



Neutral Citation Number: [2024] EWHC 77 (Ch)

Case No: IL-2022-000021

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 5 February 2024

Before :

HHJ CADWALLADER SITTING AS A JUDGE OF THE HIGH COURT

Between :

JOYCE CAROLE BECKER-DOUGLAS	<u>Claimant</u>
- and -	
(1) BONNIER BOOKS UK GROUP HOLDINGS LIMITED	<u>Defendants</u>
(2) SIR CHRISTOPHER ANDREW HOY	
(3) JOANNA NADIN	
(4) CLARE ELSOM	
(5) THE BLAIR PARTNERSHIP LLP	

The claimant in person
Robert Howe KC (instructed by DAC Beachcroft LLP on behalf of the First to Fourth Defendants inclusive, and by Simkins LLP on behalf of the Fifth Defendant) for the Defendants

Hearing dates: 24 November 2023

JUDGMENT

HHJ Cadwallader:

The application

1. This is an application on behalf of the Defendants for summary judgment against the Claimant under Civil Procedure Rules Part 24. 2 on the ground that the Claimant has no real prospect of succeeding with her claim, and there is no other compelling reason for the case to be disposed of at trial. Alternatively, the Defendants apply to strike out specific parts of the Particulars of Claim pursuant to Civil Procedure Rules Part 3. 4 (2) (a) or for the elements of the claim based upon them to be dismissed pursuant to Civil Procedure Rules Part 24. 2 on the ground that those parts disclose no reasonable cause of action or the Claimant has no real prospect of success in relation to those parts and there is no other compelling reason for those matters to be disposed of at trial.

The parties

2. It is uncontroversial for present purposes at least that the Claimant is an author, illustrator, scriptwriter, musician and singer songwriter. The First Defendant (which was formerly known as Bonnier Publishing Limited) is a book publisher and published a series of books known as the *Flying Fergus* series, of which the Second Defendant is a co-author with the Third Defendant. The Third Defendant is a successful author of children's and adult literary fiction. The Fourth Defendant is a well-known children's illustrator, and illustrated the *Flying Fergus* series. The Fifth Defendant is the literary agency which represents the Second Defendant.

The evidence

3. The application is supported by a witness statement dated 27 July 2023 of Thomas Iverson, a member of the law firm Simkins LLP, which acts for the Fifth Defendant; a

witness statement dated 24 July 2023 of Emma Matthewson, the executive publisher of Hot Key Books and Piccadilly Press, which are both imprints of the First Defendant; a witness statement dated 21 July 2023 of the Second Defendant; a witness statement dated 24 July 2023 of the Third Defendant; a witness statement also dated 24 July 2023 of the Fourth Defendant; and a witness statement dated 28 July 2023 of Neil Blair, the founder and a member of the Fifth Defendant, a solicitor, literary agent and formerly a managing partner at the Christopher Little Literary Agency (CLLA). The Fifth Defendant represents the Second Defendant and acts as his literary agent in respect of the *Flying Fergus* series of books, which are the subject matter of this dispute.

4. The application is resisted on the basis of a witness statement dated 22 September 2023 of the Claimant; a witness statement of 10 September 2023 from Melanie Jones, her daughter; and a witness statement dated 12 August 2023 of Simon Hall, an animation producer and studio owner.

Representation at the hearing

5. In considering this application I have it firmly in mind that although the Particulars of Claim were settled by counsel, the Claimant has acted in person since around 24 October 2022, albeit she was assisted by her daughter in court before me as a McKenzie friend (no objection being taken notwithstanding that her daughter was also a witness). The Defendants, by contrast, were represented by leading counsel instructed by solicitors. Nonetheless, although the Claimant's submissions were by contrast somewhat disorganised and repetitive, she was able to get her points across, she had obtained the evidence which I have mentioned above, and had prepared a substantial skeleton argument. Some time after it appeared that her submissions had

reached a natural conclusion, and were merely going around again, she frankly admitted in response to a query from me that she had really been trying to reduce the amount of time available to leading counsel for the Defendants for his submissions in reply. In the event, leading counsel for the Defendants was able to complete his submissions well within the available time.

