

ENGLAND AND WALES / JUDGMENT

Hipgnosis Music Ltd v Mercuriadis & Ors

[2026] EWHC 82 (Ch) (20 January 2026)

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Neutral Citation Number: [2026] EWHC 82 (Ch) Case No: BL-2023-000899 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES BUSINESS LIST (ChD)
Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL 20/01/2026 B e f o r e : MR JUSTICE ADAM JOHNSON

Between: HIPGNOSIS MUSIC LIMITED Claimant

- and -

(1) MERCK MERCURIADIS

(2) HIPGNOSIS SONGS FUND LIMITED

(3) HIPGNOSIS SONG MANAGEMENT LIMITED Defendants

Edward Davies KC and Anna Scharnetzky (instructed by Forsters LLP) for the Claimant Edmund Cullen KC and Edward Granger (instructed by Payne Hicks Beach LLP) for the First Defendant Neil Kitchener KC and Patrick Harty and Dominic Li (instructed by Herbert Smith Freehills Kramer LLP) for the Second and Third Defendants Hearing date: 16th January 2026

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Introduction

This litigation involves claims by Hipgnosis Music Limited ("HML"). The Defendants are Mr Merck Mercuriadis ("Mr Mercuriadis") and two companies associated with him, namely Hipgnosis Songs Fund Limited ("HSFL 2") and Hipgnosis Song Management Limited ("HSML"). These can be referred to together as "the Companies". The case is about 5 weeks before trial. Detailed Statements of Case have been served and there have been various rounds of amendments already. By its present application, however, HML seeks to amend the Replies it has served in response to the Defences served by Mr Mercuriadis and HSML. The amendment application is resisted and so I am required to rule on it. The Claim in Outline The claim has its origin in a business venture under which HML and a subsidiary, Hipgnosis Copyrights plc ("Copyrights"), would be involved in the acquisition and exploitation of music catalogues. The initial shareholders in HML included Mr Mercuriadis with a 47.5% shareholding and a company called Solid Venture Capital Ltd ("SVCL") which also had 47.5%. SVCL, in turn, was owned by a Mr Gergeo and a Mr Ingmanson. It is alleged that by October 2015, Mr Ingmanson had transferred his shareholding to Mr Gergeo, but I understand it is disputed whether Mr Ingmanson had relinquished all control and influence over Mr Gergeo. In any event, it has now turned out that at the time, Mr Gergeo and Mr Ingmanson were both connected to a substantial fraud on Swedish pension funds. They have subsequently been convicted of criminal offences in Sweden. Mr Mercuriadis' position is that he did not know this to begin with, although he came to be aware of it later in their working relationship. Detailed questions about who knew what and when will obviously be for the trial. It appears to be accepted though that SVCL acquired at least some of its equity in HML through its use of funds deriving from the criminal scheme. Mr Kitchen KC made submissions to that effect and Mr Davies KC did not resist the point. There was also debt funding provided by SVCL and by another entity associated with Mr Gergeo. The Companies say that these funds must have been tainted too. The allegation by HML is that Mr Mercuriadis diverted for his own benefit the maturing business opportunity which was to be exploited via Copyrights. At the relevant time, Mr Mercuriadis was a director of both HML and Copyrights. It is alleged that he breached his fiduciary duties by orchestrating a scheme via which the music catalogues business came to be developed not by Copyrights but instead by the Companies, i.e. HSFL 2 and HSML. As to what was originally intended, the plan in early 2017 was for Copyrights to acquire music catalogues using funding to be raised by means of a £50m bond issue in Gibraltar. In the end this did not proceed. Mr Mercuriadis' evidence is that during this time he was becoming increasingly concerned about the activities of Mr Gergeo and Mr Ingmanson, and there were discussions about him acquiring the SVCL shares in HML. However, no sale eventuated. A different structure – namely an IPO – was then considered using corporate vehicles known as Hipgnosis Songs Fund Limited and Hipgnosis Songs Limited. Neither did that work, however, and the IPO was aborted in September 2017. Also in September 2017, Metro Bank closed HML's accounts, due to concerns about Mr Gergeo and Mr Ingmanson. In December 2017 they were both arrested in England. In the same month, Mr Mercuriadis presented a winding up petition as HML's sole director and it was subsequently wound up on 21 February 2018. Copyrights was struck off in March 2018 on the basis that it had ceased to trade. HSFL 2 and

