Neutral Citation Number: [2021] EWHC 2321 (Ch)

Case No: BL-2021-000520

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, 7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 23/08/2021

Before :

SIR ANTHONY MANN

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Between:

(1) Steve Jones **(2) Paul Cook**	**Claimants**
- and -	
(1) John Lydon **(2) Glen Matlock** **(3) Peter Button (as trustee of Simon Beverley's Artistic Estate under the will trust of Sarah Ross, decd)**	**Defendants**

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- -

Mr Edmund Cullen QC and **Mr Edward Granger** (instructed by **Lee & Thompson LLP**) for the **claimants**
Mr Mark Cunningham QC and Ms Amanda Michaels (instructed by **Ince Gordon Dadds LLP**) for the first defendant
The second and third defendants were not represented and did not appear.

Hearing dates: 15th, 16th, 19th, 20th, 21st, 22nd and 27th July 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR ANTHONY MANN

Sir Anthony Mann :

Introduction

1. The parties to this action are the former members of the punk band The Sex Pistols and the trustee of the artistic estate of one deceased member. The band operated as a band between 1975 and 1978 before breaking up. They performed a few come-back tours in the 1990s and early 2000s. Despite their relatively short life as a group they had a very large impact on popular music and popular culture and acquired a fame and renown which lives on today. As a result their music, performance, recording and image rights have a very significant value even today. This action concerns the exploitation of the rights arising out of their activities as a band.

2. Their lead singer and main lyricist was known as Johnny Rotten, but his real name is John Lydon, and he is the first defendant. Two other band members, Mr Jones and Mr Cook, are claimants. Mr Matlock, the second defendant, is the fourth original member but he left before the band split up. He was replaced by Simon Ritchie (or Simon Beverley - both names are used in these proceedings), otherwise known by his stage name Sid Vicious, in 1977. Because of the confusion as to his proper surname, I shall use his stage name hereafter. He died in 1979 and his artistic estate has been formally represented by the third defendant, Mr Button, as trustee since 1996. Mr Button is a qualified and experienced solicitor who operates in the media world.

3. This action turns on the construction, effect and enforceability of a document known in these proceedings as the Band Member Agreement ("BMA"), entered into in 1998 by all the parties to this action. It deals with how the parties are to deal inter se with decisions as to the future exploitation of the band's music and other rights and on its face seems to allow for a majority of the right holders to bind the minority as to whether or not any exploitation takes place. It was never invoked until recently, but now the claimants, Mr Matlock and Mr Button wish to give permission to use the band's music in a proposed series of TV programmes to be directed by Mr Danny Boyle, based on a memoir written by Mr Jones. Mr Lydon opposes that permission. The claimants seek declaratory and injunctive relief in this action, in order to establish and enforce what they say are his obligations under the BMA. Although they are not claimants in the action, and are not represented, Mr Matlock and Mr Button support the claim and have provided witness evidence for the claimants. Mr Lydon resists all that and says that he is not obliged to participate in the grant of rights on the true construction and effect of the agreement, and that in any event the other parties are estopped from asserting their claims on the footing that the BMA has never been relied on in the past and the various band members have always been allowed a veto on any particular act of exploitation.

4. Mr Edmund Cullen QC led for the claimants before me; Mr Mark Cunningham QC led for Mr Lydon.

Title to the rights to Sex Pistols IP

5. The rights of the various members of the band in their music and their performances has become fragmented over time, with different members or sub-groups assigning or licensing their various rights to various organisations, and in some cases dealing with geographical regions (N American vs rest of the world) differently. Rights have been assigned, or where they are retained they are administered by licensees. The sort of consents necessary for the exploitation of Sex Pistol music would therefore first need to come from an assignee or licensee.

6. Most of the documentation does not require the consent of the assigning band member to the assignee's or licensee's exploitation of the rights in question. In respect of the current proposed TV series, all rights holders or administrators have given consents and approvals for all necessary rights, save for Warner Chappell Music in respect of Mr Lydon's interest in publishing rights excluding North America, and Universal Music Publishing (formerly BMG) in respect of his North America publishing rights. Though they may be entitled, under the terms of their assignments, to give consents irrespective of Mr Lydon's wishes, they have both indicated that they will not do so unless he consents, or at least they are awaiting the result of these proceedings. Both those companies have given consents in respect of various interests held from other members of the band, so as far as they are concerned there is no inherent objection to the TV project. What is de facto holding up getting a complete hand is Mr Lydon's refusal to consent in respect of the interests just identified. The objective of these proceedings is therefore to deploy the BMA to procure that consent, or its equivalent, as the last piece of the rights jigsaw. The other band members (including Mr Button – from now on where the context admits that expression will include Mr Button) have taken a majority decision within the BMA and seek to enforce it.

The events giving rise to the present dispute

7. Relationships between band members have always been strained, even going back to the days when the band was performing. Mr Lydon has not shrunk from describing his difficult relationships with the other members (difficult in different ways with different members), and that has persisted even through their comeback tours in the 1990s and 2000s. It persists today.

8. In 2016 and 2017 Mr Jones published a memoir entitled "Lonely Boy: Tales from a Sex Pistol" in the UK and then in North America. A production company expressed an interest in it for a limited TV series (called "Pistol" for the purposes of this hearing - I shall use that expression where necessary) and took an option in November 2018, and the well-known film director Mr Danny Boyle was engaged to direct it in 2020, which was considered quite a coup. The key focus of the series is understood by Mr Jones to be his time in the band and the London punk scene at the time of the Sex Pistols. Ms Anita Camarata has for very many years acted as manager for Mr Jones and Mr Cook (and for a time for Mr Button) in respect of their various Sex Pistols rights. She has had various dealings in relation to the rights associated with the book on behalf of Mr Jones and shooting for the series has been going ahead and was expected to finish in July 2021, with post-production to finish in April 2022.

9. The producers of Pistol wish (for obvious reasons) to use Sex Pistols musical material in the series, and it seems to be understood by the main players in these proceedings that the series will not happen if the music cannot be used. For that purpose a "sync licence" is required from rights holders. The rights holders are (as appears above) various entities. Insofar as they seek de facto consent from band members, Mr Jones, Mr Cook and Mr Button were all in favour of the project from the outset, and Mr Matlock agreed once he had spoken to Mr Boyle. Ms Camarata was handling the project on behalf of Mr Jones, and she had the task of dealing with Mr Lydon at the appropriate moment. When the project was originally under consideration Ms Camarata was less sure of Mr Lydon's position but hoped he would agree once he appreciated Mr Boyle's vision and involvement. She understood that if necessary she could rely on the majority voting provisions of the BMA but Mr Jones was keen to get Mr Lydon's "blessing" (her word) for the enterprise, as was Mr Cook (and, she says, herself).

10. Ms Camarata (and Mr Jones) did not involve Mr Lydon at an earlier stage, which could well be part of the source of the difficulty which then arose, though I do not consider her to be blameworthy in that respect. She says that she told him a little later than she had planned (in January 2021) because of some aggressive correspondence with his representatives in relation to another matter. On 4th January 2021 she emailed Mr Stevens (Mr Lydon's manager) to inform him of the show and that Mr Lydon would be notified of requests for licences through the "normal channels", which I understand to mean the companies which held the relevant rights. Mr Lydon was provided with scene descriptions and had an opportunity speak to Mr Boyle about the matter together with the actor depicting Mr Lydon. However, Mr Lydon did not wish to do so, and Mr Boyle spoke to Mr Stevens instead.

11. Mr Lydon objected to a number of things. When news of the project became more public very shortly after he was told about it, he says he was hounded by the press to an unacceptable degree. He found out that Mr Boyle had been engaged in late summer 2020, which was some time before Mr Lydon was informed about the project at all. He considers he has not been consulted at all about something that was about a band in which

he was a central figure (no-one disputes that he was a central figure). He feels he has been treated with disrespect. For all those, and probably other, reasons he has refused to give his consent to the use of Sex Pistols music in the series. Since his motivation, and the justifiabilty of his stance, is not relied on by him in this action, I do not need to develop his thinking further.

12. It will be convenient to deal at this stage with various allegations levelled against the claimants and Ms Camarata about this series of events. Mr Cunningham put to them firmly that they engaged in concealment of the project from Mr Lydon. His suggestion was that Mr Lydon should have been told about the project at a much earlier stage and that that was not done because they wished to conceal it from him. They all rebuffed that suggestion. Ms Camarata gave the most elaborate explanation of why it was not necessarily appropriate to inform him earlier, and it boiled down to the fact that the project was too uncertain to take to Mr Lydon at any earlier stage. Getting the series to the stage when it was obviously going to happen was a lengthy and uncertain process. The first stage was the grant of an option, but that had little significance in this context, and they then had to get writers on board. Several turned it down before one was found. Then a director had to be found, and other things had to be done. The Coronavirus pandemic introduced a new raft of uncertainties, and even as late as December 2020 Ms Camarata was very concerned that the project would not happen, because of the pandemic. Then it became apparent that it would start, and that, she said, was the time to approach Mr Lydon, which she did after Christmas.

13. Whether or not an earlier communication would have changed Mr Lydon's views of the project, I find that there was no concealment of the project in any meaningful or perjorative sense. Ms Camarata (who would be likely to take the timing decision) reasonably considered that there was insufficient to take to him at any point before she did. There would be little point in taking it to him at the date the book was optioned because there would not be anything meaningful to take. After that there were uncertainties which needed to be resolved. It is apparent to me that the relationships between the parties might justifiably lead to caution being taken to an approach to Mr Lydon in order to make sure that difficulties were not caused by too early an approach and to enable a proper picture to be presented to him. I do not consider there was culpable concealment in the non-involvement of Mr Lydon earlier than it happened.

14. Nor do I consider that there was anything particularly unfair about the manner in which the other Sex Pistols, and Ms Camarata, set about informing Mr Lydon. They had a project to manage, and they had Mr Lydon (and his manager Mr Stevens) to manage as well, and a view had to be taken as to how to go about the matter. When they did inform Mr Lydon of the project they offered him access to the director, actor and show runner so that that he could be informed of the proposed content of the series, and they offered him scene descriptions. He did not avail himself of those opportunities. It is true that a request by Mr Lydon to see scripts was declined, but that is because the producers would not release them to anyone - I accept Ms Camarata's evidence on this. In his witness

statement Mr Lydon complained that he still did not know what the series was or was intended to be. So far as that remains the case that is to a significant extent down to his declining to speak to Mr Boyle, the actor portraying him or the show runner. I therefore reject the allegation of unfairness.

15. On Mr Lydon's pleaded case all those matters are not relied on for any purpose at all. However, the claimants' witnesses were cross-examined on the matter, so it was apparently important to Mr Lydon. It seemed that the matter went to credit, but in final submissions Mr Cunningham sought to draw the matters into his unconscionability arguments on estoppel. I therefore have to deal with them, for that reason, as well as being required to do so in fairness to the witnesses who had accusations levelled against them.

16. When Mr Lydon refused his consent the other band members invoked the majority voting provisions of the BMA. Mr Lydon still refused to give his consent. As appears above his two rights holders have not given their consent as a result of Mr Lydon's stance, so currently Sex Pistols music material is not available to Pistol.

17. Those facts led to the commencement of these proceedings on 22nd March 2021 in which the claimants seek confirmation that the majority can bind Mr Lydon in licensing the music, and for associated relief. They originally applied for interim relief, but in lieu of interim relief being granted a speedy trial was ordered. It is that speedy trial that has came before me. The condensed period for getting this case to trial has led to a need to adopt a slightly more flexible approach to newly introduced or unpleaded material, and to an unsatisfactory, but necessary, technique for dealing with a without prejudice objection to some material - I have had to deal with it alongside this judgment when in normal circumstances it would have been much more appropriate to take it as a separate application before the trial, and preferably not before the trial judge. This point is amplified below. The need for a speedy answer also led to the necessity to stick to a fairly tight timetable, which in turn led to cross-examination which may have been briefer than would otherwise have been the case in one or two instances. However, having conducted the trial, I am quite satisfied that no unfair disadvantage has resulted to either side as a result of all that.

Witnesses

18. In this section I set out the witnesses I heard and brief comments on the nature and quality of their evidence. The substance of their respective evidence appears elsewhere.

Steve Jones

19. Mr Jones is one of the founder members of the band. He gave his evidence via a video-link from California. Although the audio was at times somewhat choppy, I was satisfied that neither he nor the court was significantly disadvantaged by that.

20. He was not a sophisticated man in business terms, and understandably left all his licensing affairs to Ms Camarata, with whom he has had a long and trusting business relationship. He was obviously not consulted to any deep level (and sometimes not at all) on many of the transactions conducted for him by Ms Camarata, though he had some involvement in one or two particular transactions. He professed a willingness to be fair to Mr Lydon, and I accept his genuineness in that respect. He also accepted that he did not like Mr Lydon, though he acknowledged the latter's centrality to the success and reputation of the band. I do not consider that his dislike of Mr Lydon affected the truth and accuracy of his evidence.

21. His witness statement was short, which was consistent with his lack of knowledge of detail of any particular transactions. He was, overall, a credible witness on matters of which he could give evidence, which were not that many.

Ms Anita Camarata

22. Ms Camarata has managed Mr Jones in respect of his Sex Pistols interests since 1984, and Mr Cook and the interests of the Sid Vicious estate shortly thereafter. She claims to be, and obviously is, an experienced music manager, managing transactions for others as well as those three people. She is based in Los Angeles. As I have already found, Mr Jones generally left his affairs to her to manage, though she did consult him and on some occasions he had strong wishes which she implemented. The same is true of Mr Cook. Mr Button was a little different. Since Mr Button is a solicitor he was a bit more hands-on in relation to the music affairs of the Sid Vicious estate, though she acted as manager in relation to that estate as well.

