



Neutral Citation Number: (2023) EWHC 3478 (IPEC)

Claim No: IP-2021-NCL-000002

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN NEWCASTLE UPON TYNE
INTELLECTUAL PROPERTY LIST (ChD)
INTELLECTUAL PROPERTY ENTERPRISE COURT

Business and Property Court
Newcastle-Upon-Tyne Civil & Family Courts and
Tribunal Centre
Barras Bridge
Newcastle-Upon-Tyne
NE1 8QF

Date: 21 November 2023

Before:

MS. PAT TREACY
(SITTING AS A DEPUTY HIGH COURT JUDGE IN THE INTELLECTUAL
PROPERTY ENTERPRISE COURT)

Between:

(1) Photobooth Props Limited
(2) Lily's Prints Limited

Claimants

- and -

(1) NEPBH Ltd
(2) Quinn UK Limited
(3) Claire Quinn
(4) Reece Quinn
(5) Michael Quinn
(6) Your Print Supplies Limited
(7) Your Photobooth Props Limited
(8) Michael Connor Quinn

Defendants

Both parties being unrepresented.
The Claimants appearing through their officer Mr Paul [Sherrington]
The Defendants not being present

Hearing date: 21 and 22 November 2023

JUDGMENT

(Corrected version of notes as given orally in Court
Approved by DHCJ Treacy)



DEPUTY JUDGE TREACY:

Introduction

1. This Judgment follows a trial at which the Defendants did not appear. It is the final judgment on liability.
2. The Defendants' failure to attend the trial caused significant difficulties for the Claimants, the Court and Court staff. Having maintained that they would appear and defend the claim, the Defendants informed the Court during the afternoon before the trial was due to start that none of them would be attending.
3. The Defendants had not complied with any of the deadlines in the CMC Order. They had offered neither witness evidence nor documentary disclosure in advance of trial and, when confirming non-attendance, had expressly declined to support their defence, stating that they would offer no defence.
4. CPR 39.3 deals with the potential consequences if a party fails to attend trial. For ease of reference, CPR 39.3 provides:

Failure to attend the trial

39.3

(1) The court may proceed with a trial in the absence of a party but – [...]

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under paragraph (2) or paragraph (3) must be supported by evidence.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –

(a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;

(b) had a good reason for not attending the trial; and

(c) has a reasonable prospect of success at the trial.

5. The Claimants (in person) were clear that they wished the trial to continue to final judgment in the light of the disruption that had been caused them over several years and while preparing for trial. Inevitably, a significant burden falls on the Claimants in advance of trial including compiling and preparing trial bundles. This is even more the case where, as here, the Claimants were unrepresented, and the Defendants had not cooperated with the trial preparation process.



6. I explained to the Claimants that under Rule 39.3(3) the Defendants might apply to have any judgment given in their absence set aside but had to satisfy the criteria in CPR 39.3(5).
7. In the light of the Claimants' request and the provisions of CPR 39.3, I decided that the most appropriate course in line with the Overriding Objective and in the interests of justice was to conduct the trial in the absence of the Defendants.

Context and description of claim

8. The businesses involved in the dispute supply photobooths and related accessories. These were described earlier in the proceedings by Recorder Kimbell KC, sitting as a Deputy High Court Judge as follows: *'The photobooths are the type where you step in, sit down, draw a curtain and wait for a number of photographs to be taken automatically. The photographs then appear a few minutes later in a slot on the outside of the booth. Photobooths of this type are now apparently a common feature at birthday parties, weddings and other events. The panels on the outside of the photobooths are used to provide thematic decoration appropriate to the event. The relevant designs are printed out as "skins" and inserted around the outside of the booth. The purpose of the skin design is to entice people in and to complement the atmosphere of the party or event in question.'* ([2022] EWHC 750 (IPEC), paragraphs 1 and 2).

