

ENGLAND AND WALES / JUDGMENT

JCB Power Systems Limited & Anor v Gnutti Carlo S.P.A

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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Case Nos: HT-2021-000420, HT-2022-000156
Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 4 July 2023

Before : Mrs Justice Joanna Smith

Between : (1) JCB Power Systems Limited
(2) JCB Service
Claimants
- and -
Gnutti Carlo S. P. A
Defendant
(1) Gnutti Carlo UK Limited
(2) Gnutti Carlo SPA
-and-
Schaeffler (UK) Limited

Claimants
Defendant
Gaynor Chambers (instructed by DWF Law LLP) for JCB
Zulfikar Khayum (instructed by Deloitte LLP) for Gnutti
Sean O'Sullivan KC and Iain Munro (instructed by Eversheds Sutherland) for
Schaeffler
Hearing dates: 4th July 2023

RULING

Mrs Justice Joanna Smith (12:01 pm) Tuesday, 4 July 2023 Ruling by MRS JUSTICE JOANNA SMITH

1. At this case management conference, Gnutti applies for its CPR Part 18 application for further information from JCB to be heard, notwithstanding that it accepts that the application was served with only two clear days' notice, rather than the three clear days' notice required by the rules. The application seeks information in respect of two requests (referred to respectively as requests 4 and 13).
2. Mr Khayum's submissions in support of the application being heard today have been extremely persuasive. In general terms, this is exactly the sort of application that should be dealt with at a case management conference. Furthermore it is clear that JCB has been aware of the potential for this application to be made since 22 June and of the basis for the application in relation to request 4.
3. However, standing back, I must apply the overriding objective to this application. Ms Chambers for JCB has convinced me that it would be neither fair nor just to hear the substantive application today in circumstances where her clients have had so little notice of it. She says that JCB needs time to respond to what is, to be fair, a lengthy witness statement in support of the application and that her solicitors need time to take instructions in relation to the requests. In respect of request 13, Ms Chambers says that the need for instructions is particularly acute owing to the fact that she is presently unable to say whether information in relation to that request has already been provided by JCB to Gnutti in connection with earlier requests. 4. I appreciate that Mr Khayum says -- and I have some sympathy with this -- that the application for further information is really a simple one designed to provide clarity as to the pleaded case. It may turn out to be simple but, in light of what Ms Chambers has said, it is not fair to deal with it today and so I am going to refuse the application that it be heard.
5. However, I accept that the substantive application needs to be dealt with as soon as possible, not least because of the importance to Gnutti of understanding the way the case is advanced against it by JCB and so enabling it, as appropriate, to pass allegations down the line to Schaeffler. 6. In those circumstances, I am going to order that this application be dealt with on paper by me within two weeks and directions to that effect will need to be included in the order in due course. On the basis that the application will be determined in short order, it will still be possible to fix a tight timetable for the service of amended pleadings today.

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