23. Since Ms Camarata was central to the management of the affairs of Mr Jones and Mr Cook, her own acts, views, intentions and beliefs are central to their cases. Thus any assumptions that she might have about the current enforceability of the BMA would be as significant to this case as theirs, because she falls to be treated, for these purposes as their agent, a situation not always acknowledged in the submissions made to me. She gave evidence of the conduct of their business affairs, so far as relevant to this trial. She struck me as being a very able and conscientious manager, and a truthful witness. She

was firm in her views about the continued enforceability of the BMA, but not to the point of obduracy or giving the impression she was toeing a party line. I considered her to be a credible and truthful witness on whose evidence I could rely.

24. It was suggested to her that she had deliberately suppressed some evidence when making a case for urgency in the March interim application. I acquit her of that charge. Mr Cunningham instanced a number of other instances in her evidence which were said to reflect adversely on her credibility. I do not consider that any of them have the effect contended for by Mr Cunningham. In particular I do not think that there was anything sinister in her failing to state in her witness statement that she was on a commission for activities generally (which is hardly surprising) or that she was an executive producer on the proposed TV series. Mr Cunningham invited me to find that she was motivated only by monetising the Sex Pistols and the series and was not interested in quality control. I reject that particular criticism too. She was obviously concerned to maximise financial returns for her clients. That was her job. But I do not consider that that meant she was not interested in quality control, though from time to time she may have had a different view from Mr Lydon as to what that required.

Paul Cook

25. Mr Cook was an original band member of the Sex Pistols. He gave evidence of his own assumptions about the BMA (he knew about it at all material times and did not think it had ceased to have effect) and, so far as he could, of the individual transactions relied on by Mr Lydon to support his case on the existence of vetoes and the requirement of unanimity. In fact, because he left so much to Ms Camarata and because of the passage of time, he could not give much evidence about that. He was a plain-speaking, straightforward and reliable witness who did not exaggerate or try to fill in gaps which he could not properly fill. No particular criticism was made of him in Mr Cunningham's final submissions.

Glen Matlock

26. Mr Matlock was a founder member of the group who left in 1977 because of disagreements; he was replaced by Sid Vicious. He was slightly more casual in his demeanour than the other claimants band member witnesses, but he was again, in my view, a straightforward and honest witness.

Mr Peter Button

27. Mr Button is a partner in the solicitors' firm of Clintons and has been for many years. He has great expertise in the entertainment business. Over the years he has represented Sid Vicious's artistic estate as trustee, first directly for the estate itself and then as succession trustee for various subsequent beneficiaries. The details of that do not matter.

28. He gave evidence of his activities, attitude, views and assumptions in relation to the matters in issue in this action. Again, I consider he was a straightforward witness who was doing his best to give accurate evidence of the matters about which he was asked.

Mr Lydon

29. Mr Lydon gave oral evidence for more than half a day. He is (by his own admission) not an educated man in terms of formal education. He is, however, not a naive man when it comes to the assessment of Sex Pistols opportunities and the preservation of what he considers to be the Sex Pistols brand and legacy. He has Mr Stevens as his manager, and he no doubt needs one, but he took many of the underlying business decisions himself (Mr Stevens said he looked to him for instructions) and he was more capable of understanding some of the implications of legal matters than he sought to give the impression of in the witness box. I consider that he has, in his own mind, become fixated with the notion that the BMA cannot and should not apply, and that has coloured his recollection, narrative of events and the rest of his evidence, which contributed to his resorting to the mantras of unanimity, vetoes and the non-use of the BMA when faced with more difficult questions, rather than really addressing the points.

John "Rambo" Stevens

30. Mr Stevens has been Mr Lydon's manager since the early 2000s, having graduated there from his earlier status as providing security and being a personal assistant. There is no doubt that he is very loyal to Mr Lydon. He said in the witness box that he would not lie for him, but I consider that he has allowed his loyalty to colour some parts of his evidence. He too was given to resorting to the mantra of unanimity and the like, suggesting he was sometimes toeing a party line rather than really addressing the evidence.

Mr Harish Shah

31. Mr Shah was the accountant to the band (in the form of what is called the Sex Pistols Residuals, being a trust which holds the band's commonly held assets and rights) between

1986 and 2017, and has acted for Mr Lydon individually in that period too. He obviously acted as a business adviser as well. Since 2017 he has acted only for Mr Lydon. It would seem that prior to that time he had sided with Mr Lydon over the issue of persistence of the BMA when it arose in 2015 (in saying that I make it clear that I am not relying on evidence I received de bene esse in relation to a "without prejudice" issue) as is apparent from a conversation in April 2015 to which I will come. His inappropriate reluctance to acknowledge the content of that significant conversation, and the rest of his evidence and his performance in the witness box, lead me to consider that his loyalty to Mr Lydon's cause has coloured some of his evidence.

Mr Alexis Grower

32. Mr Grower is an experienced solicitor with decades of experience in the music industry. He became the solicitor to Mr Lydon, on Mr Shah's introduction, in 2010, and has remained his UK solicitor ever since. He was involved in significant events in 2014/2015 when the BMA came to the fore in negotiations between the parties, and has been involved in limited relevant incidents since then. I consider that he was an honest and reliable witness.

The genesis of the BMA and its subsequent deployment

33. As previously observed, the BMA is a document which provides for majority decisions in relation to whether and how Sex Pistols IP rights should be exploited. I have set out its terms in full in the Appendix to this judgment. The square bracketed "[ii]" in the middle of clause 2 is a manuscript addition, but nothing turns on that. It is not necessary to set out the Exhibits referred to in it.

34. Paragraph 1 deals with Compositions (ie publishing rights). It provides a mechanism for dealing with licensing which involves notifying other rights owners of requests for a licence and then the approval by a majority in clause 1(e). The approval mechanism is a form of consultation process. That should be noted because one of the points made by Mr Lydon in this litigation is that the BMA constitutes an oppressive mechanism in which he would play no part. One of the effects of the last sentence of clause 2 is to make existing approval rights of band members under existing agreements subject to the same majority voting provisions - a band member can be forced to give an approval which is provided for under an existing licence or assignment in favour of publishing and music companies.

35. Other rights ("Properties") are to be licensed on the basis of majority consent under clause 5. Clause 6 contains pre-emption rights which are not relevant to these proceedings.

36. Its validity is not disputed (now); nor is its general effect on its face as providing for a majority voting regime. The claimants (and Mr Matlock and Mr Button) rely on the majority voting provisions set out in clauses 1, 2 and 5. They provide for a majority to outvote a minority (which on the numbers involved in this case will be a single member) in relation to rights exploitation. Its purpose is clearly outlined in the second recital.

37. Of the witnesses, only Ms Camarata and Mr Button had a real recollection of the circumstances of the circumstances of this agreement. At the time Ms Camarata was managing the claimants and acted for them in that capacity. Mr Button acted for the claimants, and for himself as trustee, in its negotiation. They have some recollection of the circumstances and Mr Matlock has a generalised recollection. Otherwise none of the other parties or witnesses spoke to its circumstances. Mr Lydon claimed to have no recollection of the actual agreement until it was produced in circumstances appearing below. Mr Stevens was not on the scene at the time and Mr Shah was not involved in the matter.

38. Disclosed documents and the oral evidence illustrate the circumstances of its creation and execution. It took the best part of 2 years to negotiate and finalise the BMA. It is clear enough from the oral evidence and such contemporaneous documents as have survived that it was prompted by Mr Lydon's expressed desire to sell his North American publishing interests to a concern called BMG. BMG wished to have a letter of comfort from the other members of the band (and Mr Button) consenting to the sale and confirming that they had no claims affecting the rights. For their part the other band members (actually, Ms Camarata acting for the claimants) and Mr Button were concerned that the sale would result in Mr Lydon's losing control over licences or having little motivation to provide approvals for licences, which might cost them income. They therefore proposed that, as part of a deal under which they would provide the letter of comfort to BMG, they should all enter into an agreement to provide for majority voting on licensing matters. None of that was challenged at the trial. It is clear that Mr Lydon must have agreed, because he ultimately entered into the BMA.

39. At the time Mr Lydon was represented in these dealings by a US attorney (Mr Howard Siegel), an English solicitor (Mr Lander of Russells) and his manager at the time, Mr Eric Gardner. There is no doubt that the document was a fully negotiated document involving lawyers on both sides and that its purpose as a document providing for majority control was fully understood. In a fax dated 11th December 1997 Mr Button wrote to Mr Lander:

> "Because of this [viz the ability of a co-writer under US law to grant a consent binding the others] my clients insist that synchronisation licences, the use of compositions for advertising and commercial purposes and arrangements, adaptations and/or translations to compositions can only be granted if a majority approve the same.

> Similarly the exploitation of Sex Pistols recordings, videos, artwork and merchandising must be controlled by the majority. It is not right for any of the individuals if any one can hinder exploitation if requested by the majority.
>
> In light of the above perhaps you or Howard Siegel can redraft the document incorporating those amendments sent to you on 17th October which have confirmed in correspondence [sic] are acceptable."

40. This fax demonstrates a number of things. First, that the original drafts emanated from Mr Siegel on Mr Lydon's side. Second, the clear purpose of the document, which was to control and govern the grant of rights by majority voting. And third, the importance of it to the band members other than Mr Lydon, as must have been apparent to Mr Lydon. This last point goes to the likelihood of its being effectively abandoned, which Mr Lydon's case requires to have happened.

41. Thereafter various drafts and re-drafts passed. A fax of 17th December 1997 states that Mr Siegel was sending a copy of the then draft to (inter alia) his client for his review. The then draft was in substantially the same form as the final version.

42. Correspondence reveals that Mr Lydon's advisers were pressing hard for the completion of the documents. On 10th December 1997 Mr Siegel left a message for Mr Button which has been transcribed as follows:

> "Peter Its Howard Siegel in New York calling about John Lydon and the Sex Pistols. I have spoken with Alan Lander of course as I know you have and otherwise corresponded with him. I must tell you that I am beseeching you, I am begging you, pleading with you to finish this up before the holidays because after that it will likely have corroded to the point where John will have no alternative but to feel that the deal from BMG has been sabotaged by the failure of the group to agree to something that has already been agreed for almost a year. I have spoken with Gary Stiffleman [the other members' US attorney], Gary assures me that he has no issues, that Anita has no issues. Alan Lander tells me that as far as he knows you and he have agreed on everything. So either someone is mistaken or someone is just simply not following through. I have no idea where we stand in your view but I would be extremely grateful if you would let me know what in your view needs to be done. As far as I understand it as I say from the other participants everything has been done except that nothing has been signed. If

> you are waiting for a redraft or if you are waiting for Lander to clarify a point whatever it is Peter please tell me so that I can try to expedite it and avoid a whole bunch of legal hassles. So if you would like to call Alan please do if you would like to speak with me that would be delightful."

43. This message shows how important the documents were, as does a following letter from Mr Siegel. On 15th December 1997 he faxed Mr Button, with copies to each of Mr Stiffelman (a lawyer acting for the rest of the band), Mr Gardner (Mr Lydon's then manager), Mr Lander (Mr Lydon's English solicitor) and Mr Lydon himself. In it he said:

> "Peter, it is essential beyond my ability to emphasize that this agreement [ie the BMA], together with the BMG comfort letter (copy attached) must both be signed by January 12th."

It goes on to propose ways in which Ms Camarata and Mr Stiffelman might assist in the process.

44. A letter from Mr Gardner dated 20th February 1998 to Ms Camarata enclosed the agreements signed by Mr Lydon and referred to the "extreme pressure" from BMG which meant it would "help tremendously" if the agreements were returned as soon as possible. This letter was copied to, inter alia, Mr Lydon.

45. It is apparent from a letter of Mr Gardner that Mr Lydon had signed the BMA by 20th February. The other parties signed on a date which is not apparent, but must have been relatively shortly thereafter. At any rate, they did sign. The signed document was not and is not dated.

46. A number of significant points flow from this narrative.

> (a) The BMA was a very important and significant part of the overall deal. It was important to the other band members because it gave them an important protection which they felt they needed. It was significant because it produced a very significant limitation on the rights of any one band member in relation to the IP rights covered by it, whether that was Mr Lydon (who was obviously its principal target) or one of the others. It was a price that Mr Lydon had to pay

to get the letter of comfort he needed for the assignment he wished to make (and which he did make).

(b) Mr Lydon must have been fully advised about the BMA and its consequences. On his side he had an English lawyer, a US attorney and his manager. He was copied in on significant documents pressing for its execution (see above). It is impossible to believe that he did not know what its effect was and I reject the suggestion made by him that he did not really know or appreciate its effect. That piece of evidence was a convenient contrivance. It is highly likely that, even if he did not read it himself, it will have been explained to him and he will have understood its effects. The inherent likelihood of that is reinforced by his own evidence about his concerns to protect the Sex Pistols legacy. A man with those concerns (which I accept he had) would expect to be made to understand important documents that he was signing. He would not have been cavalier about that.

(c) Its importance to the parties, and particularly to the non-Lydon parties, would have persisted in the period following its execution. There is no reason why they should have treated it as of no significance once it was executed, or at any particular time thereafter. Nothing was suggested as having happened which would have reduced its significance to the non-Lydon parties in the years that followed.

(d) The fact that Mr Lydon signed it is completely inconsistent with his assertion that he regards an agreement in those terms, depriving him of a veto, as shackling his wishes in an unacceptable way which would disincentivise him from participating in decisions about the exploitation of Sex Pistols rights. I return to this point below. For present purposes it is relevant to note that he must have made an informed decision to sign it and (if it is a shackle) to shackle himself.

(e) The agreement that he reached with BMG also introduced a term limiting the control which Mr Lydon could thereafter exercise over Sex Pistols rights. It contained a provision for him to give consent to certain exploitation, but that consent was not to be unreasonably withheld. He therefore did not have unconstrained control over these rights even at that stage. His lack of consent (which he professed to be so vital to the preservation of the Sex Pistols legacy) could ultimately be overridden by BMG if it chose to do so.

