

<b>Neutral Citation No: [2025] NICH 1</b>	<b>Ref: HUD12654</b>
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	<b>ICOS No: 24/22863</b>
	<b>Delivered: 06/01/2025</b>

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**CHANCERY DIVISION**

**SLURRYKAT LTD**

**Plaintiff**

**v**

**WILSON MOORE AND LEWIS MOORE  
(TRADING AS MOORE BROTHERS ENGINEERING)**

**Defendant**

**Mr Colmer KC with Mr Gibson (instructed by Cleaver Fulton Rankin Solicitors) for the  
Plaintiff**  
**Mr Hopkins KC with Mr Sinton (instructed by Lewis Silkin (NI) Solicitors) for the  
Defendant**

**HUDDLESTON J**

*Introduction*

[1] This case involves an application for an interim injunction restraining the defendants from “infringing the plaintiff’s design right in the SlurryKat reelers” and seeking an order that the defendants be restrained from “manufacturing or attempting to manufacture [the] reelers and/or from selling, promoting or advertising any reeler products.”

[2] The reelers in question are based around a chassis or frame and in a combination with a number of other components, provide a system by which lengths of hose can be wound out and rewound in order to distribute slurry across fields as part of a recurring agricultural process to spread agricultural slurry. The particular reelers under consideration in this case are ones that can be fixed to a tractor – either front or rear.

[3] The plaintiff claims design right in two separate reelers, one launched in 2020 (“the 2020 model”) and a later one which was launched in 2024 (“the 2024 model”).

[4] At the hearing of this matter it became apparent that the plaintiff asserts a design right in respect of the entirety of both models and not, it would seem, in the constituent parts – a point which the defendant suggests is an alteration in its original case – which refers to “design rights” – suggestive of its existence across a number of components within each model. I do not need to go into that issue at this interim stage.

[5] The defendants’ case, in summary, is that the pleaded case against them for infringement of design right is extremely weak and will not succeed. It advocates that the court at this interim stage should consider only “what, if anything, is required to be done to prevent irremediable prejudice” – to which it says nothing on the basis that if the relief is refused the plaintiff has an adequate remedy in damages.

### *History*

[6] The factual basis asserted by the plaintiff is that:

- (a) In 2022, the defendants offered for sale a reeler (the “defendants’ 2022 model”) which infringed the plaintiff’s design rights in the plaintiff’s 2020 model. That led to proceedings which were compromised in the terms of an order of this court in May 2023 to which I shall return.
- (b) Secondly, the plaintiff asserts the defendants designed and offered for sale reelers (the “defendants’ 2023 model”) which infringes the plaintiff’s design right in the plaintiff’s 2024 model.
- (c) That the plaintiff has sought patent protection for its 2024 model – largely on the basis of its location of inverted drive motors – the innovation from the prior art being their insertion on the interior frame of the machine.

[7] As I have indicated, the earlier proceedings were compromised under the terms of an order of this court issued on 19 May 2023 (ie the 2023 Order). Under its terms, and in addition to requiring affidavits from the defendants as to the actions they had previously taken, the defendants undertook that (and here I quote from the text of the Order):

“[2] In perpetuity that they [would] not manufacture or supply designs for any reelers incorporating or otherwise infringing the plaintiffs’ designs.”

[8] There was a consequential provision regarding delivery of the three disputed reelers at that time, which is of no particular moment to this case, save and except that the plaintiff says that they were generous in not at that time requiring the scrapping of one of the motors – a motor which they now allege has been reused in the defendants’ 2023 model.

[9] Suffice to say at this stage, that the defendants allege that the plaintiff argues (incorrectly) that the reference to “designs” within the 2023 Order refers to and was a de facto acceptance of all of the allegations made in the original statement of claim (ie in respect of the 2022/2023 proceedings). The defendants resist that interpretation and take a more limited view of the terms of the Order. They vehemently resist the argument that they accepted the individual breaches as then alleged in the statement of claim and say that their current designs are different and do not infringe any alleged design right and/or the terms of the Order.

[10] That leads me on to the legal principles at play.

[11] The plaintiff’s case asserts unregistered design rights (UDR) under the S213 Copyright Design and Patents Act 1988 (the “CDPA”). By virtue of section 226(2) of the CDPA for an infringement to be established the plaintiff must prove ‘reproduction’ by the defendants. Reproduction is defined in the following way:

“reproduction of a design by making articles to the design [by] copying the design so as to produce articles exactly or substantially to that design.”

