the outset, I remind myself that allegations of contempt of court must be proved by the applicants beyond reasonable doubt. That said, in the present case there is no issue as to the particulars of contempt that are pursued before me.
4. Before turning to the details of the committal application, I note that, when seized of a committal application in extant copyright proceedings, the court has power to award both ordinary damages and additional damages, under section 97(2) of the Copyright, Designs and Patents Act 1988. The parties have informed me that they have this morning reached agreement that the defendants shall have a joint and several liability to the claimants in the sum of £48,000 inclusive of ordinary damages, additional damages, interest and costs, payable at the rate of £1,000 per calendar month. For what it is worth, that seems to me to be a very sensible agreement for the defendants to have reached, and I am grateful for the efforts made in that regard.

5. With that, I turn to a summary of the facts. The first claimant was incorporated and operates for the purpose, amongst other things, of exploiting, enforcing and protecting on behalf of its members the exclusive right to play and authorise the playing of sound recordings in public. That right is one of the exclusive rights of the owner of the copyright which subsists in a sound recording. That exclusive right is assigned to the first claimant by its members for those purposes. Where the member is not the owner but the exclusive licensee of the copyright it appoints the first claimant its exclusive agent for the exercise of that right. Details of the assignments and the contractual arrangements are set out in Mr Ochs' first affidavit. There is a large body of sound recordings dealt with by the first claimant. The second claimant was incorporated and operates for the purpose of enforcing and protecting on behalf of its members (who include all of the major composers, writers and publishers of musical works in the United Kingdom) the exclusive right to perform in public or communicate to the public musical works and to authorise others to do the same; that right is part of the copyright which subsists in such musical works.
6. The first defendant operates and has at all material times operated a nightclub known as the Dare To Club at premises in Alfred Street in Bristol and is the licence-holder for the premises under the Licensing Act 2003. The second defendant, Ms Brice, is and has at all material times been the director and shareholder of the first defendant and is the designated premises supervisor for the premises under that Act.
7. In 2022 the activities at the club came to the attention of the claimants, and in April 2022 solicitors acting for the claimants wrote to the first defendant, saying

that it was playing musical works at the club without a licence from the claimants. The letter enclosed licence application forms. No response was received. Accordingly, on the instruction of the claimants an agent attended at the club premises on 25 June 2022 and noted that recorded tracks were being played at the premises, a number of which were subject to the claimants' copyright.

8. In July 2022 a further letter was sent to the defendants, threatening legal proceedings if completed licence application forms were not received within 7 days. Again, no response was received.
9. Proceedings were commenced in August 2022. The particulars of claim averred that the defendants had infringed the claimants' copyright. I will not read the particulars of infringement out; those in respect of the first claimant's copyright are in paragraphs 15 to 18, and those in respect of the second claimant's copyright are in paragraphs 19 to 22, and those particulars made clear the subject-matter of the complaint and the nature of the activity complained of.
10. The defendants failed to respond to the claim; they did not acknowledge service of the claim form or file a defence. The claimants applied for a default judgment containing an injunction.
11. The order dated 19 January 2023 was, I am informed, in the terms of a standard default judgment in cases of this type. It was indorsed with a penal notice. The relevant paragraphs are in the following terms:

1.1 The Defendants must not, in the case of the First Defendant whether acting by itself, its directors, officers, servants or agents of any of them or otherwise howsoever, or in the case of the Second Defendant whether acting by herself, her servants or

agents or any of them or otherwise howsoever carry out the following acts or any of them that is to say:

1.1.1 infringe the First Claimant's copyright and/or any copyright in respect of which any of the First Claimant's members holds an exclusive licence by playing in public any sound recordings in the First Claimant's Repertoire without the applicable licence to do so; or

1.1.2 authorise another or others to commit such acts aforesaid;

but as to each such sound recording only during the period during which the exclusive right to play the same in public is vested in the First Claimant or in the First Claimant's member that has appointed the First Claimant to act as its exclusive agent in respect of that sound recording.

