

Court of Appeal Rejects the Concept of “Floating Jurisdictions”

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by Joseph Lewin and Yelim Jun

Hipgnosis SFH 1 Limited v Barry Manilow & Anr [2025] EWCA Civ 486

The Court of Appeal considered the operation of asymmetric jurisdiction clauses and unanimously rejected the concept of “floating jurisdictions”.

Facts and background

On March 20, 2020, Hipgnosis entered into a “Music Catalogue Agreement” to purchase Barry Manilow’s music catalogue for an initial payment, along with a further “purchase price” which was dependent on certain revenue targets being met.

Mr. Manilow was also obligated to pay royalties, which became a point of dispute when he allegedly withheld some payments, claiming entitlement to additional elements of the purchase price.

The Music Catalogue Agreement contained an “asymmetric jurisdiction clause”. This clause provided (i) that each party would submit to the exclusive jurisdiction of the English courts; but (ii) that Mr. Manilow could nevertheless bring proceedings in respect of certain purchase price claims in Los Angeles, California, and New York.

Hipgnosis initiated proceedings in England. Two weeks later, Mr. Manilow issued proceedings in Los Angeles concerning the alleged entitlement to additional purchase price, together with wider claims of fraudulent or negligent misrepresentation. Mr. Manilow sought a stay of the English proceedings issued by Hipgnosis.

Judgment

At first instance, the High Court granted the stay, accepting Mr. Manilow’s argument that his election to pursue proceedings in the US, as permitted by the jurisdiction clause, had

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the effect of crystallising the “floating jurisdiction” in favour of Los Angeles, which displaced the English Court’s jurisdiction over the purchase price claims.

The Court of Appeal unanimously overturned the High Court’s decision, and refused to grant a stay of the English proceedings.

The Court of Appeal held that:

1. The jurisdiction of the English court is determined at the date of issue of proceedings. It could not be revoked by Mr. Manilow. The court found that the concept that the English court had jurisdiction when the proceedings were issued, but that such jurisdiction was only “floating” and was then lost in favour of California when the option was exercised, was “*heretical and contrary to authority*”.
2. The asymmetric jurisdiction clause allowing Mr. Manilow to commence proceedings in the US was a limited carve out in relation to certain purchase price claims. The clause could not be construed as revoking the irrevocable submission by Mr. Manilow to the jurisdiction of the English court or otherwise extinguishing in some way the jurisdiction which the English court already had over all the claims when the proceedings were issued.
3. The clause meant that there were parallel overlapping proceedings on foot, but that was a possibility which is inherent in an asymmetric jurisdiction clause drafted in this way.
4. Mr. Manilow’s (i) reliance on the “one stop shop” presumption derived from *Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40 that when construing a dispute resolution clause, the court should begin from the presumption that the parties are likely to have intended any dispute to be decided by the same tribunal unless the language makes clear that certain matters were to be excluded, and (ii) argument that parties could not have intended the same issue to be litigated in two jurisdictions were misplaced. Whether or not that presumption applies will depend on the express provisions of the relevant clause(s).
5. The risk of irreconcilable judgments could be avoided by the application of the *issue estoppel* doctrine, a set of legal principles that prevent parties from re-litigating issues that have already been decided in a prior court.

Commentary

The case highlights the importance of explicit drafting in asymmetric jurisdiction clauses.

Parties should carefully consider whether it is really the parties’ intention to allow parallel proceedings, as well as any conditions on a party’s right to bring new claims where proceedings have already been brought against it in another jurisdiction.