The claim

6. The claim which the Defendants seek to have summarily dismissed is for the infringement of the Claimant's copyright in certain works, and for misuse of confidential information (that is, the content of those works), by the publication in the UK and worldwide of the *Flying Fergus* series of books consisting of 10 illustrated novels and a bike guide in a variety of media, and the use of the *Flying Fergus* character and universe in various formats.
7. The Claimant's works in which copyright is alleged to have been infringed and in respect of which confidential information is alleged to have been misused are a number of works related to a character called Jimmy Whizz, namely *The Magic Birthday Present* animatic, its songs and illustrations; *Jimmy Whizz – the World of Abracazee*, an unpublished novel; *Jimmy Whizz and the Land of the Bad BAD Snowman* screenplay; the *Jimmy Whizz* 'Bible' for a proposed *Jimmy Whizz* TV series; and various other literary, artistic and musical works featuring *Jimmy Whizz* and his universe.
8. It is common ground that the *Jimmy Whizz* works and the *Flying Fergus* series are both works for children concerning a boy and his special flying bicycle, and that none of the *Jimmy Whizz* works was ever published. The Claimant's case is that it is a reasonable inference from the nature and extent of the similarities which she has

identified between the *Jimmy Whizz* works and the *Flying Fergus* series that substantial parts of the *Flying Fergus* series have been copied from the *Jimmy Whizz* works. Further or alternatively, the Claimant relies on what is said to be certain idiosyncratic content as evidence of copying.

9. The Claimant alleges that the Second, Third and Fourth Defendants had indirect access to the Claimant's works or some of them. The allegations may be summarised as follows.

(1) She alleges that she submitted various of the Claimant's works to certain agents and publishers including Bloomsbury Publishing plc, CLLA, A & C Black Publishers Ltd (said to be an imprint of Bloomsbury Publishing plc), the Blair Partnership, and Neil Blair via Lumos. When in early 2015 Hot Key Books agreed a publishing deal for the *Flying Fergus* series, five named individuals were working at Hot Key Books who had been working at Bloomsbury Children's Books when the Claimant submitted various of her works, one of whom (Madeleine Stevens) reviewed and rejected those works.

(2) Moreover, some of the Claimant's works had been submitted to the Fifth Defendant and CLLA. The Claimant alleges that it is reasonable to infer that Neil Blair (who was the founder and a member of the Fifth Defendant, which acted as agent on the publishing deal for the *Flying Fergus* series) was likely to have had access to them.

(3) Another of the Hot Key Books individuals (Emma Matthewson) and an employee of the Fifth Defendant negotiated the publishing deal.

10. The Defendants have filed a joint defence in response to the Claimant's Particulars of Claim. In addition, they make this application. They say that the insuperable problem with the Claimant's case is that she has no evidence, and no case with any realistic prospect of success, that the Second, Third or Fourth Defendants (respectively the authors and illustrator of the *Flying Fergus* series) had any knowledge of, or access to, any of the *Jimmy Whizz* works when they first created the *Flying Fergus* series, but on the contrary have given clear evidence of how they independently created the parts of that series, supported by contemporaneous documents. They say that the Claimant has no credible basis for contending, and no realistic prospect of demonstrating, that the evidence of those individuals is untruthful.

Summary judgment

11. In considering the application for summary judgment, I remind myself of the established principles which are helpfully set out in the Defendants' skeleton argument and which I do not understand to be controversial. They were set out by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (*Ch*) at [15] and approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098; at [24].
12. The court must consider whether the Claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All E.R. 91. A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8].
13. In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*. This does not mean that the court must take at face value and without analysis

everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10].

14. In *King v Stiefel* [2021] EWHC 1045 (Comm), Cockerill J stated:

“21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.

22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up.”