Claimants

9. The First Claimant (**Photobooth Props Ltd**) is a limited company with company no. 10345472 and registered office address at Unit 9 Tundry Way, Chainbridge Industrial Estate, Blaydon-On-Tyne, England, NE21 5SJ. Photobooths Props Ltd offers photobooths for hire, as well as supplying accessories, skins, props, and panels for use with photobooths.
10. The Second Claimant (**Lily's Prints Ltd**) is a limited company with company no. 12173674 and registered office address at 9 Tundry Way, Blaydon-On-Tyne, England, NE21 5SJ. Lily's Prints Ltd, among other things, designs and prints accessories, skins, props, and panels for use with photobooths.
11. Below these companies are together referred to as the Claimants.
12. Mr Paul Sherrington and Ms Lie Xie are either owners or directors of both Claimants. Both are employees of Photobooth Props Ltd.

Defendants

13. There are eight defendants: Mr Michael Quinn and Mrs Claire Quinn, their sons, Reese and Connor Quinn and four companies owned or controlled by them.
14. The First Defendant (**NEPBH**) is a limited company with company no. 11886049 and registered office address at Kemp House, 160 City Road, London, United Kingdom, EC1V 2NX. NEPBH was in the business of printing photobooth skins, and before the



sale of its website domain to Lily's Prints in July 2019 operated its business from a website "www.nepbhprint.com",

15. The Second Defendant (**Quinn UK**) was incorporated on 14 August 2019 with company no. 12156311 and registered office address at Unit 6 Derwenthaugh Marina, Blydon, Blydon, Tyne and Wear, England, NE21 5LL.
16. The Third Defendant (**Claire Quinn**) is the sole registered director of Quinn UK.
17. The Fourth Defendant (**Reece Quinn**) is the sole registered director of NEPBH and the Sixth and Seventh Defendants, and son of the Third and Fifth Defendants.
18. The Fifth Defendant (**Michael Quinn**) is the husband of the Third Defendant, and father of the Fourth and Eighth Defendants. He was alleged to be a de facto director and/or agent, and the guiding mind, of each of the corporate defendants.
19. The Sixth Defendant (**YP Supplies Ltd**) was incorporated on 24 January 2020 with company no. 12422853 and registered office address at Kemp House, 160 City Road, London, United Kingdom, EC1V 2NX.
20. The Seventh Defendant (**YP Props Ltd**) was incorporated on 15 April 2020 with company no. 12556101 and registered office address at Unit 6 Derwenthaugh Marina, Blydon, Blydon, Tyne and Wear, England, NE21 5LL.
21. Both the Sixth and Seventh Defendants are pleaded to have been involved in the supply of accessories and equipment related to photobooths (after the 2019 transaction which is the subject of the dispute).
22. The Eighth Defendant (**Connor Quinn**) was previously a registered director of the Seventh Defendant and is the son of the Third and Fifth Defendants.

The dispute

23. This claim arose out of a deal agreed between Mr Sherrington and Mr Quinn in the summer of 2019.
24. The Claimants claim that that transaction related to the entirety of the printing business carried on by the First Defendant. They say that Mr Quinn represented to Mr Sherrington that:
 - (i) the business and all its assets were his to dispose of;
 - (ii) he had authority to do so; and
 - (iii) the business assets included, among other things, copyright in the designs used by the business.
25. The Claimants' evidence is that Mr Quinn stated that he had no intention of continuing in the printing industry; and that Mr Quinn had encouraged the Claimants to enter into the transaction on the basis that they could continue operating the



business in the same way as previously as a going concern after the sale. The price to be paid by the Claimants was £45,830.11.