47. It is not apparent that the BMA was referred to again as between the parties until the end of 2014 when it emerged in the context of a dispute about a particular licence, to which I will come. There is a dispute on the evidence as to whether it was mentioned at a meeting in 2012 involving Mr Button, Ms Camarata and Mr Shah at the Savoy hotel. Mr Shah disputes this mention, and I favour Mr Button's and Ms Camarata's evidence, though since Mr Button accepted that Mr Shah was there as accountant to the band members as a whole it does not count so forcefully as a mention to Mr Lydon's representatives in particular. For some considerable time Mr Lydon thought and said it was so suspicious that he thought it was a forgery. However, he now accepts that it is not.

The issues in this case and the evidence generally

48. Now that there is no longer any issue as to the validity or authenticity of the BMA, the issues in this case are as follows:

> (a) Are the claimants (and Mr Matlock and Mr Button) estopped from relying on the majority voting provisions in the BMA?
>
> (b) If not, does the BMA on its true construction, or alternatively as a matter of implication, require Mr Lydon to grant a consent to the use of Sex Pistols music in the proposed Pistol TV series?
>
> (c) Are the claimants entitled to a declaration as to an obligation of Mr Lydon to comply with the majority wishes as to the grant of IP rights? This point goes to one of the heads of relief sought.

49. In order to establish his estoppel case Mr Lydon seeks to establish assumptions, acquiescence and representations by referring to over 20 instances where the granting of rights over Sex Pistols IP rights was considered and which he says evidence or give rise to one or more of those aspects of estoppel.

50. On the way I also have to decide whether certain evidence going to estoppel is admissibleor inadmissible as being part of without prejudice correspondence, and I also have to decide whether to allow Mr Lydon an amendment of his Defence to plead certain acts of reliance for estoppel purposes. I have in fact dealt with the without prejudice point in a separate judgment which will have to be read with this one in relation to certain points (see [2021] EWHC 2322 (Ch)).

The ingredients of estoppel

51. Mr Lydon relies on all the possible kinds of estoppel in this case apart from those arising from legal proceedings. He does not plead them all in his Defence. His Defence does not in terms refer to any of the established kinds, but it relies heavily on what it says is the consistent conduct of all members of the band in apparently requiring unanimity in respect of requests for licences of rights, and consistent conduct in not seeking to overrule a dissentient, in a manner which suggests that estoppel by convention, and only estoppel by convention, was relied on.

52. However, in answer to a Request for Further Information Mr Lydon indicated that he was relying on all conceivable kinds of estoppel, including "a combination or amalgam of all or some of [them]". The full pleading is as follows:

> "On the contrary, and as is apparent from the unrestricted language of paragraph 25 [of the Defence], Mr Lydon relies on the doctrine of estoppel generally, and contends that the facts and matters already pleaded in the Defence, and to be supplemented pursuant to the reservation made in paragraph 17, give rise to the estoppel stated in paragraph 25, and entitle him to rely on: estoppel by representation, and/or estoppel by convention, and/or proprietary estoppel, and/or promissory estoppel, and, so far as is necessary, a combination or amalgam of all or some of these."

53. The concept of a combination or amalgam of all the different types of estoppel is not something known to law. The law has, at least hitherto, developed on the basis that each type of estoppel has its own requirements, albeit they can be seen to be related - see *Tinkler v HMRC* [2021] UKSC 39 at para 28. However, the document then goes on to specify some of the ingredients of each of the types of each type of estoppel from which it can be seen that each kind of estoppel is indeed relied on. It is therefore necessary to have the law of all of them in mind. Fortunately the underlying principles were not in dispute.

54. Estoppel by convention arises where parties share a common understanding or assumption of a state of affairs which is not necessarily accurate, or where one party acquiesces in the erroneous misunderstanding or assumption of the other, and it is unjust to go back on the assumption. The principles have been summarised in a number of cases, the main ones of which received consideration in *Tinkler,* in which judgment was delivered a few days after final submissions in this case. The principles are not controversial, and I can take them from the decision of Briggs J in *Revenue and Customs Comrs v Benchdollar Ltd* [2009] EWHC 1310 (Ch); [2010] 1 All ER 174), apparently approved (with one rider) by Lord Burrows SCJ in *Tinkler* at para 45:

> "In my judgment, the principles applicable to the assertion of an estoppel by convention arising out of non-contractual dealings … are as follows. (i) It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them. (ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it. (iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter. (iv) That

> reliance must have occurred in connection with some subsequent mutual dealing between the parties. (v) Some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position." (per Briggs J in *Revenue and Customs Comrs v Benchdollar Ltd* [2009] EWHC 1310 (Ch); [2010] 1 All ER 174)

55. Although that dictum refers to non-contractual dealings, the authorities make it plain that the same principles apply to contractual dealings (whence the doctrine originated). There is also a gloss or elaboration on the first of those principles in that it has been made clear that "[the] first principle should be amended to include that "the crossing of the line between the parties may consist either of words, or conduct from which the necessary sharing can properly be inferred". That is a reference to the feature that the assumption must be "expressly shared between" the parties (see *Tinkler* at para 49).

56. It is necessary to clarify one additional matter in relation to the doctrine. The common assumption need not be a shared assumption if it is held by one party and the other has acquiesced in the first's assumption. This is apparent from the formulation in *Republic of India v India Steamship Co Ltd (No 2) ("The Indian Endurance")* [1998] AC 878:

> "It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, t*he assumption being either shared by them both or made by one and acquiesced in by the other*. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption …" (p913 per Lord Steyn but my emphasis).

57. This is significant in the present case because, as will become apparent, the individuals on the non-Lydon side of the matter never assumed that the BMA was not operative, nor had they forgotten about it. In his final submissions Mr Cunningham accepted that he could not rely on a common assumption about the existence or operability of the BMA, and that he had to rely on their having acquiesced in Mr Lydon's (alleged) belief that there was no majority voting rule in place.

58. In the light of the fact that the acquiescence case has come to the fore it is necessary to note that in order for there to be acquiescence in the assumption of another it is necessary for the first person to know of the assumption of the other. Mr Cunningham accepted that proposition, so it is unnecessary for me to lengthen this judgment by including authorities about it.

59. The estoppel is not necessarily final. Its effect can be suspensory -

> "… once the common assumption is revealed to be erroneous the estoppel will not apply to future dealings" (Hiscox v Outhwaite [1992] 1 AC 562, per Lord Donaldson MR at 575).

60. Care has to be taken in applying this sentence. The effect of the estoppel must depend on what justice in the case requires. If it requires that the estoppel should apply to "future dealings" it will do so; if it is sufficient to give effect to the estoppel that it should stop short of that then that is what the court will give effect to.

61. Next in his attempt to engage practically every form of estoppel known to lawyers Mr Cunningham invoked estoppel by representation. The principles of this appear most conveniently from the judgment of Carr J in *Spliethoff's Bevraschingskantoor BV v. Bank of China Limited* [2016] 1 All ER (Comm) 1034 at [156]:

> "The legal requirements of an estoppel by representation of fact are well known: (i) a representation which is in law deemed a representation of fact, (ii) that the precise representation was in fact made, (iii) that the later position taken contradicts in substance the original representation, (iv) that the original representation was of a nature to induce and was made with the intention and result of inducing the party raising the estoppel to alter his position on the faith of it and to his detriment, and (v) that the original representation was made by the party sought to be estopped and was made to the party setting up the estoppels (see for example Spencer Bower: The Law Relating to Estoppel by Representation (4th Ed 2004 at paragraph 1.2.3). The representation must be clear or unequivocal, or precise and unambiguous (see Chitty: Contracts (31st Ed) ("Chitty") at paragraph 3-090).

62. These principles were not in dispute before me. Mr Cullen drew particular attention to the need for the representation to be clear or unequivocal, or precise and unambiguous. In my view there is no reason why that should not apply to all forms of estoppel involving a representation even though that particular qualification does not appear in all their formulations. There is no reason why a lower standard of clarity should be required for other forms of estoppel.

63. Mr Cunningham next sought to invoke proprietary estoppel. This estoppel operates so as to confer some sort of proprietary right. I cannot see that it has any application to the present case, so I shall not consider it further. In any event it is impossible to see how

Mr Cunningham could succeed on this breed of estoppel without succeeding on one or more of the others.

64. Last, Mr Cunningham sought to invoke promissory estoppel. The principles of this version appear in *Harvey v Dunbar* [2017] EWCA Civ 60 at para 60:

> "Where, by his words or conduct one party to a transaction, (A) freely makes to the other (B) a clear and unequivocal promise or assurance that he or she will not enforce his or her strict legal rights, and that promise or assurance is intended to affect the legal relations between them (whether contractual or otherwise) or was reasonably understood by B to have that effect, and, before it is withdrawn, B acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it. B must also show that the promise was intended to be binding in the sense that (judged on an objective basis) it was intended to affect the legal relationships between the parties and A either knew or could have reasonably foreseen that B would act on it. Yet B's conduct need not derive its origins solely from A's encouragement or representation. The principal issue is whether A's representation had a sufficiently material influence on B's conduct to make it inequitable for A to depart from it."

65. Mr Cullen pointed out that normally silence could not qualify as a clear and unequivocal promise or assurance:

> "Saying nothing and "standing by", ie. doing nothing, are, to my mind, equivocal actions. This court has stated that, in the absence of special circumstances, silence and inaction are, when objectively considered, equivocal and cannot, of themselves, constitute an unequivocal representation as to whether a person will or will not rely on a particular legal right in the future" (Argo Systems FZE v Liberty Insurance Pte Ltd [2011] EWCA Civ 1572 at para 46).

I agree.

66. There are some principles which can be extracted from the above authorities which are particularly significant in this litigation. The essence of an estoppel is that a party is forced to accept a legal factual position which is not necessarily the actual position. It gives effect to the erroneous belief of the person with the benefit of the estoppel because the other person has either given rise to it (usually by a representation) or has shared it

(estoppel by convention where there is a shared assumption) or has himself/herself gone along with that belief without actually sharing it (estoppel by convention where one side acquiesces in the erroneous belief of the other). Estoppel by convention based on acquiscence fills a gap where a person is responsible for the belief of another without actually creating it in the first place by a representation. In *Tinkler* Lord Burrows described certain principles of estoppel by convention as follows:

> "51. It may be helpful if I explain in my own words the important ideas that lie behind the first three principles of *Benchdollar*. Those ideas are as follows. The person raising the estoppel (who I shall refer to as "C") must know that the person against whom the estoppel is raised (who I shall refer to as "D") shares the common assumption and must be strengthened, or influenced, in its reliance on that common assumption by that knowledge; and D must (objectively) intend, or expect, that that will be the effect on C of its conduct crossing the line so that one can say that D has assumed some element of responsibility for C's reliance on the common assumption."

The emphasis is mine. The acquiescence of the other party is what provides that element of responsibility. That is a point which is very important in the present case.

67. So far as the representation versions of estoppel are concerned, it is true that representations can be by word or conduct, but if a representation is to be by conduct then there must be facts which clearly demonstrate that the representation was being made. That will usually mean that there is some context in which the subject matter of the representation is somehow clearly in the background to the conduct in question. It is not sufficient if the conduct would be consistent with the representation if it were made expressly. It must go further and actually contain the representation in an implied way. Again, this is a point which is significant in this case.

The parties' awareness and beliefs as to the enforceability of the BMA from time to time

68. Until Mr Cunningham made clear in his final submissions that, in relation to estoppel by convention, he was no longer relying on a shared or common assumption about the applicability of the BMA, or the existence of a unanimity regime, it was important to consider the evidence on the non-Lydon side of the line as to what assumptions the participants held. The point is now of less importance because of Mr Cunningham's apparent acceptance that his case was now based on an assumption by Mr Lydon acquiesced in by the others. He did not seek to challenge the claimants' witnesses' evidence that they thought the BMA was available to them. However, the understanding of those witnesses is capable of being an important part of the background to other things that I have to decide, so I will make some findings about it. It will be convenient to deal with this separately before turning to a consideration of more detailed aspects of the dealings of the parties. I shall also make some findings about what the evidence, other than the specific incidents relied on by Mr Lydon, says about his own beliefs and assumptions.

69. So far as the claimants' side of the case is concerned, I am quite satisfied that none of the relevant individuals treated the BMA as being or becoming unenforceable, or that they considered that unanimity was always required in dealing with Sex Pistols IP rights. In his witness statement Mr Jones said that he had always known about the agreement and that majority rules applied to the parties, and in cross-examination Mr Cunningham said he was not going to challenge that; he went on to investigate the extent to which Mr Jones was said to have been aware that (according to Mr Cunningham) Mr Lydon thought it did not apply.

70. Mr Cook's evidence was to the effect that he was aware of the effect of the BMA and he had always believed it was effective. He was not challenged as to his general awareness.

71. Mr Matlock's clear evidence was he was aware of the effect of the BMA and never assumed it had ceased to have effect. He was not challenged on that. He did not accept that any instances of alleged vetoes which were put to him were in fact vetoes.