HSML were incorporated after that, in June 2018, and in July 2018 HSFL 2 raised just over £202m by means of an IPO on the London Stock Exchange. HML brings its present claims via its Liquidators. It has also taken an assignment of claims by Copyrights. Broadly speaking the claims are for breach of fiduciary duty by Mr Mercuriadis, and against HSFL 2 and HSML for dishonestly assisting Mr Mercuriadis in his breaches of duty. The claims include claims for equitable compensation. It is the claims for equitable compensation that we are presently concerned with. It is accepted by HML that in order to make good its claims, there will need to be an assessment of what would have happened in a counterfactual world in which there had been no breach of duty by Mr Mercuriadis. What HML says would have happened is that Copyrights itself could and would have raised funds in an IPO on the London Stock Exchange in 2017. We now get to the issue. By Spring of 2017, there were already developing problems given what was known about Mr Gergeo and Mr Ingmanson. In their Defences, both Mr Mercuriadis and HSML say the taint arising from that association would have been fatal to any IPO by Copyrights taking place at around that time, and thus there was no real prospect – in the counterfactual scenario posited by HML – of any IPO ever getting off the ground. The amendment application is concerned with the response to this point. The present incarnation of HML's Reply to Mr Mercuriadis, namely the Re-Amended Reply, effectively takes the position that the problem was not insurmountable, because by April 2017 Mr Gergeo was not a director of Copyrights and would if necessary have resigned as a director of HML. That still though leaves the question of SVCL's 47.5% ownership interest in HML, and thus its indirect interest in Copyrights. As to this, the current Re-Amended Reply to Mr Mercuriadis again says that would not have been an impediment, and pleads as follows at para. 50.3.7: " ... upon the completion of an IPO by Copyrights, HML would not retain any significant shareholding in Copyrights. Therefore, if Copyrights had carried out an IPO, as it should have done, that would have resulted in SVCL (and hence Mr Gergeo) having no significant indirect ownership interest in Copyrights". Thus, the case presently is that any taint arising from SVCL's shareholding interest in HML would have been solved by the IPO itself, which in effect would have diluted that interest to a point where it had no significance. The same case is advanced in the current version of the Reply to the Defence of HSML. HML's Expert Evidence What has now happened, however, is that the evidence served by HML's financial markets expert Mr Christie has called for this position to be re-evaluated. His view is that something more would have been needed, before any IPO, to insulate HML and thus Copyrights from any possible contamination arising from an association with Mr Gergeo or Mr Ingmanson. He thinks that a formal arrangement of some kind would have been needed to assure investors. His evidence in his report at para. 25 is as follows: " The key prerequisite ... is that a negotiated arrangement would have been agreed prior to IPO between Mr Mercuriadis, Mr Gergeo, and HML (or, if different, whichever entity was established to act as investment adviser to the IPO entity) to end Mr Gergeo's involvement and influence in respect of HML, Copyrights and any other entity established with respect to the IPO save for a payment or payments in return for that surrender (the 'Mitigation Arrangement')." Mr Christie does not prescribe what form of agreement would have been required, but he does identify the objectives, which include (Report at para. 26.2) that "[t]he shares held by SVCL in HML ... would be disposed of ...so that Mr Gergeo's ability to exert any influence as an indirect shareholder over HML or Copyrights, or over the intended IPO, was

eliminated". Mr Christie emphasises, understandably, that this result would need to be achieved both "substantively and optically" (Report at para 26.5). At the same time, Mr Christie is realistic enough to recognise that Mr Gergeo would have wanted to receive something in return for SVCL's investment. Another objective he identifies is therefore that Mr Gergeo would have wanted some form of economic participation in the outcome of the IPO, although achieving that objective could not compromise the first objective of ensuring that Mr Gergeo was both "substantively and optically" removed from any "participation or influence" (Report at para. 29). Almost as an aside, at para. 215 of his Report Mr Christie also says that if his proposed "Mitigation Arrangement" had been put in place during early 2017, then that would also have addressed the problem later presented by the removal of Metro Bank's banking facilities in September 2017. Mr Christie says that because the reason for the closure of the Metro Bank account would no longer have existed, "... it is my assumption that the closure of HML's Metro bank account would therefore not have happened". The Proposed Amendment It is this evidence which has led to the proposed amendment. HML seeks permission to amend its Replies to Mr Mercuriadis and HSML to allege the following: "... if Mr Gergeo had been led to understand that it was necessary or advisable in the interests of Copyrights being able to complete an IPO or otherwise in the interests of HML that SVCL should cease to be registered as the holder of any shares in HML (which is a matter for expert evidence), HML contends that an arrangement could and would have been reached, if Mr Mercuriadis had been acting in accordance with his duties as a director of Copyrights and HML, under which Mr Gergeo obtained a legally enforceable entitlement to receive a share of the economic benefits to be derived from Copyrights' intended business (e.g. a contractual entitlement to receive an agreed proportion of the fees payable to the investment adviser) and SVCL ceased to be registered as the holder of any shares in HML". The pleading then goes on to rely, in support of the case that some form of agreement would have been achievable, on the fact that discussions had in fact been ongoing between Mr Gergeo and Mr Mercuriadis in around April 2017, about a possible sale of "almost all of the shares in HML held by SVCL". In his submissions, Mr Davies KC for HML emphasised that at the time, in early 2017, Mr Mercuriadis had his own keen interest in some form of transaction moving forward, and said that the same motivation would likewise have existed in any counterfactual scenario and means there are good reasons for thinking some kind of deal would have been struck. Outcome and Discussion That is the proposed pleading. The Defendants do not consent to it, and take a number of objections, the main points being that the pleading is vague and insufficiently particularised, and that it comes very late in the day, just a few weeks before trial. I therefore need to determine whether to give permission for the amendment. I have decided that I should not, for the following reasons. To start with, the parties were agreed about the overall approach I should adopt having regard to the powers reflected in CPR, rule 17.1(2)(b) and rule 17.3. The Court has a broad discretionary power to be exercised having regard to the overriding objective to deal with cases justly and at appropriate cost. Exercising the discretion involves weighing the relative injustice to the applicant if the amendment is refused against any prejudice to the respondent if the application is permitted: see *Various Aircraft Leasing Companies v. Saudi Arabian Airlines Corporation*