1.2 The Defendants must not, in the case of the First Defendant whether acting by itself, its directors, officers, servants or agents of any of them or otherwise howsoever, or in the case of the Second Defendant whether acting by herself, her servants or agents or any of them or otherwise howsoever carry out the following acts or any of them that is to say:

1.2.1 infringe the Second Claimant's copyright by, without the applicable licence, performing in public and/or communicating to the public any literary or musical works in the Second Claimant's Repertoire during the period of subsistence of the Performing Right in such works and of the Second Claimant's ownership of that Performing Right; or

1.2.2 authorise another or others to commit such acts aforesaid; or

1.2.3 infringe the Second Claimant's copyright by, without the applicable licence, permitting Dare To, 1 Alfred Street, St.Philips, Bristol, Somerset, BS2 0RF or any other premises being a place of public entertainment to be used for the performance of any literary or musical works in the Second Claimant's Repertoire during the period of subsistence of the Performing Right in such works and of the Second Claimant's ownership of that Performing Right.

12. Although the order had already been served, the defendants continued to be unlicensed. Therefore the order was personally served on the second defendant,

Ms Brice, at the premises on 28 July 2023, some six months after the order was made.

13. There was then communication and correspondence in the summer of 2023. Ms Brice applied directly to the claimants for a licence. She was told that the matter should go through the claimants' solicitors, who wrote to the defendants setting out the moneys due. There was some dispute, including an exchange of "without prejudice" correspondence, concerning the moneys due, but ultimately, after the claimants' solicitors had set out in detail what was due, no further response was received from the defendants.
14. The claimants therefore instructed agents again to investigate whether the defendants were continuing to infringe their copyright. They concluded that they were. Accordingly, they brought the present contempt application, which was personally served on 8 November 2024.
15. The matter came before the court on a few occasions. On 27 November 2024 Rajah J recorded that solicitors acting on behalf of the defendants had informed the claimants that the defendants did not intend to contest the contempt allegations but that they wished to make representations in mitigation. The order of Meade J on 16 December 2024 recorded that all except one of the particulars of contempt in the contempt application notice were not disputed and that the only piece of supporting evidence that was disputed related to the single disputed allegation of contempt.
16. The result is that the undisputed allegations of contempt are set out in the following paragraphs which, as they are the particulars of contempt, I shall read out:

“Contempt by the First Defendant

6. Despite the Defendants’ knowledge of the terms of the Order, on 15 June 2024 at the Premises the First Defendant:

- a) played in public by its agent a DJ and/or authorised the playing in public by that DJ of sound recordings comprised in the repertoire of the First Claimant namely [and then a number of sound recordings are set out]

and

- b) performed in public by its agent a DJ and/or authorised the performance in public by that DJ of literary and/or musical works comprised in the repertoire of the Second Claimant namely [and then a number of works are set out].

7. At all material times, the exclusive right to play each such sound recording in public belonged to the First Claimant and the exclusive right to perform each such literary and/or musical work in public belonged to the Second Claimant.

8. At all material times, neither the DJ nor the First Defendant had any licence from the First Claimant to play any such sound recording in public nor had they any licence from the Second Claimant to perform any such literary and/or musical work in public.

9. In the premises, each such playing and performance and/or the authorisation of each such playing and performance was a breach of the Order and a contempt of Court by the First Defendant.”

“Contempt by the Second Defendant: failure to secure the First Defendant’s compliance with the Order

11. [A]t the time of the said infringements, the Second Defendant was a director of the First Defendant with knowledge of the terms of the Order. As such she was under a duty to take reasonable steps to secure the First Defendant’s compliance with the Order. The First Defendant wilfully failed to do so, as evidenced by the continued infringement at the Premises after the date of service of the Order as set out above.”

17. In summary, therefore, the first defendant falls to be sentenced on the basis that it was responsible for the infringements on 15 June 2024 because the DJ

committed them as the first defendant's agent and/or the first defendant authorised them (authorisation of copyright infringement being itself an infringement). The second defendant, Ms Brice, falls to be sentenced on the basis that, being a director of the first defendant with knowledge of the order, she wilfully failed to take any steps to secure the first defendant's compliance with it. The claimants do not pursue the allegation that the second defendant, Ms Brice, actually authorised the infringements.

