

General Form of Judgment or Order

In the County Court at Bristol	
Claim Number	B30BS329
Date	18 September 2015



RICHARD PERRY (APPELLANT)	1 <sup>st</sup> Claimant Ref
FH BRUNDLE (A FIRM)	1 <sup>st</sup> Defendant Ref

Before His Honour Judge McCahill QC sitting at the County Court at Bristol, Bristol Civil Justice Centre, 2 Redcliff Street, Bristol, BS1 6GR.

Application by Richard Perry for permission to appeal against the Bankruptcy Order made against him by Deputy District Judge Giddins on Thursday 30 April 2015

**Decision**

Permission to appeal is refused on all grounds.

All grounds are totally without merit. They are doomed to fail.

There is no prospect of a successful appeal or any other compelling reason why the appeal should be heard.

Pursuant to CPR 52.3 (4A) (a), Mr Perry may not request this decision to be reconsidered at a hearing. (1)

This decision has been made by His Honour Judge McCahill QC, a Specialist Chancery Circuit Judge.

**Materials considered**

I have spent at least the equivalent of one day in dealing with and analysing the papers relating to this application for permission to appeal.

I have considered all the documentation supplied to the court by Mr Perry and FH Brundle ("the Respondent") for the purposes of this application. In particular, for the avoidance of doubt, I have specifically read:

- Appellant's Notice (12 May 2015) and Grounds of Appeal (24 May 2015 and 1 September 2015);
- Transcript of the proceedings before Deputy District Judge Giddins on 30 April 2015;
- Approved Judgment of Deputy District Judge Giddins on 30 April 2015;
- Judgments of his Honour Judge Hacon (6 March 2014 and 2 April 2014), following a trial involving Mr Perry and the Respondent in the Intellectual Property Enterprise Court ("IPEC) in January 2014. The costs judgment suggests that Mr Perry had sent on 26 March 2014 a letter to himself purportedly from Judge Hacon, which the Judge had never written);
- Written reasons given by Floyd LJ and Lewison LJ refusing Mr Perry permission to appeal against the dismissal of his claims and the judgment against him in favour of the Respondent by His Honour Judge Hacon;
- Transcript of the proceedings in the Court of Appeal on 3 February 2015 before Lewison LJ;

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Produced by: Miss A Smallcombe  
CJR065C

- Transcript of the judgement of Lewison LJ on 3 February 2005;
- Mr Perry's Particulars of Claim, dated 9 May 2015, issued in London on 15 May 2015
- Mr Perry's correspondence with SFO, Wiltshire Police and Action Fraud
- Appeal Bundles supplied by Mr Perry on 29 May 2015, 9 July 2015 and 7 September 2015 (this last bundle containing 376 pages consolidating previous bundles)
- Mr Perry's application for permission to act as a Director of a Limited Company while an undischarged Bankrupt (contained within the consolidated bundle delivered on 7 September 2015)
- Supplemental Skeleton arguments supplied by Mr Perry and the Respondent.

(3)

Strike out/Summary Judgment Application

The Respondent has issued an application for the summary dismissal of the claim commenced by Mr Perry in London on 15 May 2015. That hearing is listed to take place at 2pm on 25 September 2015. Mr Perry's renewed application for permission to continue to act as a Director is due to be heard in Bristol at 2pm on 22 September 2015.

My decision and the reasons for my decision given in this document do not deal with or purport to dispose of that summary judgment application in London, even though there is inevitably a significant overlap between this application for permission to appeal and the application yet to be heard in London.

This overlap has arisen because, given the undisputed debt [£36,525 (plus interest) - litigation cost orders arising out of Mr Perry's unsuccessful defence and cross-claim in the IPEC proceedings] owed by Mr Perry to the Respondent, I have had to consider whether Mr Perry has genuine and serious cross claim(s) which equal or overtop that undisputed debt.

That question has inevitably caused me to consider the merits of the High Court claim issued by Mr Perry in London in May 2015 and the further, as yet unissued, claim which he proposes to make against the Respondent under the Fraud Act 2006.

(5)

Grounds of Appeal

Mr Perry puts forward two grounds of appeal: (i) Deputy District Judge Giddins erred in his conclusion that Mr Perry did not have a genuine and serious cross-claim that exceeded the undisputed amount owed by Mr Perry to the Respondent petitioner; and (ii) Deputy District Judge Giddins erred in refusing to grant an adjournment of the hearing on 30 April 2015, for some 12 weeks, to enable Mr Perry to satisfy the judgment debt for the trial costs, which had formed the basis of the statutory demand preceding the bankruptcy petition.