72. Ms Camarata's evidence was that she actually wanted the BMA in the first place in order to protect the interests of her clients. That was not challenged. In cross-examination she presented the history as being one in which she herself proposed and promoted the BMA because of her concerns about one band member being able to block exploitation (Day 3 p99). Her evidence was that she has always been aware of the BMA and believed it to be a valid and controlling agreement. That particular belief was not, as such, challenged by Mr Cunningham. She was challenged on various transactions in which it was suggested that she acknowledged, gave effect to or accepted a veto by a member of the band, but that is as far as the challenge went. It was never suggested how it might be that an important agreement, apparently promoted by her to deal with a particular problem, and which retained its significance, might have lost its effect in her mind so as to cause her to forget about it or to assume it did not exist. Such a suggestion would not have been plausible, though it was inherent in the pleaded form of the Defence. She was challenged on some of the wording she used in emails sent in relation to the detailed transactions relied on by Mr Lydon (a "need" for the consent of Mr Lydon). I consider that in context below, but for present purposes I can summarise by saying that I do not consider that that wording demonstrates an otherwise inexplicable change of heart about the BMA. I find that at all times since its execution Ms Camarata was aware of the existence and availability of the BMA. Nothing else is plausible in the circumstances. This is an important finding because, bearing in mind her position as agent for Mr Jones and Mr Cook, and her involvement in the acts said to acknowledge the availability of a veto, her assumptions are as important as theirs.

73. Mr Button's evidence was that he was aware of the BMA at all times since he signed it. He was aware of its purpose and apparently agreed with that purpose. As an experienced solicitor he is more likely to have been aware of its need than, perhaps, the band members themselves, and yet again no real basis was suggested to him (or me) as to why or how it was that he forgot about it or decided that it was no longer needed. I find that he, too, had no cause to consider it abandoned at any stage and did not do so.[1]

74. Mr Lydon's evidence of this own belief was varied and prima facie implausible. He said it was obvious that he did not understand it. I do not accept that evidence. He is canny enough in relation to Sex Pistols affairs to have understood what it said at the time, and he was surrounded by professionals who will have explained it to him. I do not believe that, in relation to Sex Pistols matters which he obviously considered to be generally important, he would have signed anything whose effect he did not understand. Then he claimed to have forgotten about it. That is a little more plausible, but still unlikely. At one point in his cross-examination he suggested that the BMA was not relied on as soon as it was executed because it would not work. I reject that suggestion and do not accept that even he thought that at the time. Importantly, he did not suggest that any idea that it was not in operation stemmed from anything that the other band members or Mr Button said.

75. In fact there is good reason to suppose, and I find, that Mr Lydon was still aware of, or was at least reminded of, the BMA in 2009. In June of that year Russells were acting on his behalf in relation to a dispute about the control of image and merchandising rights in relation to Sid Vicious material (the Live Nation incident, referred to in more detail below). Mr Lydon was apparently very concerned that he alone should have the right to control these matters, so as to preserve the "goodwill" in Sex Pistols-related material. It was not suggested that other band members should be involved in this. I was shown a draft agreement which gave Mr Lydon the right to pre-approve any use of the material.

76. In the course of correspondence between Mr Organ of Russells on the one hand (acting for Mr Lydon) and Mr Button on the other Mr Organ wrote that he had spoken to Mr Lydon about the matter and that Mr Lydon had a couple of comments of his own, and the letter goes on:

> "I explained to you in some detail why the agreement is with John and not with SPR [ie Sex Pistols Residuals, a description of all the original band members other than Mr Matlock, plus Mr Button] because this was the first point that you raised during our conversation."

[1] In the interests of preserving the partitioning required by my having heard material said to be without prejudice, but reflecting the fact that I actually heard evidence about it, I record in this footnote that if I were entitled to take into account the without prejudice material said to indicate he had forgotten about it, I would have found that it did not have that effect and Mr Button had not forgotten about it.

> John feels very strongly that the goodwill in Sex Pistols has to be preserved and maintained by this agreement (amongst other things). He is not prepared to run the risk of being out-voted in relation to any issues that may arise."

77. So Mr Organ was explaining why it was that Mr Lydon, rather than the band as a whole, should control this asset, and the reason was to avoid his being outvoted. That can only be a reference to the voting mechanism of the BMA of which Mr Organ will have been aware (his firm was acting at the time of its creation). That demonstrates that Mr Organ was aware of it at the time, and it also makes it likely that he discussed the point with Mr Lydon, not least because the letter itself demonstrates that the underlying matter was discussed with Mr Lydon, and the desire to preserve Sex Pistols goodwill is a known concern of Mr Lydon. I am prepared to find, and do find, that these negotiations, and the writing of this letter, were an occasion on which the effect of the BMA was discussed with Mr Lydon and he was reminded of its existence (if, contrary to the probabilities, he had forgotten about it). That being the case, it is prima facie unlikely that he would have forgotten about it again by 2014, when the point raised its head again.

78. So far as Mr Stevens is concerned, he was not on the scene as a manager when the BMA was agreed, and it is not apparent when, if ever, he became aware of it until 2014. It may not have been in his mind for most of the time until then.

79. It follows that it is prima facie unlikely that Mr Lydon had completely forgotten about the BMA at any stage. I would, however, accept that it probably did not come into his mind until something caused it to be put there, and that his own conviction as to his importance to the Sex Pistols brand (a view held by others) may have put him in a mindset where he considered that in practice he should have a veto, but that is as far as it goes.

80. In coming to those conclusions I have not pre-judged the particular incidents which Mr Lydon relies on as demonstrating his belief (and the belief of others) that he and others had a veto on rights exploitation transactions. I shall consider those episodes one by one and consider whether they are capable of supporting Mr Lydon's case as to his alleged belief and the acquiescence in it by others.

81. That deals with what the relevant participants themselves knew. So far as the case is based on estoppel by convention by acquiescence is concerned, Mr Lydon has to demonstrate not only that he believed (assumed) the BMA to be of no effect and/or that unanimity was required in rights decisions. He also has to demonstrate acquiescence by the other band members in those beliefs (because a shared assumption is not relied on).

Mr Cunningham accepted the proposition that acquiescence requires knowledge – one cannot acquiesce in something that one does not know about. So in order to succeed he would have to demonstrate that the other band members knew that he thought the BMA was of no effect, or that any member had a veto on rights exploitation. There is no evidence at all that they had such knowledge other than such evidence as might emerge from the specific incidents referred to below. So those incidents will have to be scrutinised not only for evidence that Mr Lydon had the belief he claims to have had; they will also have to be scrutinised for evidence that the other band members knew about that belief. I can at this stage summarise the effect of that evidence by saying that it in no way supports any allegation of knowledge until 2015.

The claimants' (and others') views on the deployment of the BMA

82. There is another common theme running through this action in relation to the availability of the BMA which I can usefully deal with in this separate section and before turning to the individual events which are relied on by Mr Lydon as proving his estoppel case. That theme is the views of Ms Camarata, her two clients, Mr Matlock and Mr Button, to matters of licensing and the risks of deploying the BMA.

83. While they all disclaimed a belief that any individual had a veto, they all acknowledged that it was highly desirable that they act as harmoniously as possible in relation to all their dealings. That meant trying to produce a general agreement where possible, and avoiding falling out. Ms Camarata in particular considered that that was in the long term interests of the band members and considered it was necessary if the band was ever to get together again on a tour (which has now not happened for over 15 years). Tours were ways of reconnecting with fans (as she explained to Mr Button) and keeping the brand going. She also considered that co-ordinated and agreed approaches were generally in everyone's best interests.

84. I accept that evidence. They also all acknowledged that deploying the BMA and enforcing a majority vote would be very disruptive to relationships, so they were reluctant to deploy it. Mr Jones spoke of the need to "keep the ball rolling" by not damaging relationships, and that there would be a risk to that process if the BMA were deployed. That was a sentiment shared by Mr Cook, Ms Camarata and Mr Button. Ms Camarata accepted that what had happened in the present case demonstrated how a disagreement over the BMA might be fatal to the future of the band, though she hoped it would not be. To that extent, therefore, all the band members acknowledged the dangers of using the BMA.

85. However, that is not the same thing as acknowledging that the BMA should be treated as not being in force, contrary to suggestions made by Mr Cunningham. The dangers that

existed will have existed from the moment the BMA was signed, yet it was signed. It is perfectly consistent to say that it would be dangerous to invoke the majority provisions in the BMA whilst at the same time holding the view that it could be invoked if necessary. Having heard all their evidence, including evidence on Mr Lydon's particular instances where the point arose, I accept that the band members (and Mr Button) and Ms Camarata held that position. It does not mean that they accepted, or assumed, that the BMA had no effect (or that unanimity was required), or that they knew that Mr Lydon held that view. At most it means they would have to make a decision on deployment of the BMA wisely, and then handle the matter carefully; it did not mean that there could never be a deployment.

86. Mr Lydon's case on assumptions by the claimants seemed to presuppose that if the BMA were really treated as being enforceable then the claimants (through Ms Camarata) would have enforced it on every occasion on which it might have been deployed in order to procure a transaction that she favoured. Again, this is a fallacy. Just because it is known to be available it does not follow that it will always be used; so it does not follow that a failure to use it means that it is thought to be of no effect. It is perfectly plausible that the claimants (and Ms Camarata) would take the view that they preferred consensus if it could be achieved, and be willing to forego their preferences in the interests of keeping everyone onside. That is what I find happened in large numbers of the incidents relied on by Mr Lydon in this case.

87. In reaching these conclusions I am not pre-judging what happened on the various occasions which I now have to analyse. I reach them as a result of having considered the totality of the evidence on those matters, and the rest of the evidence. I set out my findings here rather than after the catalogue of those occasions because it is convenient to do so and to avoid disrupting the ongoing narrative too much.

Events said to found the estoppel.

88. I now turn to the long series of events which Mr Lydon says demonstrates that the parties never relied on or asserted the BMA as entitling a majority to over-ride a minority in the grant of rights and that the parties operated on the shared assumption (now an acquiesced-in assumption) that the majority had no such rights and that unanimity was required. The events, or some of them, are also relied on as being the instances of the making of certain representations (usually by conduct) on the topic. It is necessary to refer to them all here.

89. It should be noted that these events start in 2005. Until then the parties were apparently dealing with licensing and other matters without any apparent differences or disagreements. That period says nothing about the claims of Mr Lydon in the case. Apart from there being no incidents from which Mr Lydon can derive assistance, Mr Lydon

does not rely on anything in that early period as amounting to an acquiescence in relation to any belief he may have had (but probably did not have) about the absence of the effect of the BMA.

90. I also add that the final presentation of Mr Lydon's case left me somewhat uncertain as to the reliance which was still being placed on pre-2014 events, because Mr Cunningham's written final submissions seemed to proceed mainly from an allegation of an abandonment of the BMA in 2014 (as a result of events to which I will come). However, for the sake of completeness I will deal with these earlier events so far as they still seem to have significance. So far as reliance more generally is concerned, as I go through the relevant events I make certain findings about reliance in relation to the various incidents. Mr Lydon had a wider form of reliance across the piece, based on what he said he would have done had he not thought he had a veto. I deal with that wider form in a separate section of this judgment after considering the various events to which I now turn.

91. In what follows I title the events in accordance with the shorthand developed during the course of the case.

Silver Kingdom - 2005

92. In the Re-Amended Defence this is relied on as a demonstration of the assumption by all parties that unanimity was required in all licensing matters because of the terms of a clause about notices. Clause 4.1 of a licence dated 23rd December 2005 for the use of Sex Pistols material in connection with cashmere sweaters (which was signed for all Sex Pistols members) provided for approval of designs, and it contained the following clause:

> "Any notices and requests for approval to be sent to us shall be sent to Anita Camarata at 1200 Corsica Drive, Pacific Palisades, CA 90272, USA and to Chris Organ at RusselIs, 1-4 Warwick Street, London W1R 6LJ."

93. I disagree that this demonstrates a common assumption of unanimity. For the reasons appearing above there was no such common assumption, and in any event it demonstrates no such thing. It is a simple clause providing for who is to receive notices, and how. What happens thereafter in terms of agreement or disagreement between the parties inter se is outside the scope of the clause. This instance does nothing to assist the case of Mr Lydon. It does not amount to any form of representation useful to Mr Lydon; it does not demonstrate an assumption about unanimity on the part of Mr Lydon, and does not amount to any form of acquiescence by the other band members in any such assumption.

94. In his written final submissions Mr Cunningham pointed to a letter from Mr Organ dated 21st July 2006 apparently written in connection with this merchandising agreement. The relevant parts read:

> "During the course of my discussions with John [Lydon] it became clear to me that there was one matter that was causing him a great deal of concern with regard to the approval of Sex Pistols products.
>
> John feels that there are some unapproved products out in the marketplace and has asked me to stress that the approval procedure provided for in the contract must be strictly adhered to and whilst Anita can give approval on behalf of Sid, Steve and Paul, John also has to approve all of the products and insists that this procedure is strictly adhered to.
>
> John appreciates that the turnaround for approval must be dealt with promptly and efficiently and you will not find him uncooperative in this regard. To assist I wonder if you could let me have a list of current Sex Pistols products (including individual band members) that are currently available through the auspices of Bravado."

95. This was relied on by Mr Cunningham as demonstrating and expressing a need for unanimity. It was the first time this letter had been referred to in these proceedings. It was not referred to in evidence; it was not put to any witness in cross-examination; and it was not pleaded. I would therefore probably not allow it to be relied on even if it might have had the effect contended for. But in fact it does not have that effect. The letter is actually written to the counterparty to the merchandising agreement (Bravado). In that context it is a complaint about someone (probably Bravado) releasing products that have not been authorised by anyone. In other words, it is a complaint about lack of any authorisation made to those distributing unauthorised goods, and an insistence that an authorisation procedure be obeyed. It is not an averment of a requirement of unanimity in circumstances in which unanimity was somehow in play. True it is that the letter was copied to, inter alia, Ms Camarata and Mr Button (but not Mr Matlock), but that does not detract from what the letter is all about. Furthermore, it cannot realistically be said that Mr Organ was referring to unanimity when the 2009 correspondence (see above) demonstrates he was aware of the BMA.