18. In circumstances where the contempts are proved on the evidence and not disputed by the defendants, I turn to consider what appropriate sentence is to be passed. The relevant principles have been discussed in numerous cases, but most recently by Bryan J in *SIA Investment Industry v Pardus Wealth Ltd* [2025] EWHC 269 (Comm), at [15]-45], where the judge referred to and reviewed a number of well-known authorities. I need not repeat what he said but I have it in mind.
19. Regarding the first defendant, the only practicable sanction is a fine. The information that I have, though not ideally detailed, indicates that the only way in which either of the defendants can continue to meet the liabilities to the claimants that have been agreed today, and the only way in which in the future they can hope to be able to afford not only to do that but also to buy the necessary licence, is by continued trading. It would be counterproductive in those circumstances to impose a substantial fine on the first defendant. It seems to me that a fine of £500 on the first defendant is the lowest that can realistically be imposed to mark the fact that the first defendant has been in contempt of court.

20. Regarding the second defendant, Ms Brice, there are in principle three options: a fine, an immediate sentence of imprisonment, and a suspended sentence of imprisonment. I say at the outset that one reason that I have had the matter listed in this court, which does not have facilities for immediate sentences of imprisonment to be imposed, is because I will not impose a sentence of that nature.
21. Mr Scott, for whose submissions on behalf of Ms Brice I am very grateful, submits, I think rightly, that a financial penalty would be counterproductive. I bear in mind that the courts have made it clear that a sentence of imprisonment cannot be passed simply because a fine cannot be paid: if a sentence of imprisonment would be wrong in principle, it cannot be imposed for want of any more attractive alternative. However, Mr Scott concedes, again rightly in my judgment, that some form of custodial sentence is appropriate in the circumstances. I note what has been said on Ms Brice's behalf about the nature of the breaches and a degree of perhaps understandable confusion that may have existed at an early stage as to the need for a licence. But any such confusion had long since passed and was dispelled by the injunction, if by nothing else. And the invoice that was apparently given to the DJ at the event on 15 June 2024, which contained text purporting to require him to ensure that no infringement of copyright occurred, plainly did not make a proper or meaningful effort to comply with the order, in circumstances where the first defendant, through the agency of the second defendant as its director, had persistently failed to obtain the necessary licences.

22. For all that has been said in favour of the second defendant, her contempt must be regarded as a serious and wilful breach of the order. It is important as a matter of public policy that court orders be complied with. Further, the matters constituting the contempt of court cannot be regarded as victimless infringements, because the failure to get licences for activities that are otherwise an infringement of copyright is in the nature of a cheat on those with the property rights in the recordings or the works, who are entitled to receive the fruits of their labours and not to be deprived of them through wrongful conduct.
23. All that said, I am not going to make an order for immediate imprisonment. I have heard the mitigation put on behalf of Ms Brice. I accept that at least at the outset she went into this business without a full appreciation of what was required, though (as I have said) that should long since have been dispelled. I accept that her incarceration would be serious for others besides herself, in particular for her children, who on the evidence that she has given require her presence at home. Although I am sure that difficulties caused by her removal from home could be got round if necessary, this would clearly place considerable strains on the family unit. I have regard also to the need for the second defendant to continue to operate the business, which sounds as though it has good prospects, doubtless largely by reason of her own acumen. It is important for everybody, including I suspect the claimants, that she be able to continue to devote herself to the running of the business, if at all possible.
24. Accordingly, I consider that a sentence of imprisonment can properly be suspended. The shortest period that is appropriate is a sentence of 56 days,

which I will suspend for a period of 12 months on condition of compliance with the injunction order of Miles J.

JUDGE KEYSER: Ms Brice, do you want to stand for a moment. First of all, as far as you can tell, did you follow that?

SECOND DEFENDANT: Yes.

JUDGE KEYSER: So, that is a sentence of imprisonment of 56 days, suspended. If it is activated, you will serve half. It will remain in existence for 12 months and it will not be activated provided you don't breach the order. But if you do breach the order then, upon proof of breach, it will stand to be activated and you will stand to be subject to further punishment for any further breach of the order. I say those things not as a threat but because I need to be sure that you do understand and that you understand how critically important it is that you do not breach the order.

SECOND DEFENDANT: Yes.

JUDGE KEYSER: Thank you; sit down. Is there anything else?

MR SCOTT: Not from this side, my Lord.

MR HARBOTTLE: Nor from this side, my Lord.

JUDGE KEYSER: Thank you. I am grateful to you both.