



Neutral citation [2017] CAT 3

IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1262/5/7/16 (T)

Victoria House
Bloomsbury Place
London WC1A 2EB

27 January 2017

THE HONOURABLE MR JUSTICE MARCUS SMITH
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

AGENTS' MUTUAL LIMITED

Claimant

- v -

GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)

Defendant

RULING

1. This dispute is due to be heard at a trial commencing on Friday 3 February 2017, with a time estimate of 12 days. I dealt with various applications of the parties at a PTR, which took place on 15 December 2016. The outcome of those applications is set out in an order dated 15 December 2016 (the “PTR Order”).
2. In a letter to the Tribunal dated 25 January 2017, the Defendant¹ made three applications, which it claimed were urgent, and which it asked the Tribunal to resolve on the papers as a matter of urgency. This Ruling determines these applications.
3. The first application arises out of paragraph 3 of the PTR Order. By that paragraph, the Claimant was ordered to provide certain clarifications and/or further information by 19 December 2016. This the Claimant did, a little later than ordered, on 21 December 2016. The Claimant’s response, I should observe, appears to be substantive, running to some 5 single-spaced pages, and making reference to various documents in the Claimant’s disclosure.
4. By a letter dated 16 January 2017, it was asserted by the Defendant that “a number of key questions remain unresolved despite the answers provided in your letter of 21 December 2016”. This letter set out five points, to which it requested a response by 20 January 2017, attested by a statement of truth.
5. Although, of course, the Tribunal has yet to hear any evidence, I have had the opportunity of reading the witness statements and expert reports that have been filed. I am not persuaded (although I do not wish to close the Defendant’s legal team from so contending at trial) that the matters on which the Defendant seeks further information are “key” and I make no order that the Claimant answer them. I am supported, in this conclusion, by three points (over-and-above my preliminary reading):
 - (1) The experts have both been able to file reports, in the Defendant’s case a very long one. The experts have also submitted a lengthy joint statement. Neither expert, so far as I am aware, has raised these additional “key” points of information as somehow preventing them from expressing their opinions as experts.

¹ When I refer to “Claimant” and “Defendant”, I include references to their respective solicitors.

- (2) The Defendant took a long time to raise these so-called deficiencies, even taking account of the Christmas period. The Claimant provided the information on 21 December 2016, and it took until 16 January 2017 for these “key” points of further information to be formulated by the Defendant.
- (3) By their letter of 25 January 2017, the Claimant has indicated it will respond further.
6. The second application relates to a number of “specific documents which are absent from the Claimant’s disclosure”. The Defendant seeks their production or an explanation as to why these documents have not been disclosed. Specifically, the Defendant seeks an order that the Claimant, by 27 January 2017, in each case “(i) indicates where the document has been provided in the disclosure; or (ii) discloses the document and makes it available for inspection; or (iii) explains why no such document exists to be disclosed or made available for inspection and verifies such explanation by a statement of truth.”
7. I decline to make such an order. Nothing that I have seen so far persuades me that such an order needs to be made. At the PTR, it appeared to me that the Claimant was (as one would expect with solicitors on the record) proceeding responsibly with its disclosure obligations, and I have no doubt that this will continue. It should be noted that the chronological run of documents in the trial bundles amounts to some 18 lever-arch files.
8. Thirdly, the Defendant seeks an order for the production of an electronic version of the trial bundles by 4pm on the date that the application was filed, namely 25 January 2017. The Defendant already has – as does the Tribunal – a physical set of the bundles. I refuse this application, also. By its letter of 25 January 2017, the Claimant explains why it is taking time to produce these, and I decline to go behind this explanation. I have no doubt that the Claimant will produce an electronic version of the trial bundles as soon as practically possible. I would only add that an electronic version would be of some assistance to the Tribunal also.
9. Accordingly, the Defendant’s applications are all refused. The Defendant also requested that the date for filing its written opening submissions be extended from 4pm yesterday until 4pm on Monday 30 January 2017 (this request was predicated on a need

to consider the information and documents sought from the Claimant). I am not persuaded that the provision of this information or these documents would have in any way prevented the filing of written opening submissions. In the event the parties have filed their skeleton arguments yesterday so I do not need to rule on this application.

The Honourable Mr Justice Marcus Smith
Chairman of the Competition Appeal Tribunal

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 27 January 2017