15. However, in reaching its conclusion, the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No.5)* [2001] EWCA Civ 550. Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] F.S.R. 3.

16. On the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better.
17. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.
18. In *Elite Property Holdings Ltd v Barclays Bank Plc* [2019] EWCA Civ 204 which concerned the identical test for applications to amend, Asplin LJ explained at [41-42] that:

“41. For the amendments to be allowed the Appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472. A claim does not have such a prospect where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the Claimant does not have material to support at least a prima facie case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their

case to entitle the Court to draw the necessary inferences: *Three Rivers District Council v Bank of England (No. 3)* [2003] 2 AC 1.

42. The court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon.”

19. These principles have been applied in the context of claims for copyright infringement summarily to dismiss claims where there was no credible evidence of access, in, for example, *Miles v ITV Network Ltd* [2003] EWHC 3134 (Ch), per Laddie J, in which the claimant alleged that ITV had infringed his copyrights and/or breached confidence in relation to a proposed cartoon TV programme called *Trusty and his Friends* (*Trusty* being ‘an anthropomorphised traffic light’), in the production of its cartoon *Dream Street* (which also involved ‘anthropomorphised traffic furniture’). Master Bragge summarily dismissed the claim, and Laddie J upheld that decision on appeal, on the ground that the claimant had produced “no real material on which to challenge the Defendants’ story” as to how they had independently created their work. Earlier in the judgment he observed:

“11. I think it is necessary to have in mind why the House of Lords says that there should not be mini-trials in applications for summary judgment. The court is not being asked to make an educated guess at a summary stage as to who is going to win and who is going to lose. It is inappropriate to do that. Were that course to be adopted by the courts, parties with perfectly valid claims or defences would be deprived of their opportunity of having their case properly considered at a trial. That would be a strong step for the court to take. It is clear that Master Bragge had that fully in mind.

12. But that does not mean that the court should not understand the facts which are in issue. ... Mr Miles’ case is based entirely on inference. It is based upon an allegation that the similarities between one or two of the characters in his programme and one or two concepts in his programme are sufficiently close to characters and concepts in “*Dream Street*” that copying should be inferred and that such an inference is sufficiently strong at this stage to give rise to an arguable case of copyright infringement and breach of confidence, notwithstanding the adamant denials of the Defendants.

13. On the other hand, the Defendants' case is that they have a perfectly clear, and in many respects documented, history of the development of "Dream Street". For this reason they have put in evidence from a number of individuals showing how the "Dream Street" concept was developed, who did the drawing of the various characters, how the characters' characteristics or personalities were developed, and how the programme was eventually put together and then sold by the Second Defendant to the First Defendant.

14. The story, as one might expect, involves a number of strands, and involves the input of a number of people. ... In no normal sense is there a conflict of evidence of the sort which one simply must not try to resolve on a summary application. The story put forward by the Defendants on its face makes sense and holds together.

...

16. In a case like this, one is not concerned with conducting a mini-trial in the sense of trying to resolve conflicts between witnesses of primary fact. One has to read the evidence to understand the nature of what the Defendants say and the story they put forward, and test that against the only case advanced by the Claimant, namely, one of inference of copying, because of the alleged close similarities relied upon."

20. *Meakin v BBC* [2010] EWHC 2065 (Ch) was a case in which the claimant alleged that the BBC had infringed his copyrights in proposals for a game show. Arnold J summarily dismissed the claim on the grounds that the alleged similarities were repetitive, recycled, commonplace and at a high level of abstraction ([44] – [45]); and the claimant's case on access was speculative and amounted to a series of conspiracy theories as to how the defendants might have had access to the claimant's work [48].
21. In *Molavi v Gilbert* [2023] EWHC 646 (Ch), the claimant alleged that the BBC infringed her copyright and misused her confidential information in a two-part storyline in the forensic pathology series, *Silent Witness*. Marcus Smith J summarily dismissed the claim on the ground that there was no arguable basis for the contention that it was to be inferred from the materials relied on by the claimant that the BBC copied any part of the claimant's works [33].