Kitchen Nightmares - October 2006

96. This is the first instance of a disagreement relied on by Mr Lydon. Rights were sought to enable Sex Pistols music to be used in a Gordon Ramsay kitchen-based programme. A request was made on 31st October 2006. £85 was proffered for use of a 30 second segment. Mr Matlock refused his consent because he considered that Mr Ramsey's activities had put a local restaurant which he liked out of business. The others were minded to agree to grant the licence. Mr Lydon said that he wanted to grant this licence because he liked Mr Ramsay and the idea of this use of the music in this context amused him. The licence was not granted.

97. Mr Lydon relies on this as an instance of the BMA not being applied against Mr Matlock. He is right about that so far as it goes. Mr Lydon was in favour of this project. Ms Camarata was minded to approve this on behalf of her clients, but since the amount was so small and the project uninteresting she did not seek to take it further. She was not that keen on the project and wanted to preserve harmony and would not have invoked the BMA over £85. Mr Matlock accepted he declined to consent, but his evidence was that he did not accept he had a formal veto.

98. I accept the claimants' case on this incident. I accept that Ms Camarata was not sufficiently interested in pursuing this project on behalf of her clients to go so far as insisting on Mr Matlock's consent or over-riding his refusal. Mr Lydon by himself could not have overridden him, of course. This is not an acknowledgment of a veto, and does not demonstrate an assumption of the impotence of the BMA. It is a demonstration of a commercial decision as to whether to press an opportunity or not.

99. This incident does not give rise to any form of representation that unanimity was required. The point was not made to arise, so it is impossible to infer that anyone was saying anything about it.

Autopsy - 2006

100. On 22nd September 2006 a request was received for the use of Sex Pistols music in an episode of a US TV documentary series called "Autopsy", whose subject matter appears from its title. Ms Camarata's first reaction was to refuse (on behalf of the claimants) because the fee was too small. She was asked to reconsider shortly thereafter and an email indicates that she was awaiting a DVD of the show before making a decision. An improved offer was made and that offer was accepted by all concerned. Mr Lydon was keen on this licence because he was keen on the series.

101. When the improved offer was made Ms Camarata indicated that it was acceptable in an email of 18th October 2006, but she added:

> "… but they need approval for John's share at BMG."

102. Mr Cunningham relied on this incident for two things. First, he said it demonstrated Ms Camarata exercising a veto on the first proposal, which was consistent with, and demonstrated, the generally accepted need for unanimity which was inconsistent with the BMA, and second he relied on the word "need" in the email of 18th October as demonstrating the same thing - she thought that Mr Lydon's consent was required (and therefore could not be over-ridden). Ms Camarata said she was not exercising a veto herself and in using the word "need" she was being "cordial" and "collaborative" in accordance with her general policy of promoting consensus where possible.

103. The first point goes nowhere for Mr Cunningham. His case depends on Ms Camarata refusing a licence on behalf of the estate of Sid Vicious alone, thereby demonstrating that she considered he (and therefore the others) had a right of veto. The premise is false. Ms Camarata considered herself as acting for 3 clients (Mr Jones, Mr Cook and the estate). If she turned the deal down for those three then that has nothing to do with a single person veto. It would be entirely consistent with the majority voting provisions of the BMA (not that she was thinking of it at the time). In fact the estate of Sid Vicious had no interest in the two songs for which a licence was sought, so she can only have been acting for her 2 other clients, but the point is still the same - under the BMA 2 band members can block. So if one is thinking in terms of rights to block/consent, her conduct is consistent with the claimants' case.

104. So far as the second point is concerned, this fails too. First, the statement as it was made was accurate. Mr Lydon's rights were held by BMG and BMG's consent was required for North American rights. It was not bound by the majority voting provision (though if it asked for Mr Lydon's consent he would be) so there was a "need" to get its consent. Second, I find that in using the word "need" Ms Camarata was not intending to say anything about her views on majority voting/unanimity. I have already made findings about her own actual views and assumptions, and she was not abandoning them in her use of the word "need". I accept that she was trying to be "collaborative" (to use her own word) and not acknowledging band members' right of veto.

105. Furthermore, it should not be overlooked that the implementation of the BMA required some process of consultation anyway - see clause 1.

106. Accordingly this incident does not support Mr Cunningham's case on estoppel by convention. In addition to the points above, it cannot be relied on by him as demonstrating an assumption which he accepted did not exist (and which I have also found not to exist) on the non-Lydon side. Nor is it any evidence of acquiescence in any belief of Mr Lydon about the BMA. Nor does it assist him on representation. Nothing in the facts amounts, in my view, to a representation about the BMA or voting rights when properly viewed. The question of unanimity among band members was not in play, so there was little scope for a representation about it. The "need" email was actually sent to a representative of the claimants' publishing company (Cherry Lane, who had a licence), not to Mr Lydon or anyone acting on his behalf, so it cannot have been a representation to him about anything. Furthermore, there is no evidence that Mr Lydon relied on any representation arising out of this incident.

Signatures

107. This matter was not referred to in Mr Cunningham's written or oral final submissions. None of the claimants' witnesses were cross-examined on it. It rather seems as though this matter was de facto abandoned, but I will deal with it briefly.

108. The pleaded case on this identifies a merchandising agreement between SPR US LLC (of which the claimants, Mr Lydon and Mr Button were members) and Signatures Network Inc "as of 1st January 2008". It pleads that so far as Mr Lydon is aware, during the currency of this agreement (which lasted until 1st June 2017) no member of the band sought to rely on the BMA to impose majority rule in relation to its operation.

109. It is consistent with the claimants' evidence that the BMA was indeed not invoked in relation to this agreement (though no witness confirmed that), but that fact by itself is of no significance. For all I know the parties were always in complete agreement about relevant matters, so the BMA would be of no relevance. The pleaded material does not demonstrate anything relevant to the estoppel by convention case, or any material from which any representation can be inferred. This matter affords no support to Mr Lydon's case.

Madonna's "Sticky and Sweet" Tour - 2009

110. On 4th June 2009 Ms Camarata received an apparent request for use of a guitar riff from one of the Sex Pistols's recordings in one of Madonna's tour sets. Ms Camarata forwarded it to someone else (I am not sure of the capacity of the recipient), adding:

> "Please do not forward. I just need to know what kind of licence Madonna needs to play this on her tour or does she even need one. If not I would prefer not to have to ask Lydon. Let me know asap."

She received a response:

> "They do not need any kind of license to perform it live but if there is any form of recording then obviously they will need to clear the sample and allocate the relevant amount of publishing to the guys."

111. Ms Camarata was cross-examined on the use of the words "have to ask Lydon". It was suggested that they reflected the fact that she knew that unanimity was required for licences and the BMA would not operate. Her explanation was again that she was operating on the basis of consensus, and anyway would never have invoked the BMA for a slight matter like this.

112. It appears that Mr Stevens denied permission for this use by endorsing his denial on a fax sheet ated 25th June 2009, but it also appears that permission was not necessary because this particular use was covered by bulk licensing agreements.

113. This event is said to demonstrate an acknowledgement by Ms Camarata of a power of veto in Mr Lydon, and therefore to demonstrate an understanding that obtaining his consent was an obligation and a requirement. This averment as such cannot stand with my finding that Ms Camarata considered the BMA to be available if necessary. I accept her evidence that this was not an occasion on which she would have deployed it had it been relevant at all - which it was not because no licence turned out to be necessary. The reference to asking Mr Lydon is yet another demonstration of her desire to keep everyone onboard so far as possible; it is not an acknowledgment of a right of veto inconsistent with the BMA.

114. If it be alleged that some sort of representation was made about there being a veto or about the BMA not being in force, then again that does not work. It is impossible to spell any relevant representation out of these events. It should be noted that the reference to not asking Mr Lydon was not said to Mr Lydon or his agent Mr Stevens, and so cannot be a foundation for a representation made to them.

115. In evidence Mr Lydon and Mr Stevens referred to another occasion on which they refused Madonna permission to use Sex Pistols material. The evidence on this was too confused

and unfocused on any pleading to make the incident of any use to anyone in these proceedings.

Let there be love - 2009

116. In 2009 a stage production called "Let there be love" asked by email (3rd September 2009) for a licence to use a Sex Pistols song ("Anarchy in the UK"). The request was directed to the rights holders (licensees) for the claimants (Cherry Lane). Cherry Lane passed the request on to Ms Camarata. Her assistant Suzie Rashdan wrote back to Cherry Lane on the same day:

> "Hi Robert, did you receive this? we would like to approve but need approval through John Lydon's side from Rambo. Please follow up and let me know, thanks."

117. It seems the request was faxed through to Mr Stevens by Universal Group Publishing who held Mr Lydon's North American rights (which, it will be remembered, included a provision for the consent of Mr Lydon, such consent not to be unreasonably withheld, as successors to BMG) and he endorsed it as approved. In due course this licence was granted.

118. The pleaded case on this is that the reference to the "need" for approval was inconsistent with a belief that the BMA could be relied on. It is therefore pleaded as an evidential matter in support of the alleged common assumption. In evidence Ms Camarata (who did not in fact write the email in question) said that this was not a substantial matter and she would not have wanted to grant the licence (or have it granted) if Mr Lydon did not agree. In saying that she needed approval she was implementing her general policy (not obligation) of trying to achieve a consensual approach to such matters. If her evidence is to be accepted then the statement loses its evidential force.

119. I accept her evidence. Since I accept that she had originally wanted, and at all times remembered, the BMA, and since Mr Cunningham told me he was not asserting that she was not aware of the BMA (if I am allowed that double negative), then she cannot have been saying that Mr Lydon's consent was needed for legal reasons. No case has been made for treating this as evidence that the claimants were acquiescing in an erroneous belief on the part of Mr Lydon. That disposes of that part of the pleaded case.

120. In addition to that point, the Further Information provided by Mr Lydon also relies on this incident as being a representation by word and conduct that in respect of licensing

deals the claimants did not rely on the majority voting provision in the BMA and recognised that unanimity was required.

121. I reject that submission. On the facts the BMA had not been mentioned for years, and was not in the forefront of anyone's mind. Mr Stevens was insistent he did not know about it. Mr Lydon probably did, though it was not in the forefront of his mind. In the circumstances the statement made in the email was not a representation about the BMA at all. It was a statement of the position of Ms Camarata on this transaction. It was not even made to Mr Lydon or Mr Stevens; it was made to Cherry Lane. Ms Camarata had no reason to suppose it would ever come to the attention of Mr Lydon (and I find that it did not, on the basis of his cross-examination) or Mr Stevens (it was in the fax sent to him) so it was not even a statement made to them. And there is no basis for saying that they relied on it in any way. In short, it was not a representation about the BMA or majority voting, it was not made to Mr Lydon or his agent, and was not relied on by Mr Lydon or his agent. There is no basis for a representation estoppel there.

Live Nation merchandising agreement - 2010

122. This incident was left in a confused state because the facts were not fully developed. The Live Nation agreement related to Sid Vicious merchandise, in which only Mr Button (as personal representative) was technically interested. Mr Cunningham's written final submissions seemed to accept that, though, at least historically speaking, it would seem that Mr Lydon did not. He wanted to have control over approvals for this merchandise. His view was that Sid Vicious had never left the band. There is a reference in the correspondence to there being a lot of uncontrolled and unauthorised Sid Vicious material in the market.

123. Negotiations for this agreement had started back in 2009, and it was in that context that Mr Organ wrote the letter which I have held to demonstrate an awareness of the BMA – see above. At that stage it was being proposed that Mr Lydon alone should be the counterparty to an agreement with Mr Button, with Mr Lydon alone having rights of approval. That is a form of veto, but of course does not amount to giving him a veto as against the other members of the band because the other members of the band were not intended to be parties at that stage. It has nothing to do with the unanimity sought to be established in these proceedings because the rest of the band had nothing to do with this particular proposed approval system.

124. By September 2010 the agreement had not been finalised and in that context there was some correspondence relied on by Mr Lydon in this case. It was now proposed that the agreement should be between Live Nation Merchadise Inc on the one hand, and "the

Band", meaning Mr Lydon, Mr Jones, Mr Cook and Mr Button, on the other, and an agreement was signed to that effect on or about 15th July 2010. Under the agreement uses were to be subject to the Band's prior approval, and under clause 2(e):

> "… all approvals when required from the Band hereunder (unless and until [Live Nations] is notified to the contrary by the Band) shall be given by both Anita Camarata (on behalf of [Mr Button], Steve Jones and Paul Cook) and John "Rambo" Stevens (on behalf of John Lydon) but not either one acting alone."

125. On 30th June Ms Camarata wrote to Mr Stevens saying:

> "Suzie told me that you were concerned about the Nancy clause. Don't worry because you still have approval rights over photos just like with The Sex Pistols."

126. Nancy Spungen was the girlfriend of Sid Vicious and the "Nancy Clause" is a reference to a clause in the agreement which provided, inter alia, for the approval by Mr Button and the Band of material which combined her image with Sid Vicious's.

127. Mr Stevens then expressed the view that he did not want the Nancy clause at all because of adverse associations with the Sex Pistols and when he saw it Mr Button wrote to Mr Organ saying:

> "Please see Rambo's email below - it is too late in the day for me to go back to Live Nation on this issue; reference to the possibility of doing a deal with Nancy's estate has been in the agmt for ages so has been known & is not a new point. Can you please just put John & Rambo's mind at rest that SPR are protected because they have the final approval right in any event."

128. This material is pleaded as being consistent only with a requirement for unanimity of approvals for licensing and as being inconsistent with a majority voting provision. This would therefore appear to be pleaded as evidential material supporting the original estoppel by convention case.

129. I find that it does not do so. The first point to be made is that this material would seem to fall outside the scope of the material covered by the BMA, as Mr Cunningham's written final submissions would seem to accept. If that is right then remarks made in this context can have little to do with assumptions about the enforceability or otherwise of the BMA. This would be a standalone agreement for these purposes. However, if that is wrong, this material is not cogent evidence in support of a case of a relevant assumption on the part of the band members and Mr Button. The agreement provided for where relevant approvals were to come from as between Live Nation and the Band, but it would still be consistent with that that in the event of a disagreement the other band members could compel the approval of Mr Lydon (or any other single dissentient). Assuming the BMA to cover this material, its mechanism cannot sensibly be taken to have been revoked by the approvals clause in the agreement. That clause, in my view, is one dealing with mechanics and formalities as between Live Nation on the one hand and the band and Mr Button on the other.

