

Case No: CC11 P02870

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Neutral Citation Number: [2011] EWPC 027

**IN THE PATENTS COUNTY COURT**

St. Dunstan's House

133-137 Fetter Lane

London EC4A 1HD

Date: 23/09/2011

**Before :**

**HIS HONOUR JUDGE BIRSS QC**

**Between :**

	<b>Golden Eye (International) Limited</b>	<b><u>Claimant</u></b>
	<b>- and -</b>	
	<b>Mr Mohamed Maricar</b>	<b><u>Defendant</u></b>
	<b>And between :</b>	
	<b>Golden Eye (International) Limited</b>	<b><u>Claimant</u></b>
	<b>- and -</b>	
	<b>Mrs D Vithlani</b>	<b><u>Defendant</u></b>

**Judgment**His Honour Judge Birss QC :

- 1.This judgment concerns two parallel cases. The matter has been dealt with on paper and without a hearing. I have today made an order of my own motion under CPR Part 3 r3.3(1) convening a hearing to take place in these two cases on Monday 10<sup>th</sup> October 2011. This judgment sets out my reasons for doing so.
- 2.In each case the claimant Golden Eye (International) Ltd has sued the defendant (an individual) for copyright infringement. The Claim Forms were issued in the Northampton County Court using the Money Claim Online system. The Particulars of Claim are in short form on the Claim Form. In action CC11P02870 (against Mr Maricar) the Particulars of Claim provides as follows:

“The Claimant is the exclusive licensee in the UK of rights in the film sold under the name Fancy an Indian? (the film), including

the right to act in relation to any breach of copyright. On 27<sup>th</sup> November 2009 the Claimant believes the defendant unlawfully made all or part of the film available from his IP address for downloading by third parties. On 29<sup>th</sup> September 2010 the Claimant sent a letter before action to the Defendant setting out in full its claim for breach of copyright. The Defendant failed to reply. The Claimant sent another letter to the Defendant on 8<sup>th</sup> November 2010 to which no response was received. The Claimant claims #700 for breach of copyright.

The claimant claims interest under section 69 of the County Courts Act 1984 at the rate of 8% a year from 27/11/2009 to 21/01/2011 on #700.00 and also interest at the same rate up to the date of judgment or earlier payment at a daily rate of #0.15.”

3.The American “pound key” symbol # is of course a common computer mistake for the symbol for pounds sterling £.

4.The Particulars of Claim in the other claim (Vithlani) are essentially the same albeit the details of the letters are different. Right away it will be seen that these claims bear some striking similarities to the claims in the litigation concerning the company Media CAT Ltd, the subject of my judgment *Media CAT v Adams* [2011] EWPCC 6. However I should also make clear that there may very well be important differences between the present cases and the Media CAT cases. At this stage I do not know.

5.It appears that at least the Vithlani case arises from information produced by British Sky Broadcasting following a *Norwich Pharmacal* order made by Mr Justice Vos on 4<sup>th</sup> February 2010.

6.This judgment arises as follows. In the Vithlani case (CC11 P02735) I have before me an application by the Defendant marked as to be dealt with without a hearing. It is supported by a statement from Mrs Vithlani’s solicitor Mr Michael Forrester of Ralli Solicitors. He explains that his firm was instructed on 11<sup>th</sup> July 2011 and a hearing was listed in the case for 14<sup>th</sup> July in Watford County Court. The defendant contended that the case should be transferred to the Patents County Court. The claimant did not agree. On 14<sup>th</sup> July the case was transferred to the Patents County Court by the order of District Judge Sethi. Correspondence ensued between the defendant’s solicitors and the claimant but did not resolve anything and on 8<sup>th</sup> August 2011 the claimant served a Notice of Discontinuance.

7.Before the Patents County Court the Defendant now applies for various orders including an

order that the claimant adds the original copyright owner (Ben Dover Productions) as a party to the proceedings (see *Media CAT v Adams* above), that after that order the claimant should apply to discontinue the claim but that failing that the action should be struck out with costs.

8. In response I have a witness statement from Mr Wagner, a solicitor. Mr Wagner states that he has care and conduct of these proceedings on behalf of the claimant although he is not yet on the record. He submits that the application should be dismissed and raises various questions about the defendant's approach to the proceedings.

9. Although I am anxious not to put the parties to further and unnecessary expense it seems to me that this is not an application which I should resolve on paper without a hearing. This is for two reasons. First, simply from the point of view of the application itself, it raises matters which I believe oral submissions will be able to assist the court in resolving. Although I set aside Notices of Discontinuance in the *Media CAT* cases, such an order is unusual and needs careful consideration with full submissions.

10. Second, a consideration of the Patents County Court records prompted by this application revealed two other parallel and apparently similar cases in which Golden Eye (International) Ltd is the claimant. The first one is *Golden Eye v Maricar*. It was issued in Northampton but by July 2011 was in Ilford County Court. Deputy District Judge Grant transferred the case to the Central London County Court on 1<sup>st</sup> August 2011 and on 4<sup>th</sup> August 2011 District Judge Langley transferred the case to the Patents County Court. It is not clear to me looking at the court file what stage that case has reached. There appears to be an outstanding application to stay a writ of *Fi Fa* as well as an application to set aside a default judgment.

11. It seems to me at this stage to be at least arguable that the *Vithlani* case (if it is to proceed) and the *Maricar* case raise common questions which may be conveniently considered together.

12. The third *Golden Eye* case in the Patents County Court records is action CC11 P0131 (*Golden Eye v Rajan*). That action was based on a Particulars of Claim in essentially the same terms as the other two albeit the film is different. It was issued in Northampton and transferred to Bow County Court in February 2011. The case was transferred to Central London County Court and then on to the Patents County Court on 23<sup>rd</sup> March 2011 by His Honour Judge Dight at CLCC. On 21<sup>st</sup> April 2011 a Notice of Discontinuance was filed at the Patents County Court. There is nothing further on the court file and so I will not include that case in the order I will make.

13. In all these circumstances it seems to me that it is appropriate to make an order convening a hearing in both *Golden Eye v Vithlani* and *Golden Eye v Maricar* together. If nothing

else I can determine Mrs Vithlani's outstanding application on that occasion. If there are applications outstanding in the Maricar case then I may be able to deal with them on that occasion as well. In any case it may be just and convenient to give directions in one or other or both actions.

14. Finally, since it is apparent that the claimant has commenced and is pursuing copyright infringement proceedings in the county courts arising presumably from information provided as a result of the order of Mr Justice Vos, the claimant is invited to consider and make submissions as to how any other of its pending cases arising from that order might be dealt with conveniently.