(6)

I observe, for the sake of completeness, that Mr Perry made no application to set aside the statutory demand. However, nothing turns on that.

Failure to grant the adjournment requested

The court retains a discretion not to make a Bankruptcy Order, even where the petition debt has been early established and any grounds of opposition have been dismissed.

However, case law has established that the discretion to adjourn should only be exercised if there is a reasonable prospect of the petition debt being paid in full within a reasonable period. Moreover, there must be credible evidence to support such a prospect if the court to grant an adjournment for payment. See *Ross v HMRC* [2010] EWHC 13 (Ch) per Henderson J.

(7)

District Judge Giddins's decision to refuse the adjournment requested by Mr Perry was not only well within the broad band of discretion open to him but was also manifestly correct on the material before him. There was no error of law or evaluative failure present in this decision.

11 months had elapsed since Mr Perry had been ordered to pay the costs. Mr Perry had placed no credible evidence before the court of his ability to meet the judgement debt within 12 weeks or at all. Indeed, Mr Perry had indicated that he had had to seek fee remission in relation to the claim which he was then going to issue in London. The material placed by Mr Perry before the court simply did not support the grant of an adjournment to satisfy the undisputed judgment debt.

Mr Perry must have realised that, if he was going to ask for the case to be adjourned to enable payment to be made, it was incumbent upon him to show that he could pay the undisputed debt within the period of the requested adjournment. Indeed, he did produce some bank statements and suggested that his company would be receiving a substantial order or orders from B&Q.

(2)

(136)

However, none of this material warranted the conclusion that the undisputed debt would be paid during the period of the adjournment or at all in the foreseeable future. 64

Moreover, none of the material produced by Mr Perry since the Bankruptcy Order has suggested that he has the means to satisfy the undisputed debt, if his bankruptcy were to be annulled. In his Particulars of Claim, dated 9 May 2015, he described himself as a person "...who does not have any money or any assets". 8

This ground of appeal is doomed to fail. It is totally without merit. Mr Perry may not request this decision to be reconsidered as an oral hearing. 2

Review under s375 Insolvency Act 1986

Mr Perry has not expressly raised this power to review as relief sought in his appeal. However, I am reminded myself of my power to rescind or review the Bankruptcy Order under this section of the Insolvency Act 1986.

Before embarking on the exercise of the discretion to review or rescind, Mr Perry would have to place before the court exceptional circumstances involving a material difference to what was before the court when the Bankruptcy Order was made. In other words, there must be something new to justify the overturning of the original order. 10

If it is alleged that new evidence warrants the exercise of discretion, then if that was evidence which could have been made available at the original hearing, any explanation given for the failure to produce it is a factor which can be taken into account in the exercise of discretion. 11

I can see no exceptional circumstances today which would warrant the court's exercising its discretion to review or rescind the Bankruptcy Order.

However, for the moment assuming that the threshold for the exercise of discretion has been crossed, the court could not rationally disturb the Bankruptcy Order without Mr Perry disclosing (i) a genuine and serious cross claim and/or (ii) showing a reasonable prospect of paying the petition debt in full. 13

I have already dealt with (ii) above. I turn now to consider the question of whether Mr Perry has disclosed the basis for a genuine and serious cross-claim equalling the undisputed debt or overtopping it.

Cross-claims

It is necessary to consider Mr Perry's proposed cross claim under two separate headings.

The first relates to a cross-claim, set out in the Particulars of Claim, dated 9 May 2005, alleging patent infringement by the Respondent. Mr Perry wishes to amend his Particulars of Claim to add claims in Passing off and fraudulent misrepresentation.

The second relates to a cross claim based upon allegations of fraud against the Respondent.

Mr Perry particularised his cross-claims in the ante-penultimate page of his new Particulars of Claim:

his claim does not include the years prior to 2013 for these reasons:

1. I want to prove patent infringement first, for the time 2013 - 2015 because I cannot sue twice for the same thing for the same period of time and the first case has just gone very badly wrong and a great miscarriage of justice has occurred. 14

2. After proving infringement I will then bring proceedings in another case for the period 2003-2015 for Fraud under the Fraud Act 2006 where the vast majority of the losses have been suffered (my £100,000 loss, property lost now worth another £100,000, loss of profits on sales estimated at £500,000 upwards and/or loss of business opportunity and those sales and I produced it myself, devaluation of my entire patent portfolio estimated at around £2 m, loss of worldwide patent protection and a further 15 plus UK filed and granted patents due to not being able to afford to pay for them as a direct consequence of having to spend thousands in the previous case and the time I've lost, when I've not had a problem paying patent fees in the last 15 years) and based on the evidence and on the balance of probabilities this claim will compensate me for everything I've lost.

