

Neutral Citation Number: [2024] EWHC 3049 (IPEC)

Case No: IP-2022-000001

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INTELLECTUAL PROPERTY ENTERPRISE COURT**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London, EC4A 1NL

Date: 24 July 2023

**Before:**

**CAMPBELL FORSYTH**  
**(sitting as a Deputy High Court Judge)**

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**Between:**

**WATERROWER (UK) LIMITED**  
**- and -**

**Claimant**

**LIKING LIMITED (t/a TOPIOM)**

**Defendant**

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**JACQUELINE REID** (instructed by **Moore Commercial Law Limited**) appeared for the **Claimant**.

**JONATHAN MOSS** and **KENDAL WATKINSON** (instructed by **Gunnercooke LLP**) appeared for the **Defendant**.

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**APPROVED JUDGMENT**

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**CAMPBELL FORSYTH :**

1. At the commencement of the trial in this matter I have been presented with a number of 'housekeeping' issues. This judgment deals with the Defendant's Application Notice filed shortly before the trial on 21 July 2023 ("the Application"). The Application is for relief from sanctions under CPR 3.9 and relates to the following issues, that: (1) Mr Fu's witness statement dated 27 January 2023 was not signed by Mr Fu but rather his electronic signature was applied on instructions by the Defendant's representatives contrary to CPR 32.4(1), (2) the final signed version of Mr Fu's statement was not prepared in Chinese (Mr Fu's native language) and then translated into English contrary to the requirements of CPR 32PD 18.1 and 23.2, and (3) a later re-signed version of Mr Fu's statement was not properly served by the deadline in the CMC Order (as amended by Agreement) contrary to CPR 32.10. The Claimant's position is the defects require the court's relief from sanction under CPR 3.9 and permission under CPR 32 PD 25.2.
2. These issues have a long background in correspondence and have additionally been set out in detail in the Claimant's skeleton argument (including its Annex A) and in the Application. In the context of this trial and following the helpful discussion in court, it is not necessary to repeat much of the detailed arguments for the purpose of determining the Application. I have, however, considered the correspondence, the evidence and both parties have addressed me on their positions on these issues. I have also been taken to the various relevant provisions of the CPR, including in particular CPR 32 and its Practice Direction and CPR 22 and its Practice Direction.
3. Mr Fu is Chinese and does not speak English. As a result, the provisions of the CPR that require translation of his evidence are triggered, in particular CPR 32 PD23.2. The main wrong, if I can put it like that, that has been identified by the Claimant is it's concern that Mr. Fu's witness statement was approved and signed in English. CPR 32 PD23.2 requires that in this situation a witness should sign an approved Chinese language statement and that

document is then translated into English. The reason is to ensure the witness understands the evidence they are giving.

4. The Defendant explained that Mr Fu's statement was the culmination of a number of drafts, and that, in the circumstances, any concerns regarding the signature of a statement not in the witnesses native language are not triggered because the witness was fully aware of those earlier drafts. It is in this context that the Defendant's explains why there were no changes made by Mr Fu to the final draft. The Defendant's confirmed there was an identical Chinese version of the English language statement available to Mr Fu at the time he approved his statement. It is accepted that these final Chinese and English versions of Mr Fu's statement are identical. The Defendant's legal representative applied a proxy electronic signature to Mr Fu's statement. A further copy of Mr Fu's statement, one re-signed with Mr Fu's own signature (but not re-dated), was served on the Claimant on 27 February 2023
5. In the end, despite the Defendant's position that no relief is needed, the Application was made, explained to be out of caution, late on Friday, 21st July 2023.
6. During the discussion of these issues, Claimant's counsel helpfully noted (while maintaining its position that Mr Fu's evidence is not in the case) she had prepared for the cross-examination of Mr Fu at trial and that there should therefore be no real prejudice in dealing with the evidence where it is in the case. The Claimant also helpfully confirmed it did not oppose Mr Fu's witness statement being admitted in the case, subject to the court applying its assessment under CPR 3.9 for relief from sanction.
7. The evidence of Mr Fu has not changed since his statement dated 27 January 2023. It has been in the possession of the Claimant's (albeit subject to the concerns noted by the Claimant) since that time. In the circumstances, as a pragmatic solution to much of the more technical arguments, the proposal was made that Mr Fu confirms his evidence on Oath when he gives evidence and re-signs his statement. It is accepted, subject to the relief point, this deals with many of the defects, albeit late. In these circumstances, I have therefore decided on this

occasion, particularly bearing in mind the time these issues have required for lengthy argument in the limited trial window and allowing the parties enough time to actually set out their case at trial, there is no need to repeat the technical details of whether or not there has been the noted formal compliance complained of under the rules.

8. Based on the helpful progress on this issue between the parties I therefore consider the Application and evidence of the Defendant for relief from sanction under CPR 3.9. As noted, Mr Fu can confirm today that he is fully aware of his evidence – as set out in the Chinese version of his evidence and confirm the correctness of his evidence under Oath. This does not deal specifically with the technical issues raised by the Claimant but it does deal with the substantive issue. Any remaining points are open to the Claimant to deal with in cross-examination.
9. The issues raised by the Claimant could potentially be very serious, although in the end that was not the case. I would therefore have expected an earlier and more thorough response from the Defendant in dealing with these potentially significant issues and breaches of the rules. That would also have allowed these time consuming issues to have been resolved at an earlier point in the case.
10. However, in the context of the evidence and submissions on the history of this issue, the lack of any real prejudice and the nature of the concerns, this is a case where the effect of the alleged breaches set out in the Application were minor and did not prevent the parties from conducting the litigation. Therefore having considered each of the three stages in *Denton*, I believe that on the facts of this matter, in all the circumstances, and with those caveats of the further confirmations on Oath of Mr Fu, conscious of the discussion on the Claimant's ability to continue with the examination of Mr Fu, the just outcome is to grant the relief requested to the extent necessary and allow permission for the Defendant to rely on the witness statement of Mr Fu in the trial.

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