This has been interpreted in *C and H Engineering v F Klucznik and Sons Ltd* (No.1) [1992] F.S.R. 424 [1992] per Aldous J as:

“Under section 226 there will only be infringement if the design is copied so as to produce articles **exactly or substantially** to the design.” [emphasis added]

[12] As part of the hearing the parties engaged both in oral and written submissions as to whether or not there had been such a breach based on the very substantial affidavits provided by both Garth Cairns (on behalf of the plaintiff) and Wilson Moore (on behalf of the defendants). The debate focused on issues regarding prior art or what is commonplace and (more directly in considering the concept of design right) the “must fit” and “must match” exceptions which arise by virtue of section 213(3)CDPA. They also raise the question as to whether what is being sought to be protected is a method or principle of construction (which would not benefit from design right protection) and/or finally on a purely factual basis as to whether or not, in chronological terms, there could or would have been copying as a question of fact, and if so, how that might have arisen.

[13] Whilst there is substantial evidence as to all of these points, fundamentally this is not a mini trial of the action but is an interim application for an injunction as to which the principles in *American Cyanamid* are the more applicable.

[14] Applying those I am satisfied that the evidence and debate on the applicability of design right protection establishes beyond doubt that there is plainly a serious issue to be tried.

[15] I am, therefore, not going to engage in an analysis of what will be crucial to the issues that will fall to be determined in the main trial. Nor am I going to involve myself in the debate as to an interpretation of the 2023 Order, other than as a factor that I bring into account in terms of undertaking the balancing exercise which inevitably falls to the court in applications such as this.

[16] In the final instance, the issue for the court is really one of establishing which course offers the least prejudice. On that point, I was referred to *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd* [2009] 1 WLR 1405, which recommends that a court should take “whichever course seems likely to cause least irremediable prejudice to one party or the other.” That, in the context of an interim hearing, makes perfect sense.

[17] The other question which arises is the question of the adequacy of damages, and, particularly, if damages themselves are an adequate remedy for the plaintiff on the present facts.

[18] It is clear from the evidence that the plaintiff has a well-established and successful business (with a turnover in excess of £14m) whereas the defendants are two brothers, who were previously employed by the plaintiff, but have, subsequent to their departure set up a business which is comparatively modest. The evidence suggests that since the departure from the plaintiff’s employment, in addition to the work which they have done to design and manufacture the reelers which are in dispute, they have undertaken straightforward repairs to agricultural machinery.

[19] Mr Moore, in his affidavit evidence to the court says that the injunction as sought would have a substantial effect on the defendants’ business – particularly to any extent it might stretch to reeler products. This business, counsel for the defence says, has remained unchallenged by the plaintiff and also points out that the sale of the reeler products has a knock-on effect in that an injunction granted in the terms sought would have a wider implication in real terms, particularly at the present time of time when the market is strongest for farmers who wish to equip themselves to take advantage of the slurry spreading season which is seasonally restricted and runs from March to October each year.

[20] The defendant also says that no evidence has been adduced by the plaintiff as to the potential impact on its business by the defendants’ alleged actions. Indeed, they say that Mr Cairn’s affidavit speaks only of two potential lost sales which are, in themselves, disputed by the defendant.

[21] As to the point raised on behalf of the plaintiff that the defendant would not be able to pay damages, the defendants say that this is a “non-point” and that their only liability for damages (on the plaintiff’s case) would arise in the circumstances where

they are not restrained and so could continue to trade. In those circumstances cash would be generated and, thus, it is contended the ability to pay damages. It is submitted, therefore, that there is insufficient evidence for the court to conclude that damages are an inadequate remedy.

### *Consideration*

[22] As I have said in the earlier stages of this judgment, I am more than satisfied that there is a serious issue to be tried. A great deal of evidence has already been produced on the question as to whether or not there has been an intellectual property infringement and based on that there is very clearly a triable issue. As I have also said, that is something which, whilst relevant to the consideration for an interim injunction, is clearly something which can only be determined when the full suite of evidence on the point(s) in dispute has been adduced. We have not reached that stage yet.

[23] Nor am I, at this stage, going to engage in an analysis of the terms of the 2023 Order other than to register the fact that (a) there were earlier infringement proceedings brought and (b) that they were compromised. As to the defendants' argument that there is no actual definition of what constitutes the "plaintiff's designs" under that order I accept that there is an issue to be argued, but again, that is something which will be open for consideration and resolution as part of the main case.

[24] Taking therefore the hallmark of adopting a course which would cause the "least irredeemable prejudice" it seems to me that on the facts and evidence before me, damages are an adequate remedy in the event that the plaintiff is ultimately successful in its claim. To grant the injunction sought would be to destroy the fledging business of the defendants without them having the ability to ever argue their case. On that basis, I refuse the application and find that the status quo ante be maintained pending the trial of the main action.

[25] Any question of costs will be reserved to the determination of the trial.