26. The Defendants' position is that nothing was transferred other than some assets, limited specifically to those listed on two invoices dated 28 September (discussed below).
27. The transaction was negotiated and concluded informally, mostly through a series of face-to-face meetings and messages on electronic media, mainly Facebook.
28. Factual disputes for resolution at trial related to the scope of the transaction; the representations made by Mr Quinn when negotiating and concluding the transaction; the scope and ownership of the assets transferred; and the terms (express or implied) on which the transfer took place. The Defence pleads that the relevant oral agreement was in or about late July 2019 although other aspects of the pleadings (including the reply) put that date in doubt and the evidence suggests that the contract was not concluded until 22 August although key terms were negotiated before that date.
29. The evidence of the Claimants, supported by significant contemporaneous material disclosed by them, is that Mr Michael Quinn had decided, under pressure from his wife, Mrs Claire Quinn, to reduce his business interests by leaving the printing industry and selling his existing printing business. The Claimants' evidence is that Mr Quinn represented his printing business as very profitable and that he wished to sell it as a going concern. As a consequence, the Claimants say the agreement was for the entirety of the business as it stood in August 2019 including physical assets such as the large printing machine used to produce specialist photobooth prop materials and all related intellectual property. The Claimants' case is that the contract was to transfer or procure the transfer of those assets to Lily's Prints Limited with no reservations. The price agreed was to be paid in instalments. The Claimants say that it was a term of the contract, understood by both parties, that Mr Quinn would not compete with the transferred business as he wished to leave the printing industry.
30. The Claimants point to a series of messages between Mr Quinn and Mr Sherrington in late August, starting with an email from Mr Sherrington to Mr Quinn expressing his doubts about buying the business in view of a slow down in orders and revenue, while noting that he had become used to the idea of adding the printing business to the business already being operated by the Claimants as '*being a great addition to our brand*'. Mr Quinn sought to reassure Mr Sherrington who then suggested that they should discuss the transaction the next day. In the early evening of 22 August Mr Sherrington indicated that he was still considering the transaction, and asked Mr Quinn to record something in writing about what would be transferred to satisfy Ms Xie that they would own everything. Later in the evening of 22 August 2019 Mr Quinn supplied an email which lists a number of web domains used by Mr Quinn's business and states that upon the final payment full ownership of those will be transferred together with '*all stock designs and print files of skin designs, canon oze arazoina flatbed uv printer, easy mount hot laminator and all stock on hand*'.
31. Subsequently the same wording was repeated in an invoice dated 28 August from Quinn UK (the Second Defendant) for £40,000. That invoice is marked (in



manuscript) ‘*all paid*’ and signed by Mr Quinn and Mr Sherrington. On the same day an additional invoice was issued by the First Defendant for £5,830.11 which related to various items of stock and was again signed by Mr Quinn and Mr Sherrington. On 30 August Mr Quinn emailed Mr Sherrington to say: ‘*It was a sad day for me today, but I really do wish you and lily every success and I know the business (sic) has moved over to safe hands and will grow (sic) the way I wanted to see it grow*’.

32. On 27 September 2019, Companies House issued a Confirmation Statement recording the non-trading status of the First Defendant.
33. In their Defence and in evidence filed when seeking to defeat a Summary Judgment application, the Defendants asserted that the sale had not been of a ‘business’, but only of some assets and that the assets sold to the Claimants were different from what had been understood by the Claimants. For example, the Defendants asserted at different times that copyright in some of the designs used by the First Defendant had not been transferred as they were owned by third parties (including the Eighth Defendant, Mr Connor Quinn) or by Mr Quinn himself.
34. In the absence of the Defendants and given that the Defendants failed to provide any disclosure, there was little or no evidence for the claim that third parties owned some copyright or that any of the copyright owned by Mr Quinn had not been transferred.
35. Mr Quinn provided some written evidence about ownership of some of the copyright in a witness statement dated 16 February 2022 which had been prepared to resist a Summary Judgment application made by the Claimants (and in support of the Defendants’ strike out and security for costs applications).
36. That evidence asserted that:
 - (i) the only rights transferred were to 15 images allegedly owned by Quinn UK. Although incorporated only on 14 August 2019 (after the oral contract for sale said by the Defendants to have been entered into in July and certainly well after the discussions between Mr Sherrington and Mr Michael Quinn about the sale of the business had progressed significantly) this company was said to be the owner of all the assets other than ‘stock in hand’;
 - (ii) all remaining images were owned either by Shutterstock or by Mr Michael Quinn in his personal capacity; and
 - (iii) while Mr Michael Quinn was ‘*happy for the Claimants to use the images...it is not correct that any rights in those images were sold...for exclusive use.*’
37. This evidence was not supported by documents other than copies of 15 images which it was admitted had been transferred to the Claimants and copies of an exchange of electronic messages which appears capable of supporting the Claimants’ position that they understood all images to have been part of the transaction and were surprised not to have received them.



