



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 16

GP1/23

OPINION OF LORD ERICHT

on the defenders' motion for leave to reclaim

in the

APPLICATION TO BE A REPRESENTATIVE PARTY IN GROUP PROCEEDINGS

by

LEE BRIDGEHOUSE

Applicant

against

(FIRST) BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT

(SECOND) BMW M GMBH GESELLSCHAFT FUR INDIVIDUELLE AUTOMOBILE

(THIRD) BMW (UK) LIMITED

(FOURTH) BMW FINANCIAL SERVICES (GB) LIMITED

(FIFTH) ALPHABET GB LIMITED

Defenders

Applicant: Milligan KC, Black; Pogust Goodhead

Defenders: Lord Davidson of Glen Clova, Boffey; BTO Solicitors LLP

8 February 2024

[1] On 18 January I authorised Lee Bridgehouse to be the representative party in group proceedings (*Bridgehouse v Bayerische Moteren Werke Aktiengesellschaft* [2024] CSOH 2). Today I refused the defenders' motion for leave to reclaim (appeal) against that authorisation and

gave an *ex tempore* oral opinion. Group proceedings are in their infancy and relatively undeveloped, so it may be useful for that decision to be made more publicly available.

I now issue that *ex tempore* opinion in writing.

[2] This is a motion by the first, third, fourth and fifth defenders for leave to appeal my interlocutor of 18 January 2024 in the application by Lee Bridgehouse to be a representative party GP1-23.

[3] The defenders submitted that the court was bound to consider the interests of both parties, and in the exercise of its discretion say where the balance lay (*Stewart v Kennedy* 1888 16 R 521 at 522). The central considerations were convenience and expedition in the course of justice and if evenly balanced the proper course was to incline in favour of leave (*Duke of Portland v Wood's Trustees* 1926 SC 640 at 653-654). The present case strongly favoured granting leave. The appointment as representative party was a milestone and could not be meaningfully reviewed at a later stage. There are no delays in the Inner House hearing cases. There was no merit in the applicant's opposition, which was a response to the appeal rather than to leave. The proposed reclaiming motion was an important opportunity for the Inner House to provide authoritative guidance. The reclaiming motion could be dealt with quickly by the Inner House.

[4] The applicant submitted that the object of leave to appeal was to prevent appeals which were not worth the appeal and avoid inconvenience, expense and delay (*Edinburgh Northern Tramways Co v G.V. Mann and Another* 1891 18 R. 1140 at 1153). The court must consider the interests of the parties (*Stewart v Kennedy* 1888 at 522; *Caddies v Harold Houldsworth & Co (Wakehead) Ltd* 1954 SLT (Notes) 3). Delay and lack of prejudice were relevant factors (*Adelphi Hotel (Glasgow) Limited v Walker* 1960 SC 182 at 185). The decision had no material bearing on the substantive issues. The defenders had no interest and there

was no prejudice to them. The true purpose was delay. There was no proper basis on which the interlocutor could be reviewed.

[5] As is explained in para [10] of Practice Note 2 of 2020 *Group Proceedings under Chapter 26A*, the procedural framework for group proceedings is based on the commercial actions model. As in commercial actions, the ability of a party to reclaim is restricted so that in most (but not all) situations leave is required. As the Inner House said in *Highlands and Islands Enterprise v CS Wind UK Ltd* [2020] CSIH 48 at para [8]:

“And speaking more generally, given the potential for delay, when commercial procedure is designed for a speedy resolution of business disputes, the court expects leave to be granted in respect of an interlocutory matter only when such delay is outweighed by compensating benefits which further the just and effective disposal of the case at hand.”

That sentence is of general application and is not limited to interim interdicts.

[6] The defenders’ position is that the appeal represents an issue of general importance which has received little reported judicial scrutiny and the proposed reclaiming motion would present an opportunity for the Inner House to lay down authoritative guidance of the development of Scots law overall.

[7] In my opinion the benefit of obtaining Inner House guidance does not further the just and effective disposal of the case in hand. While the Inner House nowadays deals with reclaiming motions more quickly than may have been the case in the past, there would still be some delay. The interests of both parties are in the expeditious resolution of the substantive issues between them. The replacement of Mr Bridgehouse by another representative party does not advance resolution of these issues. As the Canadian quotation in para [16] of the opinion (*Sondhi v Deloitte Management Service LP* 2018 ONSC 271 at para [43] quoted in *Bridgehouse v Bayerische Motoren Werke Aktiengesellschaft* [2024] CSOH 2 para [16]) demonstrates, defenders in a class action or group proceedings do not have a

strong interest in ensuring that class members are adequately represented. If the authorising of the class representative was such a significant milestone as to necessitate the possibility of review, the rules could have provided that no leave was required. Having balanced the interests of both parties, in my view in the exercise of my discretion the balance lies against allowing leave to reclaim.