[2021] EWHC 2330 at [15(1)]. In his submissions for HML, Mr Davies KC argued that the exercise we are engaged in is constructing a hypothetical. Everything is therefore a matter of speculation. This should condition the degree of precision required in pleading terms, and it is not realistic to think that a hypothetical can be put forward with granular precision as to what would have been achieved. I agree with the general sentiment behind this. If the exercise is to construct a counterfactual then obviously one is conducting an assessment not of what has happened in fact but of what is likely to have happened but for the breach complained of. The assessment of loss is hardly ever a precise exercise for this reason and very often involves dealing with inherent limitations in the evidence available. All the same I cannot accept the submission that these factors justify the very general nature of the present draft pleading. In my opinion two other matters suggest that something more is required. The first is the nature of the proposed case. The second is the stage the proceedings are at and the practical consequences at this stage of allowing the amendment to proceed. As to the nature of the proposed case, I have two inter-related concerns. One is about whether the proposed pleading is properly particularised. The other is about whether the case advanced has a real prospect of success. By real prospect of success I mean a real prospect based on an assessment of the pleading on its own terms (see the White Book 2025 Edn. at note 17.3.6). It seems to me that latter question is obviously related to the first because if a pleading is not properly particularised, it is less likely to be viable and to have a real prospect of success. That is especially so if the point of the pleading is to address a problem of sensitivity and complexity facing the party putting it forward. In the present case, the difficulty facing HML is this. In order to make good its case it will need to allege and then prove that Mr Mercuriadis, in the counterfactual, would have entered into an arrangement which achieved the various objectives identified by Mr Christie. It seems to me clear that that would not at all have been a straightforward matter in the circumstances. The background is important. The need for an arrangement only arose because of the involvement of Mr Gergeo, Mr Ingmanson and via them SVCL, in a major fraud. SVCL was a key investor in HML, and thus indirectly in Copyrights, and at least part of the seed capital for that investment had its origin in the fraudulent scheme. Mr Kitchen KC emphasised that the same was also true of additional monies used to provide debt funding. That sort of background presents a problem of particular sensitivity in the context of a public offering of securities. The position on the evidence is now that, in order to accommodate this problem, an arrangement would have been needed which achieved at least two competing objectives. One, having regard to the position of Mr Gergeo (and possibly Mr Ingmanson) is that he would continue to receive financial benefits flowing from any IPO, justified by reason of SVCL's original investment. But another, likely contradictory objective, would be to assure the market that neither Mr Gergeo nor Mr Ingmanson had any ongoing involvement or association with any of the entities associated with the IPO. Achieving a balance between these competing objectives would be difficult. Some form of arrangement would need to be found, which in the context of an IPO would need to meet the approval not only of the parties to it but also of their advisers and the relevant listing authority, that held a balance between effecting a