38. The Claimants' pleaded case, again supported by evidence, is that the Defendants (primarily Mr Michael Quinn) continued to use and offer for sale products which infringed copyright in the designs they believed to have been / alternatively that had been sold to the Claimants (some of which the Defendants agreed had been sold, and some of which were subsequently said to belong to Mr Quinn). The Defendants were also alleged to have been copying and selling some new original designs owned by Lily's Prints. The Defendants or some of them, whether directly or indirectly, were also pleaded to have been interfering with the Claimants' business, including by competing with directly with it. This was pleaded to be in breach of an implied or express term of the contract and contrary to representations made by Mr Quinn on his own behalf and as agent of all the other Defendants.

The pleaded case

39. The Particulars of Claim included claims based on misrepresentation, breach of contract, and copyright infringement.

40. Among the original remedies sought were:

- In the light of the Defendants' misrepresentations:
 - rescission of the contract selling the business to Lily's Prints and repayment of the sums paid or incurred under that contract;
 - in the alternative damages for fraudulent misrepresentation;
 - in the alternative damages for breach of contract; and
 - to the extent that moneys had been wrongly paid to the Second Defendant, the return of those moneys.
- In the light of the use by the Defendants or those connected with them of both the original designs owned by Lily's Prints and the designs assigned to Lily's Prints as part of the business transaction:
 - damages in accordance with Regulation 3 of the Intellectual Property (Enforcement, etc.) Regulations 2006/1028; or
 - to the extent that some existing copyright works were not transferred, damages for breach of contract.
- Injunctive relief against some of the Defendants.
- An Order for delivery up.
- An Order for dissemination of the Judgment.
- Interest and costs.



41. The Claimants also pleaded that the Defendants were liable as joint tortfeasors, relying on conduct and on documentary evidence, including letters said by the Defendants to have been written by them.
42. Inevitably a claim of this nature involves significant dispute on the facts. This, together with the protracted procedure (requiring three CMCs including a hearing to deal with Summary Judgment; strike out; and security for costs applications), has resulted in considerable costs notwithstanding the fact that the Defendants provided remarkably little documentary evidence at any point during the proceedings.

Relevant procedural history

43. The claim was brought on 29 June 2021. It was due to be tried in November 2022. The original trial had to be adjourned, and finally took place over a year later.
44. The CMC was initially listed to be heard on 7 December 2021.
45. As set out in the Judgment of Recorder Kimbell KC dated 1 April, the Claimants served a Notice to Admit Facts on 27 October 2021. The Defendants did not engage with the substance, replying by letter on 25 November that the facts in issue were not admitted. The Claimants consequently made an application for Summary Judgment on 25 November 2021 in relation to part of the copyright infringement claim (relating to some of the works said to have been assigned to them by the Defendants (the 'Assigned Works') and some new works owned by the Second Claimant (the 'New Works')). The Claimants asked for that application to be heard at the CMC.
46. On 29 November 2021, the Defendants asked for an adjournment of the CMC on the basis that they sought a full-day hearing to deal with the Claimants' Summary Judgment application and as they intended to issue a number of applications of their own. The Claimants objected to the delay as no applications had been made at the time the adjournment was requested.
47. The CMC was relisted for 24 February 2022. On 16 February 2022, five days before the relisted CMC, the Defendants applied to strike out the fraudulent misrepresentation claim and for security for costs.
48. Recorder Kimbell KC, sitting as an IPEC judge, heard the Applications of both parties at the relisted CMC on 24 February 2022.
49. On 1 April 2022, Recorder Kimbell KC held in a reserved Judgment ([2022] EWHC 750 (IPEC)) that the Claimants defeated both Defendants' applications.
50. As far as the attack on the pleaded misrepresentations (which were ultimately said to have become terms in the contract between the parties) was concerned, Recorder Kimbell KC had no hesitation in holding that the representations as pleaded were capable in law of grounding an action and that it would be a matter of evidence at trial as to whether the allegations were made out. He also held that the particulars given in the pleading of falsity and fraud, while short, were adequate.



