THE HIGH COURT

2015 No. 2537 P

Between:

Glaxo Group Limited and Glaxo Smithkline (Ireland) Limited t/a Allen & Hanburys

Plaintiffs

– and –

Rowex Limited

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 19th November, 2018.

1. The background to the within proceedings is detailed in *Glaxo Group Ltd v. Rowex Ltd* (Unreported, 19th May, 2015, High Court, Barrett J.). The plaintiffs now seek, pursuant to: (i) O.15, rr. 4 &/or 13 &/or 14 of the Rules of the Superior Courts 1986, as amended, to join six additional defendants to these proceedings; and (ii) O.28, r.1 of the Rules for leave to deliver an amended statement of claim. They do so because it appears to the plaintiffs from information gleaned in parallel proceedings in England that the existing and proposed additional defendants have between them committed the tort of passing off.

2. A key test in joinder applications is whether a plaintiff has a stateable case against a proposed additional defendant. The court has been referred in this regard to *Allied Irish Coal Supplies v. Powell Duffryn International Fuels Ltd* [1998] 2 IR 519, 527 ("[T]*he onus on the plaintiff is…to demonstrate…it has a stateable case*"). It is clear too that Irish courts take a liberal approach to the joinder of proposed defendants to existing proceedings. The court has been referred in this regard to, *inter alia*, *O'Connell v. Building and Allied Trades Union* [2012] 2 IR 371, 380 ("[T]*he Rules…provide a flexible method whereby…rights of plaintiffs and defendants can be protected and vindicated*") and *McGuinness v. Kenmare Property Co. Ltd* [2015] IECA 299, para.8 ("*The burden of proof on a plaintiff who seeks…an order* [of joinder] *is a light one*"). As regards the position of an intended defendant, the court has been referred to *Moorview Developments Ltd v. First Active plc* [2011] 3 IR 615, 624 ("*The relevant defendant….is not entitled to be consulted as to whether he is added as a defendant*"), and pointed to the observation in O'Connell, 379, that "*It is not necessary…that a potential defendant…be involved at all stages of a case and in every issue*."

3. Several points fall to be made:

(1) It is clear to the court from the evidence, in particular the affidavits of 21.11.2017 and 18.10.2018, sworn by Ms Carol Plunkett (a solicitor for the plaintiffs), that the plaintiffs have a stateable case as to joint tortfeasorship against the defendant and proposed defendants. There is nothing vexatious in the claims made; there is no abuse of court process presenting.

(2) It is not the case that the plaintiffs seek to make a limited case against Rowex and a more expansive case regarding the proposed defendants. Fundamentally the same issues have to be made out against all the defendants in respect of whom the plaintiffs allege passing off (and the plaintiffs will seek to make a joint liability case against all the defendants).

(3) If the court refuses the joinder, the plaintiffs could commence separate proceedings against the proposed defendants. But for the court to allow matters so to proceed would risk conflicting judgments (and hence real injustice). And it would be contrary to a central thrust of the joinder jurisdiction (which is to ensure that justice is efficiently despatched).

(4) In the defences put in in the parallel English proceedings, it is accepted by the Sandoz entities that if Sandoz UK is guilty of passing off it is jointly liable with the other defendants. So it is an odd proposition that Sandoz would come to the Irish courts and say, in effect, 'The proposed additional defendants should be sued in separate proceedings'.

(5) As to the notion that Rowex has been prejudiced because already in these proceedings it has been embroiled in a discovery application in circumstances where it is claimed that the proposed additional defendants could have been joined earlier, (i) such discovery as has been sought sought is discovery that there was an entitlement to seek, (ii) the plaintiffs have confirmed that if joinder is ordered they will not seek any further discovery from Rowex other than as was ruled by the court in May 2016 (apart from some 'tightening up' of the order to issue), so (iii) if Rowex is not going to be put to further cost it cannot complain of wasted costs.

(6) As to the alleged delay in the bringing of the within application, even if Rowex is right that there was an element of delay, what of it? Yes, Rowex has been put through a discovery application, but that is a discovery application the plaintiffs were entitled to bring, and the plaintiffs have now provided the confirmation referred to in (5). So there are no wasted costs, and costs are the only alleged prejudice complained of. There is no evidence of, e.g., prejudicial consequences such as delay in getting the matter to trial.

(7) The only prejudice as to costs that Rowex can invoke are costs to it (and the court has treated with this issue). Rowex has sought to rely upon evidence from the proposed defendants as to why they (a) should not be joined, or (b) should be joined solely on pre-emptive declarations in terms of the discovery allowable. But a proposed defendant may not be heard in application to join them to existing proceedings (*Moorview*, 624). And there is a clear policy reason why this should be so: if, any time a party was sought to be joined that party could seek to have a conditioning of the proposed joinder that would cause havoc in terms, *e.g.*, of court access and efficient management of proceedings. If there are arguments to be made as regards the discovery that may be sought/ordered post-joinder, those arguments fall properly to be made in the course of the relevant discovery application.

4. Having regard to the factors identified above, the court will grant: an order of joinder in respect of the proposed six additional defendants to the within proceedings; and also leave to deliver the proposed amended statement of claim.