clean break with the historic wrongdoing on the one hand, but making appropriate and fair market disclosures on the other. It is not at all obvious how such an arrangement would work. These points are critical context. It is not just a matter of saying that some form of arrangement could feasibly have been arrived to address the problems presented. That might be enough in some situations, for example if all that were required was a straightforward agreement for the sale of an existing shareholding. The characteristics of such an agreement are not difficult to construct and indeed might be described as commonplace. But here the parties in the counterfactual would have been presented with complex and delicate problems which demanded careful attention and would have required a creative and perhaps innovative solution, if one was practicable at all. The fact of the origin of SVCL's funds would not go away and would have to be dealt with somehow, and likewise the question of any ongoing influence by Mr Gergeo. Mr Christie's report rightly emphasised the importance of optics, and one can well understand why appearances would be key. But the question of appearances takes on a particular meaning in a case involving fraud. An undertaking to refrain from exercising power and influence is unlikely to be taken at face value if given by a person suspected of fraud, even if expressed in a contract. It seems to me that any viable pleading would need to go some way towards tackling head on how such acute practical challenges would in fact be addressed. I think it is fair for the Defendants to press the point and to ask how, in fact, Mr Christie's objectives would have been achieved. At the moment all the amendment says, in substance, is that an arrangement could and should have been reached which would have balanced the competing interests appropriately. But it does so only in very general terms, as Mr Davies himself accepted. All it says, in effect, is that it should have been possible for SVCL to relinquish its shareholding but for Mr Gergeo, via a contract, nonetheless to retain some form of entitlement to a share of the benefits flowing from Copyrights' intended business. This high level allegation is really only to the effect that something could have been done which would have addressed the problem. It does not really address the objectives stipulated by Mr Christie, because it is not clear how "optically" as well as "substantively", advisers and market participants would have been satisfied. In my opinion, the pleading is altogether too inchoate and aspirational to be permitted to proceed at this stage. This is in part a matter of basic fairness. In his submissions Mr Davies KC expressly accepted that his case was put at the most basic level, and that there will of course be many other structures available beyond the idea of a bare contract, which might legitimately be explored at trial and in particular during cross-examination of the witnesses. I think he is right about that. The outline description in the draft pleading gives a great deal of room for manoeuvre. But that only serves to illustrate the point that the Defendants do not presently know what they are dealing with and will find it difficult to prepare themselves to respond. It is well settled that a core purpose of the pleading exercise in litigation is to enable the parties to know the case they have to meet (see, for example, *Habibsons Bank Limited v. Standard Chartered Bank (HK) Ltd*

[2011] QB 943 , per Moore-Bick LJ at [12]). In my opinion, the proposed amendment, given its obvious limitations, fails that basic test. To take a specific example canvassed in oral submissions, it is quite difficult to see what instructions could usefully be given to the Defendants' financial market experts at the moment, to opine on the case advanced in the draft pleading. They might agree with the concept that, if a structure could be found which completely insulated any listing from contamination arising from the association with SVCL and Mr Gergeo, then an IPO would be viable. But they would be justified in saying that they would need to see more precisely what was proposed in order to deal with the point in a considered way. I do not think that concern is addressed by looking beyond the pleading itself at what Mr Christie says in his Report, because that too is expressed generally and is rather more a statement of what would need to be achieved than of how one would actually go about achieving it. The next matter to consider is the stage the proceedings are at. I have mentioned above already that the parties are about five weeks away from the start of trial. The case overall is well advanced. Disclosure has completed and expert reports have been exchanged or are close to exchange. It is plain that adding in a new issue at this stage would require further work on all sides. This was accepted by Mr Davies KC in submissions, but there was disagreement between the parties as to the degree of disruption which would be caused. There were a number of threads to this. One line of argument developed by Mr Davies KC was that it is often the case in large-scale litigation that amendments to statements of case have to be made to conform them to the developing evidence, including the expert evidence: see again *Aircraft Leasing Companies* at 15(2). Of course that is correct as a general proposition and I am sympathetic to it. However, one needs to look at the context of the specific case. In my opinion, the proposed amendment here would represent a significant shift in the case presently advanced, which at the moment is based on the premise that it would have been enough in the counterfactual for Mr Gergeo to have relinquished his directorship of HML. What is now being said is something quite different and it gives rise to more complex considerations. Where a proposed amendment, although inspired by the developing evidence, is nonetheless qualitatively different to the case presently being advanced, that is a strong factor against granting permission. There is also a related point as to the timing of the amendment. It is true that it arises out of Mr Christie's report, which was served only in October 2025. All the same, it seems to me that the central problem it identifies, of the special sensitivity presented by the background fraud in the context of a public offering of securities, is an obvious one and should not have come as a surprise to anyone. In *Quah v. Goldman Sachs International*