Infringement by copying

22. For present purposes only, the Defendants accept that the Claimant's works are copyright works. Her copyright would be infringed by copying her work as a whole or any substantial part of it, whether directly or indirectly: Section 16 Copyright, Designs and Patents Act 1988. Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form, including storing it in any medium by electronic means: Section 17 of that Act.
23. However, copyright does not protect ideas, but only the form of expression of ideas. Mummery LJ explained in *Baigent v Random House Group Ltd* [2007] EWCA Civ 247 that

“It is not, however, sufficient for the alleged infringing work simply to replicate or use items of information, facts, ideas, theories, arguments, themes and so on derived from the original copyright work.”

In the context of artistic or literary ideas Laddie J also explained this distinction as follows in *IPC Media Ltd v Highbury Leisure Publishing Ltd (No.2)* [2004] EWHC 2985 (Ch).

“The need to prove copying involves showing a design nexus between the Defendant's and the Claimant's works. However it is a mistake to believe that any nexus will do. The law of copyright has never gone as far as to protect general themes, styles or ideas. Monet, like those before him, acquired no right to prevent others from painting flowers or even water lilies or, to take an example referred to by Mr Howe, Georges Seurat would not have obtained, through copyright, the right to prevent others from painting in a pointillist style. Even someone who is inspired by Monet to paint water lilies or by Seurat to paint using coloured dots would not infringe copyright. Such general concepts are not put out of bounds to others by the law of copyright. Needless to say, it is impossible to define the boundary between mere taking of general concepts and ideas on the one hand and copying in the copyright sense on the other. Judge Learned Hand in *Nichols v Universal Pictures Co* 45 F Second 119 (Second Cir. 1930) said that wherever the line is drawn will seem arbitrary. He also said:

“Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times may consist of only its title; but there is a point in this series of abstractions where they are no longer protected,

since otherwise the playwright could prevent the use of his ‘ideas’, to which, apart from their expression, his property is never extended.” (p.121)”

24. I am invited to and do adopt the approach to determining allegations of copying as set out by Mummery LJ in *Baigent v. Random House Group Ltd.* [2007] EWCA Civ 247.

“122. In particular, in cases in which the issue of copying has to be decided on disputed evidence the court should be guided by the sound legal principle that proof of similarity between the alleged infringing work and the original copyright work, coupled with proof of direct or indirect access to the original, is prima facie evidence of copying for the Defendant to answer: *Francis, Day & Hunter Ltd v Bron* [1963] Ch 587 at 612 per Wilberforce J. (a wise judgment, which does not seem to have been cited to the judge).

123. The application of this principle and some reference to the applicable provisions of the 1988 Act (none of which feature in the judgment) would, I think, have disciplined the reasoning and strengthened the structure of the judgment.

124. The following issues frequently arise for decision in proceedings for infringement of literary copyright under the 1988 Act. Although this is not an exhaustive check list, the following are worth bearing in mind as issues that will usually need to be considered, preferably in a chronological setting or, in more complicated cases, of sub-sets of chronologies.

(1) What are the similarities between the alleged infringing work and the original copyright work? Unless similarities exist, there is no arguable case of copying and an allegation of infringement should never get as far as legal proceedings, let alone a trial. The 1988 Act confers on the owner the exclusive right “to copy the work” either directly or indirectly (s.16). This is not an exclusive right to prevent the publication of a work on a similar subject or a work which happens to contain similar material, thematic or otherwise.

(2) What access, direct or indirect, did the author of the alleged infringing work have to the original copyright work? Unless there was some evidence from which access can be directly proved or properly inferred, it will not be possible to establish a causal connection between the two works, which is essential if the Claimants are to prove that the Defendant’s work is a copy.

(3) Did the author of the alleged infringing work make some use in his work of material derived by him, directly or indirectly, from the original work?