130. Nor do the two emails evidence with any clarity any assumption as to the non-enforceability of the BMA. They are addressing the problem that Mr Stevens did not like the provision about Nancy Spungen and the association between her and Sid Vicious and/or the band (it would seem). The emails from Ms Camarata and Mr Button were giving reassurance that there would still be some control over the material if it was objectionable. In their context they were not saying anything about majority voting or unanimity. The emails (and particularly Mr Button's) were emphasising that the Sex Pistols had control over the material. That is what the concern was.

131. So this material does not suggest that the band members were demonstrating the assumption which this case originally required (but which was abandoned by Mr Cunningham in his final submissions). I have considered it in arriving at my conclusions as to the beliefs of the parties above. Much less does it amount to any material for supposing that the members acquiesced in the belief alleged by Mr Lydon on his part. It does not demonstrate any knowledge of his belief (whatever it might be), and is about something else anyway.

132. The Further Information relies on the email from Ms Camarata as being a representation that the band members (other than Mr Lydon) did not rely on the BMA. For the same reasons as given above, that case is unsustainable. The email is giving reassurance about there being some control, not who could exercise control at the end of the day in the event of a dispute. Nor is there any evidence of any reliance on any representation, or any evidence that it was intended to be relied on in the way which Mr Lydon's representation-type estoppels would require.

133. In Mr Cunningham's written final submissions he relies on an email of 12th March 2010 from Mr Button to Mr Organ at Russells, saying:

> "Further to your email of 08.03.10 (attached) I now also attach the latest agreement from Live Nations. I will go back to Myles Silton at Live Nations & require that (because of the way in which the Sex Pistols operate their business) the contracting party for the "Sid Solo" deal will have to be The Estate, John Lydon, Steve Jones & Paul Cook collectively ("the Licensor") and that approvals will be granted (or withheld as the case may be) by the Licensor (he need not know that approvals must be unanimous). I hope that will not concern him."

134. Mr Cunningham drew attention to the reference to unanimity. This letter was not pleaded and was not put to Mr Button. There was no investigation of its full context in the correspondence, and I am not satisfied that all relevant contextual documents are present in the bundles. The written submission was the first time the letter was referred to in the proceedings, and the point was not developed (or referred to) in oral submissions. In the circumstances there is no pleading of any form of representation made by it, or of any reliance. Mr Button was given no chance to explain his thinking about it in the witness box. In the circumstances Mr Cunningham is not entitled to rely on it and I shall disregard it.

135. It follows that this incident gives no support to any invocation of any variety of estoppel.

Universal Deal memorandum - November 2011

136. This is a long and complex document under which Sex Pistols Residuals (the trust holding Sex Pistols rights) granted Universal Music Operations Ltd a 10 year exclusive licence to exploit certain music worldwide but excluding North America. It is unnecessary for these purposes to go into what the effect and extent of those rights were, and it is sufficient to note that they seem to be extensive and therefore valuable. (The memorandum expresses itself to be an agreement "in principle" but as I understand it it is treated as a fully in force contract.). Certain obligations to obtain consent from the trust are contained in the agreement, and page 29 contains the following provision:

> "Wherever Licensor's consent is required, until further written notice Universal shall obtain consent from both Anita Camarata (as representative for Paul Cook, Stephen Jones and Estate of John Beverley) by email to acamarata@eclipseent.com and John Rambo Stevens (as representative of John Lydon) by email to rambostevens@me.com. Except where otherwise provided any request for the Licensor's approval hereunder shall not be

> unreasonably withheld or delayed and (except as to material alterations and sampling or uses of Licensed Vault Materials beyond the particular initial Artist package for which it was intended otherwise than as expressly stated herein) shall be deemed given if either the Licensor or the Licensor's Licensor's representative fails to respond to a request for approval within three (3) working days of the request for such approval."

137. The first pleaded case seems to be that this provides for consents to be provided unanimously, and the pleading goes on to plead that at no time since 2011 has anyone sought to impose majority rule on anyone else in relation to this agreement, and that at all times all band members proceeded on the basis that unanimous decisions were required under this agreement. The Further Information pleads that it amounts to a representation by conduct by the band members that they did not rely on the majority rules provision and that they recognised that unanimity was required.

138. I do not consider that on its true construction, and in its context, this provision operates to provide for unanimity as between the band members. It is a provision in a bilateral agreement between Universal on the one hand and the band members (together) on the other. In that context it provides (as is common in commercial agreements) how communications are to take place between one side and the other. I was not shown any material which would suggest that this agreement was also operating as an agreement between the band members inter se. It is a forced construction to construe this provision as being such an agreement. It provides for how consent is applied for, and says nothing as to any mechanisms as might exist on the band side as to how they dealt with requests. As between Universal on the one side and the band members on the other, Universal would need the two consents provided for and could not operate with just one of them, but that leaves intact such arrangements as are contained in the BMA. That conclusion is reinforced by the fact that it says nothing as to how many consents Ms Camarata had to get to be able to give hers. That is a "behind the scenes" matter which is of no concern to this agreement, and this clause has nothing to do with such things.

139. Accordingly this clause does not demonstrate any sort of indication that unanimity is required on the band side of the transaction. It does not demonstrate any assumption about that on the part of the band members or their agent, and it does not demonstrate any acquiescence in any particular understanding that Mr Lydon might have had.

140. By the same token the inclusion of this clause, which is actually more in the nature of a technical matter, does not amount to a representation by anyone on the band side to another band member on the same side. It simply does not have that quality. It is a distortion of its effect to suggest that it operates as a statement about the BMA or the requirement of unanimity by one band member to another. It is pointing in a different direction altogether.

141. In support of his case under this head Mr Cunningham relied on another new document in his written final submissions. In December 2018 Ms Camarata and Mr Stevens were discussing the grant of a licence for Sex Pistols music in connection with a documentary series on Punk. The email exchanges reveal that Mr Stevens (and Mr Lydon) were keen to grant this licence. Ms Camarata was not averse to it but was concerned about the actual terms being proposed by the publisher. On 14th December she wrote to the publisher:

> "UMPG [ie the publisher] does not have the right to move forward with anything until Rambo and I both approve. This is not a typical fee for the suggested use."

142. When she wrote to Mr Stevens a few minutes later she said:

> "What I reacted to was he [viz Keith Piazza of UMPG] said 'Universal plans to move forward with the required terms' and I wanted to make sure that he knew he can't do that without proper approvals."

143. Mr Cunningham sought to rely on that as another example of Ms Camarata treating the BMA as not applying. Unfortunately for him this exchange was not referred to by anyone at the trial until final submissions, and in particular it was not put to Ms Camarata. Consequently neither Mr Lydon nor Mr Stevens were cross-examined on it either. It would therefore be unfair to allow Mr Cunningham to deploy it for that reason alone. However, in any event it is apparent from the written exchange itself that it does not do what Mr Cunningham says it does. The question in this exchange was not about anything resembling voting rights or vetoes. This was Ms Camarata setting about requiring the publisher to get necessary consents in the face of her concerns about the terms offered. The exchange says nothing about Ms Camarata's views on the BMA, though in fact it would be quite consistent with it. If she had wanted to withhold consent and block the deal that would be entirely consistent with the BMA because she had two votes which would prevent the formation of a majority in favour of the deal.

144. It is also not inapposite to observe that this exchange supports Ms Camarata's evidence that she was always concerned to do matters by agreement where possible. Her concerns did not lead to her blocking the deal. She sought further information about it and was trying to progress it on the basis of proper information even though her first reaction was not favourable. At one point in the chain she wrote:

> "Not trying to be difficult and open to hearing everyone's opinion."

145. I consider that that supports my findings above as to her desire to achieve complete consensus between all band members in these sort of transactions.

Who shot Rock & Roll - 2012

146. On 18th May 2012 permission was sought for the use of one of the Sex Pistols' songs ("Anarchy in the UK") in a documentary called "Who shot Rock & Roll". Mr Stevens was in favour, as was (apparently) Ms Camarata. However, Mr Matlock objected. He was asked why, and then he changed his mind on 31st May. The Defence pleads that this reflected the parties' common understanding that unanimity was required for the grant of licences and that majority rule as provided for by the BMA was not effective or sufficient. Mr Lydon's final submissions claimed that this was a veto by Mr Matlock and that everyone recognised that he had a veto.

147. Most of this case cannot stand in the light of Mr Cunningham's acceptance that Ms Camarata and the other band members did not assume that the BMA had fallen by the wayside. They all assumed it was available. In any case, on the facts the matter did not progress as far as a demonstration of any belief that he had a veto. The point was not raised, and within 2 days Mr Matlock had changed his mind. Ms Camarata's evidence, which I accept, is that this was an instance where she would seek general agreement and would not deploy the BMA if she did not get it. Mr Matlock might have had what amounted to a veto in practical terms in that context, but it does not follow that the BMA was treated as non-operative.

148. I therefore do not consider that this episode reflects a common assumption as to the non-availability of the BMA or an assumption by all concerned that there was a right of veto. Nor does it demonstrate acquiescence by the claimants, Mr Matlock or Mr Button in any view that Mr Lydon might have had that considered the BMA was dead, or that everyone had a veto. It does not demonstrate that they knew he had a different view about the availability of the BMA (which he probably did not have anyway) or that they acquiesced in it. It simply says nothing about that.

149. The Defence treats this episode as amounting to a representation by conduct that the non-Lydon members did not rely on the majority rules provisions in the BMA and recognised that unanimity was required. I do not consider that it is possible to draw that inference from the conduct of querying Mr Matlock's position. Amongst themselves they may have recognised that the preferred consensus required that on this occasion, as on others, they would not press a dissentient member, but that is not the same thing as the content of the alleged representation.

150. This incident therefore does not assist Mr Cunningham.

London Olympics - 2012

151. Neither the original Defence nor an Amended Defence served one month later rely on this matter as supporting the overall case of the defendant. However, once it had been mentioned by the claimants' witness statements as being an incident in connection with which they had contemplated invoking the BMA Mr Lydon sought to rely on it himself. He sought to re-amend his Defence to include it at the beginning of the trial, and in the end Mr Cullen did not oppose the amendment. The circumstances in which it was introduced, just by themselves, make it difficult for Mr Lydon to mount a cogent case that he relied at the time on anything emerging from this incident - if he had relied on anything in the nature of a representation one would have thought he would have remembered it and pleaded it at the outset.

152. The relevant events were as follows. In April 2012 and the following weeks there were discussions between Ms Camarata and Mr Stevens about the possible use of two Sex Pistol songs being played during the opening ceremony of the 2012 Olympic Games. In April 2012 Mr Lydon was against the idea, but Ms Camarata, Mr Jones, Mr Cook and Mr Button were all very much in favour. An email of Ms Camarata dated 30 May 2012 refers to a very difficult conversation that Ms Camarata had had with Mr Lydon. The same email refers to the fact that Mr Jones was "flipping out" and wanted to overrule Mr Lydon. This is a reference to the fact that, on this occasion, Ms Camarata, the claimants and Mr Button actively considered invoking the BMA because they felt so strongly about the matter. The evidence that they were considering that was not challenged in cross-examination, and I find that they were considering invoking the BMA. Apart from anything else, it is evidenced by the email I have just referred to indicating Mr Jones's views.

153. What ultimately happened was that Ms Camarata wrote an email to Mr Lydon on 11 June 2012 pointing out the benefits to the Sex Pistols of the opportunity presented by the Olympics and encouraging him to speak to Mr Danny Boyle who was directing the ceremony. It seems that Mr Lydon did that and as a result he gave his consent.

154. The Defence pleads that none of the other members of the band referred to the BMA, or sought to impose the will of the majority on Mr Lydon, but all proceeded on the basis that unanimity was required, as was demonstrated by Ms Camarata's strenuous attempts to persuade Mr Lydon to agree to the proposed use. This would seem to be intended to support the common assumption said to found the estoppel by convention, and that is the

basis on which reliance is placed on this episode in Mr Cunningham's final submissions where he says: "This reflected the common assumption that unanimity was required."

155. I find as a fact that Ms Camarata and the band members other than Mr Lydon discussed the possibility of using the BMA on this occasion because the situation was so serious. They regarded the prospect of using Sex Pistols material at the Olympics opening ceremony as being such a valuable opportunity that they were prepared to contemplate abandoning the consensual approach for the first time. Once again, that evidence means that the common assumption basis of estoppel by convention cannot work for Mr Cunningham. This incident does not demonstrate such an assumption; the evidence indicates the opposite. Nor does this incident, and its surrounding evidence, demonstrate an acquiescence in any belief by Mr Lydon that unanimity was required. The other members of the band had no cause to believe that Mr Lydon had that assumption before this transaction, and this transaction does not alter that situation. In the absence of such a piece of knowledge or belief there can have been no acquiescence. They did nothing to encourage any such belief on the part of Mr Lydon. Mr Cunningham sought to suggest that an email sent by Ms Camarata to Mr Lydon seeking to persuade him to give his consent ought to have had some reference to the BMA as being a backup plan of the rest of the band. I reject that suggestion (made in cross examination). What Ms Camarata was doing was what she said she always did – she was trying to get consensus by persuasion if a matter was sufficiently important to justify trying to change a mind.