[2015] EWHC 759 (Comm) at [38(d)], it was said that another relevant factor involves looking at the consequences of the proposed amendment in terms of the consequential work to be done. This prompted some considerable debate before me. The Defendants submitted that considerable further work would be needed including (i) further evidence from Mr Mercuriadis; (ii) possibly, evidence from financial advisers who would have acted on any counterfactual IPO; (iii) further evidence from the financial markets experts, together

with meetings and preparation of any appropriate joint statement; (iv) disclosure – in particular, more detailed interrogation than has been conducted so far of the continuing involvement of Mr Ingmanson in influencing Mr Gergeo's activities, even after October 2015; and (v) further work for the quantum experts, calculating the impact of any mitigation arrangement on any award of equitable compensation. For HML, Mr Davies argued that these concerns were exaggerated and overblown, for example because (i) Mr Gergeo now has access to few documents (they were seized during his criminal investigation) and so his disclosure has necessarily been limited; (ii) there have already been disclosure searches carried out involving Mr Ingmanson and any further searches would likely be quite limited; (iii) any further evidence from Mr Mercuriadis is likely to be limited; and (iv) the Companies' financial markets expert, although not formally instructed to consider Mr Christie's report, has done so anyway and has already (informally) expressed an opinion about it (which incidentally is that Mr Christie's proposed "Mitigation Arrangement" would not, in practice, clear the way for a viable IPO). On this point, I tend to agree with Mr Davies KC that the points made by the Defendants were perhaps somewhat exaggerated. That does not change my view, however. In my opinion, the problem is really in identifying clearly what additional work would in fact be needed, given the very general nature of the pleading, and Mr Davies' concession that in practice there might be any number of ways of addressing the practical concerns identified by Mr Christie. Had the point been raised much earlier, there might then have been time to consider the different permutations through correspondence and/or formal Requests for Information; but now there is no time left for such experimentation before the start of the trial, and indeed it would be unfair to require the Defendants to spend time and resources engaged in it, when they are already deeply embedded in their existing trial preparations. I can put the matter another way. Where an amendment is advanced at such a late stage, it is incumbent on the party proposing it to articulate it as clearly and as comprehensively as possible, so its practical effects can be properly evaluated. I am not satisfied that is possible here. There is a related point, which it seems to me is about the amendment having a knock-on effect on other parts of the existing case, in a way which operates unfairly. That too needs to be part of the analysis at this stage. In a case which is as obviously complex as the present one, where the pleadings on each side are elaborate structures, moving one of the building blocks might easily result in consequences elsewhere. Mr Cullen KC gave a good example in his submissions. At present, what he called the "de-banking" of HML by Metro Bank in September 2017 is relied on as part of Mr Mercuriadis' case that no IPO involving HML would have been possible. Instead, a clean break would have been needed involving the establishment of new corporate vehicles. Yet part of Mr Christie's approach is to say that a "Mitigation Arrangement" would have avoided any "de-banking" (see above at [16]). Were that evidence to be accepted, it would have the effect of removing what Mercuriadis at the moment considers to be a very powerful point in his favour. I agree. Faced with this, Mr Davies KC said that the question of HML's banking arrangements is nothing new. It has been part of Mr Mercuriadis' case from the beginning, and if what Mr Cullen KC was saying was that

expert evidence on banking practice was needed, he could have asked for it long before now. Respectfully, however, I do not consider that meets the point. No-one before now has been offering the view that the problem of HML's banking arrangements could be overcome. Now Mr Christie is saying that, or is at least saying it is safe to assume it would be a necessary consequence of any "Mitigation Arrangement" being concluded. I think Mr Cullen KC was correct to argue that it would be unfair for Mr Mercuriadis to have to live with the risk of that proposition being accepted, at least not without the ability to put forward his own expert evidence on banking practice. That must be right, in my view. It is a big assumption, and may not be an accurate one, to think that the sort of arrangement that might pass muster in launching an IPO, would also – necessarily – be acceptable to the entity which all along had been providing banking services to HML, and which therefore would be highly sensitive to the risks associated with money laundering. I should note finally that Mr Davies KC emphasised that the refusal of his amendment application would be a terminal matter in terms of the ability to advance this aspect of the case in a positive way. I make due allowance for that in the exercise of my discretion, but all the same do not consider that it tips the balance in favour of allowing the amendment. The overriding objective is to deal with cases justly and at proportionate cost. If (as I consider) the proposed amendment is not viable and has no real prospect of success, there is no injustice in grasping the nettle now and accepting the consequences described by Mr Davies. That is sensible and appropriate case management in a matter which is already crowded with issues. To do the opposite and to give HML the benefit of the doubt would, I fear, only be to store up trouble for the future and to risk wasting considerable time and costs.

Conclusion

For all those reasons my conclusion is that the amendment application should be refused. I would ask the parties please to co-operate in drawing up an appropriate form of order which reflects that outcome. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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