(4) If the Defendant contends that no such use was made, what is his explanation for the similarities between the alleged infringing work and the original copyright work? Are they, for example, coincidental? Or are they explained by the use of similar sources? If the latter, what are the common sources which explain the similarities? How were the sources used by the authors of the respective works?

(5) If, however, use was made of the original copyright work in producing the alleged infringing work, did it amount, in all the circumstances, to ‘a substantial part’ of the original work? The acts restricted by the copyright in a literary work are to the doing of them “in relation to the work as a whole or any substantial part of it”. See s.16(3)(b) of the 1988 Act.

(6) What are the circumstances or factors which justify evaluating the part copied in the alleged infringing work as “a substantial part” of the original copyright work?”

25. I accept the Defendants’ submission, therefore, which was not disputed, that proof of access is an essential element to any claim for infringement of copyright by copying – although it may in an appropriate case be inferred from similarity if there is no sufficient explanation for this.

26. The burden of proof at trial is upon the Claimant, unless there is proof of both (a) sufficient similarity, and (b) actual access: per Zacaroli J in *Sheeran* at 24 and 25:

“24 While the legal burden rests with the person alleging infringement, in the case of conscious copying the evidential burden shifts to the alleged infringer if there is proof of sufficient similarity and proof of access. There was some debate as to whether what was required was proof of access, or proof of the possibility of access.

The weight of authority supports the former: see, for example, *Designers Guild* (above), per Lord Millett at p.2425E; *Baigent v Random House* [2007] EWCA Civ 247; [2007] F.S.R. 24 at [4], although I do not think anything turns on it in this case. Tens of thousands of new songs are uploaded to internet sites daily. It clearly cannot be enough to shift the burden of proof that a song was uploaded to the internet thereby giving the alleged infringer *means* of accessing it. In every case, it must be a question of fact and degree whether the extent of the alleged infringer’s access to the original work, combined with the extent of the similarities, raises a sufficient possibility of copying to shift the evidential burden. Where, for example, the original work was highly individual or intricate, and the alleged infringing work was very close to it, then only limited evidence of access may be sufficient in order to shift the burden. The same would not be true, on the other hand, where the original work was simple and involved relatively common elements.”

27. He added (at [26]):

“26 Irrespective of where the burden lies, infringement requires there to have been *actual* copying, which necessarily entails that the alleged infringer not only had access to the original work, but actually saw or heard it.”

The present case

28. In the present case the Defendants rightly point out that there is no direct evidence of copying. In order to establish even a prima facie case of copying at trial, the Claimant must prove at least similarity between the alleged infringing work and the original copyright work, coupled with proof of direct or indirect access to the original.
29. The Defendants' case may be summarised briefly in the following way. The application turns on one short point. The Claimant must show the Defendants had access and copied the Claimant's work. The Claimant may do so either by direct evidence, or inference. But there is no evidence at all. In particular, there is no evidence that the Defendants had access to the Claimant's work (and, on the contrary, there is cogent and compelling evidence as to how the *Flying Fergus* series was created independently of the Claimant's work). There is no question of having to test competing evidence on this point, which would be inadmissible on an application for summary judgment, because it is not a matter of competing evidence. Nor is there any evidence of copying. The Claimant brings her case on the basis of conscious, rather than unconscious, copying. That is necessarily so because it is common ground that the Claimant's works were never published, and the level of detail at which copying is alleged precludes unconscious copying. But the similarities upon which the Claimant relies do not exist. The ideas upon which the Claimant relies are commonplace and unoriginal. The textual similarities to which she points are derived by extracting from the large volume of the *Flying Fergus* works, the general, typical, and commonplace, particularly in a children's book. There are no artistic similarities between the illustrations. So far from there being similarities capable of founding an

inference both of access and of copying, there are numerous and striking differences between the works. The claim in copyright is therefore hopeless.