Hopefully I will successfully prove patent infringement now that I have all the evidence and have ascertained why it went wrong the first time."

Genuine and serious cross-claim (patent infringement) ?

Deputy District Judge Giddins did not have the advantage of seeing any draft pleading, embodying the proposed cross claims, at the hearing before him on 30 April 2015.

Since that hearing, Mr Perry has set out his new claim and issued his particulars of claim, dated 9 May 2015, which I have fully read. It is this new claim which the Respondent is seeking to have dismissed summary. This new claim form alleges not only patent infringement but also conspiracy to cheat, steal and defraud.

Nevertheless, it is still an attempt to relitigate substantially the same issues of alleged patent infringement case which have been unambiguously rejected both at first instance and in the Court of Appeal.

The new patent infringement case is wholly unarguable because of res judicata. The accused bracket (Nylofor Beam Bracket) is not an infringement of Mr Perry's patent for the reasons given by His Honour Judge Halcon, Lord Justice Floyd and Lord Justice Lewison.

The new patent claim is as doomed to failure as the previous claim was. It is totally without merit.

Mr Perry may not request this decision to be reconsidered at an oral hearing. (3)

Genuine and serious cross-claim (claims other than patent infringement, principally 'Fraud') ?

The essence of the fraud claim is referred to in the new Particulars of Claim and is quantified in the quotation from those Particulars which I have set out above. To these must be added the proposed claims in passing off and fraudulent misrepresentation, based on the alleged use of Mr Perry's name on emails sent to a manufacturer in India from Betafence Ltd and not by the Respondent. PROVING BETAFENCE NOT A PETITIONER

The proposed passing off and fraudulent misrepresentation claims seem to be based on the assumption that Lord Justice Lewison said to Mr Perry that he still had these two claims, even if the patent infringement claim failed. Having read the transcript of the proceedings in the Court of Appeal, it is plain that Lord Justice Lewison gave no such opinion. He merely stated that if Mr Perry's allegations about the misuse of his name were correct then he might have such claims open to him. However, no formulation of these two proposed new claims has been put before me nor has any explanation of how any quantified loss was thereby caused by the Respondent to Mr Perry, even if his allegations were correct.

Mr Perry considers that his allegations coupled with the fact that the Police are investigating them is evidence of a genuine and serious cross-claim.

Mr Perry's case appears to be that the Respondent (wholesale distributors) conspired with two other companies [Betafence Ltd and Britannia Fasteners] to steal his patent. Betafence is the alleged designer and manufacturer of the accused Nylofor bracket. Mr Perry claims that Britannia is the 'criminal front for Betafence'.

Whatever claims Mr Perry has or makes against Betafence and/or Britannia Fasteners, he has to demonstrate against the Respondent, as Deputy District Judge Giddins observed in his judgment when quoting from A Debtor (No. 87 of 1999) [2000] BPIR 589, that "the cross-claim must be genuine and serious or, if you prefer, one of substance..."

Mr Perry pointed to a number of inferences and factors as examples of the overt acts of the conspiracy involving the Respondent, Betafence and Britannia.

They included death threats about him made to a third party (albeit not by the Respondent), an allegedly falsified (by backdating) design sheet created by Betafence and an email from a 'Richard Perry' at Britannia Fasteners to an Indian manufacturer requesting a quotation for 'break-off nuts HDG', which is alleged by him to be a fraudulent misuse of his name. He also referred to attempts (not by the Respondent) to change his address details at HMRC, and the Respondent's failure to provide him with the affidavit he requested. It is for Mr Perry to put his best case on fraud forward now, so that the court can evaluate its substance as a cross-claim against the undisputed debt he owes to the Respondent.

The evidence of the alleged conspiracy, collusion and fraud adduced by Mr Perry so far does not begin to form the basis of an actionable claim in fraud, let alone one involving this Respondent. The fact that the police are investigating Mr Perry's complaints is not proof of anything in itself.