51. The Claimants' Summary Judgment application in respect of the Assigned Works failed as Recorder Kimbell KC held that various issues would be more appropriately dealt with at trial after the Defendants' evidence had been heard.
52. The Claimants succeeded in the part of their Summary Judgment application that related to New Works on the basis that they were on firmer evidential ground in respect of the works that had been created by Ms Xie. Judgment was entered against Fifth, Sixth and Seventh Defendants in respect of those New Works.
53. The Claimants sought an order for immediate payment of costs under CPR 63.26. This was refused by Recorder Kimbell KC by reserved Judgment handed down on 27 June 2022 (but previously seen by the parties in draft).
54. Having previously been working towards a disclosure deadline of the end of June 2022 in preparation for the trial listed for early November, the Claimants' then solicitor contacted the Defendants' then solicitor on 24 June 2022 seeking to agree an extension for disclosure to 7 July 2022. He was informed that Mr Michael Quinn had suffered a heart attack and been in hospital.
55. It was subsequently said that the First Defendant had suffered three heart attacks over the previous five weeks and was scheduled for imminent bypass surgery a few days later, on the date of the provisional deadline for disclosure, 30 June 2022. It appears that no evidence was provided to support these statements.
56. In the light of this information, it was agreed that the dates for disclosure and evidence would be delayed until early September (2 September for disclosure).
57. On 1 September 2022, the Claimants were told that Mr Michael Quinn had had further heart attacks. A seven-day extension was agreed. That deadline was also missed owing to news of further heart attacks. By this time, it was clear that the delay was likely to jeopardise the trial date of 10-11 November 2022.
58. On 9 September 2022, the Defendants filed an application to adjourn the trial and to stay the Directions Order made at the February CMC. No evidence of Mr Michael Quinn's ill health was submitted with that application.
59. On 29 September 2022 (the day before the deadline for evidence supporting the application for adjournment), the Defendants' solicitors indicated that they were applying to remove themselves from the record.
60. On 30 September 2022 (the deadline for evidence), Mrs Claire Quinn emailed the Court material referring to Mr Michael Quinn having had a heart attack. This material was not provided in a witness statement, nor supported by a statement of truth nor was it provided to the Claimants. The Claimants asserted at the time that it appeared to have been a conscious decision not to send the evidence to the Claimants. The Claimants ultimately received the evidence on 21 October.
61. The Court ordered the Defendants to provide further evidence of Mr Michael Quinn's state of health. A short witness statement from Mrs Quinn was received on 24



October. It repeated that Mr Quinn had had multiple heart attacks. There were inconsistencies with previous statements made by or on behalf of the Defendants and there was no independent supporting evidence. On 2 November 2022, Mrs Quinn's second statement was submitted, containing further evidence about her husband's health and the Defendants' financial position.