30. The Claimant argues, in brief summary, as follows. She has identified 179 similarities between the two works which, taken cumulatively, found an inference of both access and copying. She also relies on JCBD 2 (headed 'Counter Argument'). Access is also to be inferred from her multiple submissions of *Jimmy Whizz* material to companies where, at the time, some of the team behind *Flying Fergus* were working, and who knew each other. Moreover, Mr Hall's evidence is that in 2015 Zoe King, of the Fifth Defendant, approached Cosgrove Hall Fitzpatrick Entertainment, of which Mr Hall was managing director, with an idea for the Second Defendant which an employee of Cosgrove Hall Fitzpatrick Entertainment told Mr Hall was too similar to *Jimmy Whizz* for Cosgrove to take further (and it did not). There are gaps and inconsistencies in the Defendants' evidence which require to be explored at trial.
31. It is right to acknowledge that the Claimant evinces strong feelings about the Defendants, whom she accuses of bullying tactics, insults, threats and dastardly tricks, and about the validity of her claim.

Chronology

32. It is helpful to start with a chronology. The Claimant alleges that the *Jimmy Whizz* Works were created effectively between January 1991 and January 2010. In particular, the animatic musical compositions and song lyrics were created between February 1991 and December 1996; the novel was created between February 1991 and June 2005, further musical compositions and song lyrics were created between February 1991 and December 2009, and the musical script was created between

February 1992 and January 2006. The Claimant alleges that she submitted her work to various companies on a number of occasions.

33. Her alleged submissions to Bloomsbury Publishing may be summarised as follows. On 28 January 2000 she sent unidentified material concerning the *Jimmy Whizz* project, which was returned with an undated rejection letter. On 3 October 2005 she sent a manuscript of a *Jimmy Whizz* novel called “The Bears of Calgary” (later, “Jimmy Whizz and the World of Abracazee”) and then a *DVD animatic*, which was allegedly watched by several unidentified members of editorial staff and on another occasion by one unidentified member of the Bloomsbury editorial team. She was eventually given an oral rejection, and collected the material herself.
34. On 30 May 2008 she sent the first three chapters of “Jimmy Whizz and the World of Abracazee”, together with song clips from the music film script, and a basic black and white animatic, which were returned with a rejection letter of 2 July 2008.
35. On 27 September 2010 she sent a package explaining the whole concept and containing the novel, and an updated *Jimmy Whizz* ‘Bible’, which was rejected and returned in December 2010.
36. It appears not to be in dispute that A&C Black Publishers Limited (“A&C”) was principally a music publishing company. Her alleged submissions to A&C may be summarised as follows. Between about December 2007 and February 2008 the Claimant supplied some unspecified materials to A&C and received a rejection email dated 27 February 2008 from which it appears that this included some songs in some form. The material was returned the next day.

37. In June 2008, C again submitted some material which was returned under cover of a rejection letter dated 27 August 2008.
38. Her alleged submissions to the Christopher Little Literary Agency (“the CLLA”) may be summarised as follows. In February 2006 the Claimant submitted various *Jimmy Whizz* materials to the CLLA which were returned with a rejection letter dated 10 February 2006. Some years later she made a further submission of materials to the CLLA. No details have been supplied.
39. Her alleged submissions to the Blair Partnership may be summarised as follows. In 2011, she had a lengthy telephone call with someone at the Blair Partnership about *Jimmy Whizz* but her attempt to become a client was unsuccessful. She does not suggest that she provided any materials on this occasion.
40. C says that in February 2012 she tried to get Mr Blair’s contact details through Lumos but the charity refused to provide them.

Access

41. How does the Claimant allege that any of the *Jimmy Whizz* material reached any of the Defendants so it could be copied?
42. Her case is that some of Madeleine Stevens, Sarah Odedina, Emma Matthewson, Ruth Logan or Georgia Murray, who had worked for Bloomsbury but moved to Hot Key Books (an imprint of the First Defendant), gave them to the Defendants or some of them; and/or that Neil Blair and Zoe King, who had worked for the CLLA but moved to the Fifth Defendant, did so. However, she is not able to say what material they had, how they got it, what they retained (or, given that they are admitted to have

returned the material allegedly submitted it) how they retained it, what parts of it they gave to whom, when or why, and who copied what.