Mr Perry has put his case on conspiracy and fraud in writing extensively and at elaborate length on many occasions. However, it amounts to no more than speculation and assertion. It comes nowhere near the

nature and quality of evidence which is capable of amounting to a cross-claim of substance alleging dishonesty against this Respondent.

Accordingly, the proposed cross-claim against the Respondent on grounds other than patent infringement are also doomed to fail on the current evidence. This ground too is totally without merit. Mr Perry may not request this decision to be reconsidered at an oral hearing.

**Conclusion**

For all these reasons, the proposed appeal has no real prospect of success nor is there any compelling reason why the appeal should be heard.

Permission to appeal is refused. Any appeal is doomed to fail and is totally without merit on all grounds.

Mr Perry may not request this decision to be reconsidered at an oral hearing.

His Honour Judge McCahill QC  
Specialist Chancery Judge  
Bristol

Dated 18 September 2015

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# Claim Form

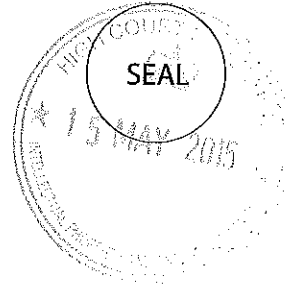
In the High Court <b>IPEC</b>	
Fee Account no.	
<small>For court use only</small>	
Claim no.	<b>IP-2015-000090</b>
Issue date	<b>15-05-2015</b>

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Claimant(s) name(s) and address(es) including postcode

RICHARD PERRY  
19 YERBURY STREET  
TROWBRIDGE  
WILTSHIRE  
BA14 8DP



Defendant(s) name and address(es) including postcode  
see attached schedule

Brief details of claim

CLAIM FOR PATENT INFRINGEMENT UNDER SECTION 74 OF THE PATENTS ACT 1977  
AN ORDER FOR ANNULMENT OR STAY ON A BANKRUPTCY PETITION 92 OF 2014  
and an order for a final injunction to prevent further sales of the product in the UK territory.

Value

MORE THAN 50,000.00 (FIFTY THOUSAND) BUT NOT MORE THAN £500,000.00 (FIVE HUNDRED THOUSAND POUNDS).

The claimant claims interest under section 69 of the County Courts Act 1984 at the rate of [8]% a year from 13TH MARCH 2013 to 9TH MAY 2015 of £40,000.00 and also interest at the same rate up to the date of judgment or earlier payment at a daily rate of £109.59.

You must indicate your preferred County Court Hearing Centre for hearings here (*see notes for guidance*)

ROYAL COURTS OF JUSTICE, HIGH COURT, LONDON

Defendant's name and address for service including postcode

SEE ATTACHED SCHEDULE AS THERE ARE THREE DEFENDANTS.

	£
Amount claimed	500,000.00
Court fee	10,480.00
Legal representative's costs	
<b>Total amount</b>	<b>£510,480.00</b>

For further details of the courts [www.gov.uk/find-court-tribunal](http://www.gov.uk/find-court-tribunal).  
When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

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Schedule of Defendants

1.

FH Brundle ( a firm )  
24-36 Lamson Road  
Ferry Lane North  
Rainham  
Essex.  
RM13 9YY

And

2.

Betafence Limited  
PO Box 119  
Shepcote Lane  
Sheffield.  
S9 1TY

And

3.

Britannia Fasteners Ltd  
4-6 Auckland Street  
Burslem  
Stoke On Trent.  
ST6 2AT

Claim No. \_\_\_\_\_

Does, or will, your claim include any issues under the Human Rights Act 1998?  Yes  No

Particulars of Claim (attached)(to follow)  
ATTACHED

**Statement of Truth**

~~\*(I believe)(The Claimant believes)~~ that the facts stated in these particulars of claim are true.  
~~\* I am duly authorised by the claimant to sign this statement~~

Full name RICHARD PERRY

Name of claimant's legal representative's firm \_\_\_\_\_

signed  position or office held \_\_\_\_\_

~~\*(Claimant)(Litigation friend)~~ (if signing on behalf of firm or company)  
~~(Claimant's legal representative)~~ *\*delete as appropriate*

19 YERBURY STREET  
TROWBRIDGE  
WILTSHIRE  
BA14 8DP

Claimant's or claimant's legal representative's  
address to which documents or payments  
should be sent if different from overleaf including  
(if appropriate) details of DX, fax or e-mail.