62. In the light of the unavoidable delay and the uncertainty surrounding Mr Quinn's health, the trial was adjourned and a further CMC was substituted for the now-vacated trial date in November.
63. Before the November CMC, the Claimants again applied for their costs of the earlier Applications on which they had succeeded. The application was made on the basis of the change of circumstances since the April Judgment of Recorder Kimbell KC (notably the very considerable delay that would now arise before trial and the resolution of the costs issues after trial). The Court declined to vary the order of Recorder Kimbell KC at the CMC. In the light of the continuing uncertainty around Mr Quinn's health, a further CMC was ordered for February 2023. Permission was granted to renew the costs application at that further CMC.
64. The Claimants renewed their application for costs on 5 December 2022. They also sent the draft Directions Order to each of the Defendants on 17 January 2023 but received no substantive response on any issue other than on that of costs.
65. At the end of January and very beginning of February 2023, the Defendants claimed that the Third, Seventh and Eighth Defendants had only recently seen the Judgment of Recorder Kimbell KC and that no costs order should, accordingly, be made against them. The Defendants also claimed that they would be unable to meet any costs order in any event.
66. At the CMC on 2 February 2023, the Defendants were ordered to make by 4pm on 2 March 2023 an interim payment on account of the Claimants' costs of the Defendants' 2022 Applications. That payment was not made, and the Claimants continue to pursue those costs.
67. Between the CMC in February and the trial various standard pre-trial steps were ordered including disclosure, the exchange of trial evidence and liaison between the parties on trial preparation.
68. The Defendants did not comply with any of the requirements in the CMC order. Mr Sherrington, on behalf of the Claimants, confirmed when giving evidence during the trial that the Defendants gave no disclosure, provided no witness evidence and did not liaise with the Claimants on any of the steps required to prepare for trial. No skeleton was provided, nor any proposals as to trial timetable, nor any assistance on a proposed reading list, all of which were clearly set out in the CMC Order.
69. By the last week before trial, the Defendants had given no indication that they did not intend to participate in the trial. On the contrary, on Friday 17 November 2023 at 13:58, less than two working days before the trial was due to begin, Mrs Claire Quinn



emailed the Court confirming that the Defendants would participate. The email remarked that the Defendants hoped that the Claimants would be in court.

70. That email also contained a complaint from the Defendants that they had not yet received a hardcopy bundle. This arose from a misunderstanding on the part of the Claimants, which they were rectifying after discussion with the Court, as the Defendants would have been aware.
71. Mrs Quinn's email on Friday afternoon confirmed that the Defendants would attend in person, apart from Mr Michael Quinn who was said to be unable to attend because of illness. It was unclear to the Court whether this was an indication that Mr Quinn sought permission to participate remotely or whether it was an indication that he was too unwell to participate at all. Given Mr Quinn's central part in the dispute, any such situation would have had significant consequences as it had been Mr Quinn's ill health which had led to the loss of the first trial date.
72. No application was made seeking adjournment or permission for remote participation, nor was evidence provided of Mr Quinn's ill health. Whilst the Defendants are unrepresented, the need for evidence of any medical condition would not have been a surprise, given the events surrounding the adjournment of the original trial date.
73. The Court emailed both parties later in the afternoon of Friday 17 November 2023 and again on Monday morning 20 November 2023 explaining that the trial would be in person as had been clear since the CMC order in the Spring. Any person who intended to participate in the trial and wished to do so remotely was reminded that it was necessary to seek the Court's permission, providing reasons together with evidence to support that request. The Court set a deadline of 15:30 on Monday 20 November 2023 (the day before the trial was due to start) for any such request, supported by evidence, which would be considered by the Judge.
74. On Monday 20 November 2023 at 13:14, an email was received, apparently from Mr Michael Quinn (although this was unclear), enclosing a screen shot of a Covid test and saying '*Please see attached, I won't be able to attend court due to having Covid 19*'. No other communication was received from the Defendants in response to the Court's emails of 17 and 20 November 2023.
75. As it was unclear whether the email sought adjournment of the trial, permission to participate and to give evidence remotely, or for some other purpose, Court staff sought to clarify and requested more information. The Defendants were informed that if the email and screen shot were intended as evidence of a party's inability to attend trial more information would be required, including about where and when the picture had been taken, by whom and in respect of whom. It was made clear that any such information should be supported by a statement of truth.
76. Later that afternoon (at 15:24), without providing further information about Mr Quinn's health, or about the screenshot, Mrs Quinn emailed the Court to say that none of the Personal Defendants would be attending Court and that no defence was being offered.