43. Her case on this is purely speculative, therefore. It is also highly implausible. The evidence as to how the *Flying Fergus* series was created indicates that the main features of which the Claimant complains had already been created by the time Hot Key Books became involved in November 2014. By June 2014 the Third Defendant had already created the main characters and synopsis for *Flying Fergus* series; the first draft of the book was sent out on 18 June and a revised draft on 26 June 2014. That appears from the Defendants' evidence and in particular from unchallenged contemporaneous emails. It is not really disputed, and certainly there is no evidence on the basis of which it could sensibly be put in issue.
44. On the other hand, the Fourth Defendant was not involved until March 2015. But the contemporaneous correspondence shows that her illustrations were based on material which pre-dated the involvement of Hot Key Books and they bear no resemblance in any event to the illustrations forming part of the *Jimmy Whizz* material.
45. Accordingly, at this point I am not engaging in a mini-trial, which would be inappropriate. Nor does there appear to be any reason to suppose there would be evidence at trial on the basis of which it could be disputed.
46. As regards Zoe King, moreover, there is uncontested contemporaneous evidence about the idea which she suggested for the *Flying Fergus* project. It was around 'the greatest bicycle race in the world' and 'Chitty Chitty Bang Bang meets Wacky Races. Bikes throughout history/legendary characters from around the world'. No magic bicycle, in the manner of *Jimmy Whizz*, was involved. When the Third Defendant

suggested it, she was not keen. Again, there is no reason to suppose there would be evidence at trial on the basis of which this could be disputed.

Similarity

47. Finally, there is the question of similarity, and in particular whether the similarities between the works are such as to be capable of founding an inference of access and copying. I have looked at and listened to the material. The supposed similarities are, in my judgment, very far from being capable of founding such an inference.
48. The Claimant has listed a catalogue of ideas which are said to be similar in both sets of work in support of her allegation of copying. Some of the similarities simply do not exist. For example the appearance of *Jimmy Whizz* and *Flying Fergus*, as described and as depicted, is not similar, but very different: they do not resemble each other save in being boys. The fact that one has a talking bike and the other a talking dog is neither here nor there. Other similarities do not evidence access or copying. Flying bicycles, parallel worlds, idealised medieval settings, bighearted young protagonists from a deprived background, and endearingly eccentric and technically-minded adults are not news in the world of children's entertainment, and there is nothing about the particular features of these works to suggest that one was derived from the other.
49. The Claimant has identified a large list of supposed textual similarities. But when looked at closely and individually, closely and all together cumulatively, or, as it were, from a distance and as a whole, and generally, they amount to no more than commonplaces, of the kind which it would actually be hard to avoid when creating material about a boy with a special bicycle which flies and takes him to magical realms.

50. The illustrations are utterly unlike in both style and content. The Claimant relies on particular gestures, such as a cheeky wink, or the raising of a finger to show that the character has an idea, but these too are all commonplace.
51. As counsel for the Defendants notes at paragraph 79 of his very full skeleton argument, and I accept, the plots associated with the respective works are very different, numerous characters are very different or do not appear at all in one or the other series.

Conclusion

52. There is therefore no basis for inferring either access or copying, and no reason to suppose that the evidence in relation to either will improve at trial. It follows that there is no reasonable prospect of success on the copyright claim. Nor is there any other compelling reason for the matter to go to trial. Quite the contrary: it would involve the parties in very substantial expenditure of time and money, and will occupy substantial court resources, to no desirable end.
53. The claim of breach of confidentiality necessarily fails, since, for the same reasons, there is no prospect of the Claimant's establishing any unauthorised use of the Claimant's works by the Defendants.
54. Had I reached the opposite conclusion, I would nonetheless have struck out the parts of the claim which the Defendants contend should be struck out, on the basis that they are unsustainable in law; but given the conclusion to which I have come, I need say no more about that.