156. This incident therefore does not support the estoppel by convention case. As I have observed, this incident was added to the Defence by a late amendment to which objection was ultimately not taken. Accordingly there is no cross-reference in the Further Information which pleads any form of representation arising out of it. However, for the sake of completeness, and even though Mr Lydon's written final submissions did not seek to make a case for a representation arising out of this matter, I find that the pleaded material and the established facts do not amount to a representation by the claimants, Mr Button or Mr Matlock about the BMA, unanimity or vetoes at all. There is no point of reference in the debate that happened at the time to which any of the conduct can be attached so as to create such a representation. The exercise that Ms Camarata was conducting was one of persuasion on the facts. Her failure to refer to the BMA was entirely consistent with a desire to be as consensual as possible about matters, and can in no way be taken as some sort of statement that the BMA, or majority rules, did not apply. I have already referred to the difficulty that Mr Lydon has in relying on this matter as giving rise to something on which he relied, and I find that he did not so rely.

157. In connection with this incident there was a dispute on the evidence as to whether Mr Button referred to the possibility of using the BMA with Mr Shah and Ms Camarata at a meeting at the Savoy hotel in May 2012. Both Ms Camarata and Mr Button said the possibility was mentioned to Mr Shah at that meeting; Mr Shah denied it. Having heard them give their evidence, and having considered the context of the meeting (which was not denied) I prefer the evidence of Ms Camarata and Mr Button. Mr Shah said that if it had been mentioned to him he would be likely to have mentioned it to Mr Stevens or Mr

Lydon. I accept that evidence too. This is another piece of evidence suggesting that Mr Lydon had not completely forgotten about the BMA. It may be that he did not pursue it further because that sort of thing was not the sort of matter which he would pursue. Mr Stevens may or may not have been told about it; but it is possible that if he was it remained the sort of background point that he did not retain bearing in mind that before too long there was agreement on the Olympics music anyway.

158. In all those circumstances this incident does not assist or support the case of Mr Lydon.

DC Snowboarding - August 2012

159. In July/August 2012 a licence was sought for the use of a Sex Pistols track ("Pretty Vacant") in a promotional video for snowboards. Mr Lydon expressed himself as being keen to grant this licence because it would introduce the band to a younger audience. Ms Camarata consented for the claimants though she did not regard it as significant. Mr Matlock did not consent, and the reason apparently was that he was in dispute with Mr Button over some other matter:

> "He wants more money from Sid from the Universal advance before he will discuss anything. Peter made him a generous offer and we are waiting to hear back." (per Ms Camarata in an email).

160. The licence was therefore not granted. Mr Matlock was not pressed with the BMA voting rules. Mr Cunningham relied on this in his written submissions and pleaded case as reflecting a common assumption that unanimity was required. Ms Camarata denied this in her evidence and said that since the matter was insignificant (the evidence reveals that the fees involved were a little over US$2,000) she would never invoke the BMA – she would not do so in a matter of that size. I accept this evidence, so there was no common assumption, in line with my findings about Ms Camarata's beliefs above. The incident does not demonstrate a veto to which Mr Matlock was legally entitled. In any event the common assumption was in substance abandoned as an allegation by Mr Cunningham as indicated above, so this incident cannot reflect that element of estoppel by convention. For the same reasons as in previous matters, this incident does not reflect or evidence any knowledge of or acquiescence in an assumption by Mr Lydon either.

161. There is no pleading that anything in this incident gave rise to a form of representation, and rightly so in my view. Accordingly this incident does not support the case of Mr Lydon.

T-Mobile - 2014-15

162. This incident was subject to a challenge as to admissibility because it was said to involve the illegitimate deployment of without prejudice material. In a separate judgment I have ruled that the material was indeed without prejudice and none of the exceptions applied. In the circumstances it cannot be deployed.

163. However, in case I am wrong about that, and since I have considered the material anyway, I make some brief findings about this part of the case. The facts are set out in my separate judgment (see [2021] EWHC 2322 (Ch)) and I do not need to set them out again here. Reference should be made to that judgment for the relevant facts and reasoning. That material does not assist Mr Lydon for the following reasons.

164. Mr Lydon's case of estoppel by convention is not assisted because there continued to be no common assumption as the inapplicability of the BMA or the need for unanimity. For the reasons already given the claimants did not share any such assumption going in, and they did not share it afterwards either. Nothing Mr Button wrote during the episode supports the idea that he had the relevant assumption. His remarks about working together were about procedure, not how disputes might be resolved. Obviously his email of 9th December 2014 shows a firm adherence to the BMA. The non-response to Mr Grower's letter is not evidence of a change of heart, and on my findings the April meeting between Ms Camarata, Mr Button and Mr Shah (which was not a without prejudice meeting) made it clear that the first two of those still believed in the BMA and there was disagreement between the two sides. As I observed in my other judgment, Mr Shah, for these purposes, was on Mr Lydon's side of the line. He was not, for these purposes, the neutral joint accountant; he had taken sides on this point, though I am prepared to accept his evidence that he was attending the meeting with Ms Camarata and Mr Button to discuss SPV matters (he was still the group's accountant at the time). In saying that he had taken sides I do not intend to accuse Mr Shah of any impropriety, but there is no doubt on which side of the line he fell in the argument on the BMA. It is unlikely that he did not report back to one or more of Mr Grower, Mr Stevens or Mr Lydon (most likely Mr Grower, as I find in my other judgment), and I find that he did.

165. So there was no common assumption, new or old. Nor do the facts demonstrate any form of acquiescence in Mr Lydon's position. Although by now the claimants knew that Mr Lydon, at least ostensibly, did not accept the BMA as being operative, and did not engage in further debate about it in correspondence, nothing they did acquiesced in that belief for the purposes of the estoppel by convention. The non-response to Mr Grower's letter (which was in any event a non-response on the part of Mr Button only) is not sufficient for the reasons given in my other judgment, and in any event the April 2015 discussion between Ms Camarata, Mr Button and Mr Shah demonstrated that they did not acquiesce in Mr Lydon's position other than to acknowledge that it existed and agree to differ. In my view the notion of acquiescence in this context must mean knowing of the assumption

on the other side, not sharing it but indicating (by some means of crossing the line) that they are content for the relationship to continue on the erroneous assumption. Nothing like that happened in the present case. Ms Camarata and Mr Button were by now plainly aware of the case that Mr Lydon made for saying the BMA did not apply, but they made it clear enough that they did not agree. That is the reverse of acquiescence.

166. Nor does a representation-based case fare any better. Mr Cunningham's written submissions on estoppel by representation, proprietary estoppel and promissory estoppel all refer to the "abandonment" of the BMA brought about by Mr Button's failure to respond to Mr Grower's January letter. It is implicit in that (though not made explicit) that the representation relied on is Mr Button's failure to respond to that letter. I find that that silence does not amount to a representation for the same reasons as it does not amount to a representation for the purposes of the exception to the usual without prejudice consequences as set out in my separate judgment. Again, for the reasons set out there, it was not even treated as a representation on the Lydon side of the line. It would be implausible to suggest that Mr Button was saying the equivalent of "Alright, I give in, the BMA has no effect", and on the evidence Mr Grower, Mr Shah and Mr Stevens did not think he had.

167. Mr Lydon's witness statement does not really say anything about treating Mr Button's silence as being per se an abandonment of the BMA, but he does rely on the contents of the Stevens/Camarata telephone conversations of January 2015 as being a dropping of the BMA. For the reasons given in my other judgment that is not a proper interpretation of those conversations even if something was said about the BMA in them. The most that Mr Lydon received through Mr Stevens was the "business as usual" message, which is not a representation about the abandonment of the BMA. I do not accept that Mr Lydon believed it had been dropped by the other side. He is more likely to have accepted that it was better not to go to war over it.

168. I should record that there was no debate before me as to whether the January Stevens/Camarata conversations or the April conversation involving Ms Camarata, Mr Button and Mr Shah were all covered by the without prejudice privilege. On what I have seen in the evidence, it seems to me to be likely that the January meeting was, because Ms Camarata's evidence was that the meeting was still about the dispute over fees and legal expenses. It is less clear that the April conversation was still about that, and it would seem to me that that conversation was not without prejudice. The content of the meeting was not fully in evidence. The earlier parts of Mr Button's note do not seem to relate to the T-Mobile matter, and Mr Shah's evidence was that it concerned SPV matters. If that is correct (and it seems likely to be) then this meeting was not without prejudice. And if that is right then it forms a very important part of the background for assessing the remaining transactions relied on by Mr Lydon. The significance is that that conversation disclosed that the claimants regarded the BMA as available to them, and that is likely to have got back to Mr Grower, Mr Stevens and Mr Lydon. If that is correct (and in my view it is) then it would require a strong piece of evidence to displace that in the future. As will appear, no such piece of evidence exists.

Public Image is Rotten - August 2017

169. It is not at all clear that this is being pursued. It was pleaded, and referred to in the first defendant's opening skeleton, but does not seem to have re-emerged thereafter. None of the claimants' witnesses were cross-examined on it and it did not appear in Mr Cunningham's table of relevant transactions in his written submissions. However, I will deal with it briefly.

170. In about August 2017 Mr Stevens was seeking consent for the use of a Sex Pistols track ("Anarchy in the UK") in a documentary about Mr Lydon and the band he formed after the demise of the Sex Pistols in 1978, bearing the title Public Image Ltd. In the course of discussing that Mr Button is said to have written on behalf of himself and the claimants to Mr Grower, copying in Mr Stevens:

> "I have been asked to make it absolutely clear however that the approval is given on the strictest understanding that John is aware that my clients expect their cooperation to be equally reciprocated in the future by John should any of them wish to use Sex Pistols material in a personal project."

171. This is pleaded as being consistent only with a requirement for unanimity in dealing with proposals for licensing and was inconsistent with majority rule as provided by the BMA. The Further Information relies on this as being a representation by word that the claimants and Mr Button did not rely on the majority rules provisions in the BMA.

172. For the reasons given above, this does not, in its context, demonstrate the alleged common assumption (if that is what the pleading is intended to convey), especially against the background of the T-Mobile material and the subsequent April 2015 meeting (but even without that material). Nor does it amount to a representation about the BMA, which was not part of the background to this transaction. It is intended to be a statement about expected cooperation, which is quite consistent with the consensuality which Mr Button and Ms Camarata were still seeking to achieve. The disappearance of this incident from the case after Mr Lydon's written opening was justified.

Acura

173. This incident was not pleaded but was relied on by Mr Cunningham without objection from Mr Cullen. In Mr Cunningham's opening it was flagged up as being another instance of an alleged representation. However, in the end it was pursued only as a credibility point as between Ms Camarata and Mr Stevens. The dispute was as to who it was who got the final good terms for a recording. Each of Ms Camarata and Mr Stevens claimed the credit for the size of the deal. The cross-examination did not reveal to me who was more likely to be giving accurate evidence on this, and the documents did not help either. I found this incident of no assistance.

Sex Skateboards - 2017

174. In this incident the band was approached for consent to the use of various Sex Pistols assets for a range of skateboard and related equipment. Mr Lydon approved this use. Ms Camarata objected to the use of one image of Sid Vicious holding a glass (because there were sensitivities about the possible portrayal of alcohol) and it was removed from the deal. The point raised by Mr Lydon is that in doing so Ms Camarata was acting for the estate alone, so in objecting to the image she was effectively exercising the sort of veto that Mr Lydon said everyone had.

175. The claimants' pleaded case in their Amended Reply is that Ms Camarata acted on behalf of the estate of Sid Vicious only. But in her evidence she says:

> "I knew that Paul and Steve supported the Estate in such matters, so to the extent that I thought about it, I was acting for my three clients."

176. In cross-examination she denied she was exercising a unilateral veto, and said that the claimants were behind her in her desire to support the estate and remove the image. Mr Jones and Mr Cook were not cross-examined about this.

177. Mr Cullen described this as a trivial incident and I agree with him. Although the incident was not investigated in any great depth I consider that what Ms Camarata was doing was part of the give and take of the attempts to approach these deals in a consensual manner.

She was not exercising a veto, despite Mr Lydon's attempts to portray it as such in the evidence. Furthermore, while I accept that she was taking her point in the interests of the estate, I am satisfied from her evidence that had it been necessary to do so she would (and knew she would) have been able to carry her other two clients with her, and would have done so, so she would not have been exercising a unilateral veto; she would have been exercising a majority vote. So this incident is inconclusive in determining whether there was a practice of a single band member being able to veto.

178. Once more the content of the April 2015 meeting makes it impossible to treat this incident as demonstrating the sort of assumption that Mr Lydon needs to rely on. Yet again, this incident does not assist Mr Lydon's case.

Jaguar Cars - 2017

179. In December 2017 a request was received for the use of a performance by Sid Vicious of a version of "My Way" in an advertisement for Jaguar cars on an Israel-only basis. Mr Lydon refused his consent (because he did not approve of the words) and he was not overriden by the other band members even though Mr Button seemed keen on this transaction.

180. This is relied on by Mr Lydon as another exercise of a veto by him and is inconsistent with the BMA having any effect because the majority rules voting procedure was not deployed. It is relied on in the Defence (as supplemented by the Further Information) as a representation by conduct that the claimants did not rely on the BMA and accepted that unanimity was required.

181. Ms Camarata originally indicated that she wished to do this deal (in an email) but her evidence was that she was not so keen on this idea that she wanted to press it via the BMA against Mr Lydon and she did not consider her clients would want to press it either. It was only worth £20,000 and came in the Christmas period. She would not have taken the step of invoking the BMA at that time, for that amount of money, over this transaction.

182. This incident does not amount to evidence of a common assumption which overrides the evidence that there was not one. Nor does it amount to acquiescence in the alleged belief of Mr Lydon because the April 2015 meeting made it plain that the claimants (and Mr Button) did not agree that the BMA had no force; they were asserting the opposite and this incident can hardly be taken to be an abandonment of that position. I accept Ms

Camarata's evidence as to why she did not press this matter towards invocation of the BMA. Nor, against that background, can it amount to the representation alleged. This conduct can hardly be treated as resiling from the clearly stated position of the claimants (through Ms Camarata) and Mr Button.