77. At just before 16:30, Mrs Quinn confirmed that all parties had been informed of the Defendants' position and, at just after 17:30, she also confirmed that none of the Corporate Defendants, their officers or agents would be attending either.
78. It subsequently transpired that, despite Mrs Quinn's assurances to Court staff, the Claimants had not been informed by the Defendants of the Defendants' decision not to participate in the trial. The Claimants were made aware of that by Court staff, late on Monday afternoon.
79. The trial therefore opened without any Defendants present and with neither trial evidence nor disclosure having been provided by the Defendants. Mr Sherrington appeared in person on behalf of the Claimants.

The conduct of the trial

80. Mr Sherrington confirmed that the Claimants maintained their Particulars of Claim as pleaded and as supplemented by the Reply, subject to some minor variations which I deal with briefly below.
81. Mr Sherrington also attested to his trial witness statement (dated 28 April 2023) being his evidence, confirmed that it was his signature on that document, that he had prepared it in his own words, and that it was still true.
82. The issues in the case have narrowed following the Summary Judgment of Recorder Kimbell KC.
83. Issues in respect of the ownership of some of the assigned works remained outstanding as did issues relating to infringement both of works which had been admitted to have been assigned and those in respect of which there was a dispute as to assignment. As the Judgment of Recorder Kimbell KC stated, a decision on those matters required a consideration of the evidence.
84. Mr Sherrington confirmed that the only relief now sought by the Claimants was damages in respect of copyright infringement, breach of contract and/or misrepresentation and interest.
85. I have reviewed the Particulars of Claim and Reply in the light of the Defence pleaded, together with the facts set out in the Claimants' evidence, supported by the contemporaneous documents that have been disclosed. I have also considered the helpful Judgment previously given by Recorder Kimball KC in respect of the Claimants' Summary Judgment application. Having done so and having heard the Claimants through Mr Sherrington, I conclude that:
 - the Claimants' case has been properly pleaded through the Particulars of Claim and Reply;
 - the Defence did not dispose of the Claimants' pleaded case;



- the Claimants' evidence was sufficient to support the Claimants' pleaded case; and
 - the scant evidence offered by the Defendants, on which I could place only limited reliance, given the lack of documentary support and the lack of opportunity for the Claimants to cross-examine the Defendants' witnesses, was insufficient to give rise to substantial doubt as to the version of events put forward by the Claimants.
86. Bearing in mind that the standard required is the balance of probabilities and my comments above, my conclusions are below.
87. The transaction was for the entirety of the business carried on by the First Defendant or by any others of the Defendants as discussed between Mr Michael Quinn and Mr Sherrington during July and early to mid-August 2019.
88. During those discussions Mr Michael Quinn made representations that he had the authority to negotiate and agree the sale of the entirety of the business which he had discussed with Mr Sherrington for many weeks (being that primarily operated through the First Defendant using a variety of websites and utilising numerous designs). Mr Michael Quinn made representations that that business was his to dispose of and in my view, for the most part (other than in respect of some copyrights said to be owned by third parties) he was capable of doing so whether acting on his own account or as agent for others of the Defendants.
89. Mr Michael Quinn represented that the Claimants would receive under the contract all the assets used by the First Defendant whether formally owned by that company, by Mr Quinn himself or by any other of the Defendants and that if the Claimants bought the business, they would be able to continue operating it as a going concern as at the time of negotiations. Those representations became terms of the contract.
90. Mr Michael Quinn represented that he had no intention of continuing to operate a business that would directly compete with the business after its sale. It became a term of the contract that he would not do so whether directly or indirectly.
91. In the circumstances, an oral contract came into being which was partially evidenced in writing through the documents referred to above, including the list prepared by Mr Michael Quinn and sent to Mr Sherrington on 22 August. That oral contract is pleaded at paragraphs 24 and 27 of the Particulars of Claim and includes at least the following provisions:
- Mr Michael Quinn would sell, or procure the sale of, all the assets required to continue running the business as a going concern as it was represented on the NEPBH website in August 2019 to the Claimants including:
 - a specialist printer for printing Photo Booth skins and accessories;
 - intellectual property rights to the designs sold on the website as at August 2019;



- the domain name upon which the website was hosted, together with other related domain names; and
 - current physical stocks of ink and panels as at the end of August 2019.
- An implied warranty that Mr Michael Quinn had knowledge of who owned the assets described above;
 - An implied warranty that Mr Michael Quinn, the First and/or Second Defendant owned and had the right to sell the assets described above;
 - A warranty, either express or implied that Mr Michael Quinn had authority to act on behalf of the First and Second Defendants;
 - That Mr Michael Quinn would take such steps as necessary to record the Second Claimant as the registered proprietor of the domains;
 - That Mr Michael Quinn would transfer the image files for all of the designs to the Claimants;
 - That neither Mr Michael Quinn, nor any other party under his control nor for whom he acted as agent would have the right to use the designs following the sale of the business;
 - That neither Mr Michael Quinn nor any other party under his control nor for whom he acted as agent would compete with the business.
92. Having sold the business, Mr Quinn and the other Defendants acted in breach of both the implied and express terms of that contract, in particular by competing with it and infringing those rights which he had transferred to it.
93. I find that copyright in almost all of the designs used by the business before the transfer were owned either by NEPBH, by Quinn UK or by Mr Michael Quinn, that those rights were transferred under the contract and that further use of them by Mr Quinn or anyone else without the consent of the Second Claimant infringes the Second Claimants' rights.
94. I am unable to conclude that a subset of designs, alleged to be owned by third parties have been transferred to the Claimants owing to a lack of evidence as to ownership. By representing that those designs were part of the business and could and would be transferred to the Second Claimant, Mr Michael Quinn made false and fraudulent representations to the Claimants on which they relied. By failing to transfer those designs, Mr Quinn breached the implied warranty that he or the other Defendants had the right to sell those assets.
95. Finally, to the extent that any issue remains outstanding on the New Works, I find that use of them by Mr Quinn or anyone else without the consent of the Second Claimant infringes the Second Claimant's rights.



96. I find the Defendants jointly liable as joint tortfeasors.

Remedies/costs

97. The CMC order provided for a split trial. The order provided that the initial trial would deal with Liability only in respect of the Claim for copyright infringement and liability and quantum in respect of the claim based on breach of contract and misrepresentation.

98. During the hearing, Mr Sherrington stated that that he did not maintain the previous requests for rescission, injunctive relief, delivery up or publication of the Judgment.

99. For practical reasons it was not possible to deal with remedies and quantum during the liability trial.

100. An enquiry as to damages will therefore take place.

101. The Claimants are awarded their costs other than those in respect of which orders have already been made, those costs to be summarily assessed.

102. The way in which the period leading up to trial unfolded meant that Mr Sherrington could not be properly prepared for a summary assessment of the Claimants' costs. Summary assessment of those costs will take place separately.

103. At the conclusion of the hearing, the Claimants asked the Court to consider lifting the IPEC costs cap in the light of the exceptionally poor behaviour of the Defendants particularly, but not only, in the lead up to trial. In the light of that conduct, which is summarised above, and very exceptionally given the good reasons underpinning the fixed costs regime which applies in IPEC, the Court gave the Claimants permission to apply, as part of the assessment process, for the IPEC costs cap to be disapplied.