183. Accordingly this incident does not assist Mr Lydon.

Skywind- April 2018

184. In April 2018 the band received a proposal from Skywind Holdings Ltd to licence a bundle of rights in connection with a band-branded digital casino game. Ms Camarata was very interested in the proposal initially, as her early emails demonstrated. However, Mr Stevens refused Mr Lydon's consent on the footing that the latter did not wish to promote gambling. The email traffic indicated that he was adamant about that despite Ms Camarata pointing out what she said demonstrated an inconsistency on the part of Mr Lydon because the band's rights had (she said) been used to promote gambling on two previous occasions with his consent. The opportunity was not pursued.

185. Mr Cunningham's written final submissions maintained that this is another occasion on which his client's veto was accepted, confirming that the BMA had indeed been abandoned in 2015. His pleading relied on this matter as being a representation about the non-effectiveness of the BMA, acquiescence in Mr Lydon proceeding on the basis that unanimity was required, and reflecting a common assumption that it was required.

186. Ms Camarata in her evidence denied that she gave effect to a veto. Her evidence was that she wanted to investigate the deal further so that they could make an informed decision (as indeed she proposed in email traffic with Mr Stevens), and that when she did so she came to the conclusion that the deal did not offer the band sufficient money for the extensive rights being sought and for the extended period for the deal (which might be as long as 8 years). Her initial activities in trying to persuade Mr Stevens/Mr Lydon towards a deal were part of her policy of trying to achieve consensuality. In those circumstances there was no question of pressing the BMA - she did not wish to have the deal either.

187. I accept Ms Camarata's evidence as to her motivation. That is quite consistent with her not having the assumption that Mr Lydon relies on. As with so many of the incidents that I have already dealt with, these facts cannot give rise to a representation about the BMA either. There was absolutely no context in which these particular dealings could

give rise to a representation about something that was not in play. Nor (as usual) was there any evidence the dealings were taken that way (no representation was relied on) by either Mr Stevens or Mr Lydon. This non-reliance aspect is developed further below. The events of 2015, far from contributing to a case of acquiescence in Mr Lydon's alleged belief that the BMA no longer had any effect, provided a background in which the opposite was the case - Ms Camarata and Mr Button had both averred its effect and never gave up on that idea.

188. This incident therefore does not support Mr Lydon's case.

Aurimoda - 2018

189. This instance, while pleaded and referred to by Mr Lydon in his evidence, apparently does not feature heavily in Mr Cunningham's case because he did not cross-examine on it, refer to it in his oral submissions or refer to it in his written final submissions. It is tempting to ignore it as abandoned, but for the sake of completeness I will deal with it.

190. In about May 2018 a licence was requested by Aurimoda SA DE CV to produce Sex Pistols branded clothing for sale in Mexico. Mr Lydon refused permission so far as sales through Walmart were concerned, but otherwise consented. The deal was done on that basis; neither Ms Camarata nor Mr Button sought to override this proposal from Mr Lydon. Ms Camarata's unchallenged evidence was that she was prepared to compromise with Mr Lydon by agreeing to his limitation.

191. Mr Lydon and Ms Camarata on the claimants' side dealt with this in their witness statements. Neither was cross-examined on it. I was not taken to any of the contemporaneous documents but have looked at that material myself. So far as I can penetrate the confusing manner in which the email traffic is presented, it seems that the principal dealings were between Mr Stevens and Rachel Redfearn of Bravado (the group's merchandising agents). Mr Stevens complained about the presence of stores such as Walmart; Ms Redfearn proposed leaving Walmart out; and Mr Stevens agreed. These were not negotiations with Ms Camarata.

192. On that basis this incident goes nowhere. On the basis of the unchallenged evidence it is evidence of no more than an agreed position on a licensing approval which was negotiated between Mr Stevens and Ms Redfearn. It has nothing to do with assumptions, acquiescence in assumptions or representations by or on the part of the claimants.

Selfridges flyer - 2018

193. In May 2018 Selfridges wanted to produce a promotional flyer (for Sex Pistols-related clothing which they were exhibiting and selling) which featured an altered version of Sex Pistols artwork. Mr Stevens objected to any alteration of Sex Pistols artwork and refused his consent. In an email Ms Camarata described it as "Beautiful" but did not challenge Mr Stevens' refusal of consent. In her witness statement (unchallenged) she says she did not think permission was required because it was only a flyer, but in any event would not have used the BMA for a minor matter such as this. The design for the flyer was not used. (As far as I can tell the correspondence, to which I was not taken, shows that a different form of flyer was used after discussion with Bravado.)

194. In his written final submissions Mr Cunningham describes this incident as being an example of "business as usual". I agree, though not in the sense that Mr Cunningham used the phrase. This was yet another example of Ms Camarata achieving consensuality by not opposing Mr Lydon's wishes, especially in relation to something which did not matter at all. Mr Cunningham's pleaded case was the now familiar one of common assumptions, acquiescence and representation. It fails on all fronts.

Grape Hemlock - November 2018

195. In this incident Sony asked to be able to use Sex Pistols imagery in a forthcoming series. Their use featured a bulldog, and Mr Stevens objected to this on behalf of Mr Lydon because the image of a bulldog had associations of which Mr Lydon did not approve, including an association with far-right groups. The use of this image did not go ahead, and this is said to be another example of an acknowledgment of a veto.

196. In the context of the transaction Ms Camarata wrote an email to Mr Stevens on 2nd December 2018 saying the following:

> "… in the future, please discuss with me before you turn down or send out explanations to 3rd parties . We need to start working these things out together then sending united emails approving or disapproving."

This email is relied on as being a representation by word that unanimity was required and the BMA was not effective. There is also the usual pleading of assumption and acquiescence.

197. The full sequence of events and the full narrative does not support Mr Lydon. In what follows I suspect that the occasionally odd timings on the emails is because of the difference in time zones between Los Angeles, where Ms Camarata (and I suspect Sony) are and the UK, where Mr Stevens and Mr Cook are. This makes some of the sequencing tricky to follow, but I think that the position is clear enough.

198. The request for a licence came in to Ms Camarata from Sony at 3.55pm on November 30th. She forwarded it to Mr Stevens and Rachel Redfearn at Bravado. At 6:11pm BST Mr Stevens responded to Ms Camarata, Sony and Ms Redfearn that he thought that Mr Lydon would have a problem with the bulldog image because of its far-right associations. At 8.22pm Ms Camarata emailed Mr Stevens querying whether Mr Lydon's opposition to the use of a bulldog was something new because he had approved it before.

199. At 6.38pm on 30th November Mr Stevens responded saying that while Mr Lydon had originally not been keen but let it go, as time had gone by he was concerned about the use of the image by football hooligans and neo-Nazi groups.

200. On 2nd December Ms Camarata responded to Mr Stevens in an email which contains the text relied on by Mr Lydon as containing a relevant representation. The full text is as follows:

> "I am fine with taking the image out of our designs and not approving for the show. However in the future, please discuss with me before you turn down or send out explanations to 3rd parties. We need to start working these things out together then sending united emails approving or disapproving."

To which Mr Stevens replied on 5th December at 4.22pm:

> "I did not turn it down, what I did is provide them with useful information to start with that there may be a problem with the bulldog design.

> This could save time and effort from becoming a waste of time and effort for everyone that is involved.
>
> Anita the problem is not us but you as you don't practice what you preach"

201. This exchange demonstrates various things. First, it would seem that Mr Stevens did not consider that he had taken a decision to turn down the design; he thought he was giving guidance for the future. That is one interpretation of what he did, but if that is correct then he did not take any decision which was capable of being a veto. Second, it demonstrates Ms Camarata's consensual approach. She had not taken a stance which was inconsistent with what she thought Mr Lydon's was, and then given way. She had not taken a stance at all, and was agreeing with what she thought Mr Stevens' stance was. It was an agreed position, not a confrontation in which a veto was acknowledged. Third, what Ms Camarata is complaining about, and proposing a remedy for, is nothing to do with the unanimity of decision making but is what she perceived to be a tendency of Mr Lydon and Mr Stevens to say things to third parties which could damage the prospects of a deal when a unified approach would be more helpful. What she was saying was almost the opposite of an acknowledgment of a veto. Her complaint was as to what she perceived to be a unilateral approach which was the practical equivalent of a veto - she did not like it.

202. Accordingly, the words relied on do not have the effect contended for. Support for the proposition that she was not taking the stance of wanting this deal appears from correspondence she had with Bravado. On 2nd December at 14:48 Ms Camarata asked Bravado if they had heard of concerns about a bulldog image before, because she thought it was in the band's book of designs. She went on:

> "I don't really care but the issue is my clients don't like these decisions being made without their approval and Rambo airing his opinion in front of 3rd party business people."

The words "I don't really care" are inconsistent with Ms Camarata acknowledging the existence of a veto, because she did not consider he was exercising one.

203. Mr Cunningham cross-examined Ms Camarata on what she emailed to Bravado (Ms Redfearn) on 3rd December:

> "There are a lot of things going on right now w[ith] the band internally so I need to see everything that he [ie Mr Lydon]

> approves, tweaks or disapproves. All decisions need to be mutual. I will speak with him direct if that makes it easier. Let me know."

204. He drew attention to the words "all", "need" and "mutual", and I think his unstated suggestion was that (like his earlier cross-examination on the word "need" in an earlier incident) they acknowledged that decisions had to be unanimous. If that was his suggestion then I disagree. The problem with which Ms Camarata was dealing (as she saw it) was Mr Stevens queering the pitch with third parties by taking a stance or making statements without consulting the others. She was advocating a unified approach to outsiders, which was not inconsistent with the BMA operating behind the scenes.

205. The last factual point arising under this head relates to the position of Mr Cook. On 2nd December at 15:01 Ms Camarata emailed Mr Cook forwarding him Mr Stevens' email of the same day saying Mr Lydon was not keen on the bulldog and saying to Mr Cook:

> "See below. Not sure if Rambo is correct. Do you know? John approved this image long ago and we have many licenses with it. It's not worth a fight but he shouldn't write emails to 3rd party business people like this before he speaks with me. He needs to discuss with us first then we can approve or disapprove. No one needs to hear his issues unless we as a group decide to tell them."

Mr Cook responded at 4:42 GMT (timed at 8:42am on another version - that is presumably Pacific Standard Time):

> "I actually agree with him. The image with the bulldog is not us."

So there would not have been a majority in favour of granting the licence in any event.

206. All these matters combine to make this yet another incident which does not support Mr Lydon's case. The representation relied on was not made; there was no veto; so there was no acquiescence in a power of veto (and the April 2015 meeting remains part of the reasoning in that conclusion), and this is not evidence of an acknowledgment of a need for unanimity in decision-making on licences.

The Crown - November 2018

207. This is another late addition to the case of Mr Lydon, apparently arising out of references to the incident in the witness statements of the claimants (or so I infer). It is said by Mr Lydon to be something which demonstrates yet again the failure of the other band members to impose their majority will on him. It is expressly pleaded:

> "In the absence of any attempt to rely upon the BMA, Mr Lydon proceeded upon the basis that unanimity was required such that the majority rule provisions of the BMA did not apply to the proposed licence or at all."

208. It is not easy to work out what, as a matter of relevant legal principle, Mr Lydon is relying on here. He does not allege some sort of representation; he does not say that this was evidence of a common assumption; and he does not allege that it is an act of acquiescence in Mr Lydon's own alleged assumption about the applicability of the BMA.

209. However, I shall resist the temptation of taking the shortcut of not paying any attention to Mr Lydon's pleaded case on the Crown and try to deal with what I understand the case to be as a result of final submissions. First it is necessary to consider the facts.

210. By June 2018 the Netflix series The Crown was a well-known and much watched series very loosely based on the lives of the royal family. There had been 2 series. On 1st June 2018 Mr Paul Veitch of Universal Music passed on a request from the producers for the use of certain Sex Pistols material in Episode 10 of the third series, as it was then planned. At that time Ms Camarata expressed concerns based on the absence of any input from the band to the recreation of "this iconic moment in the band's history", and Mr Stevens expressed his concurrence. She was apparently waiting for further information.

211. Nothing of materiality happened until 1st November 2018 when Mr Veitch sent further information to Mr Stevens and Ms Camarata. On 12th November Mr Stevens responded that he (on behalf of his client) objected to scenes showing events which he said did not happen (major disturbances on the day of the Queen's Silver Jubilee). He required that the scene be re-written. Mr Veitch responded that he would pass that on, but on 28th November he said that the scene could not be changed. He asked if Ms Camarata and Mr Stevens wanted to have another run at getting the deal. He warned that the producers of the series were about to move on to other participants if Sex Pistols did not agree. Mr Stevens responded on the same day saying that "we" did not want to be associated with a drama which re-writes history for political ends or for dramatic effect. He commented

that he was on duty parading with the paratroopers that day and the day passed without incident, and sent a photograph of himself just before the parade.

212. The next day Mr Veitch reported that the deal was off the table and that the producers were going down "another route". The inference is that they were not willing to re-write the scene and were not willing to negotiate, so they went elsewhere. The opportunity of having the Sex Pistols material used was therefore lost.

213. Ms Camarata told me in cross-examination what happened at that point. She had been told by Mr Veitch at the time of Mr Stevens' letter that she had a couple of days to try to clinch the deal. She had not intervened in the process until that point because she had been on tour with another client and she was content to see where Mr Stevens got with his point without intervening herself. He was entitled to see where the point got him. Believing that she had a couple of days to do the deal, which she thought would be very good for the band members, she had just started drafting emails when she received the email from Mr Veitch saying that the deal was off. I accept that evidence. Mr Cunningham put to her that none of that material appeared in her witness statement (which was true) without actually putting to her that it was a recent fabrication. I find that it was not. The reason that it did not appear in her witness statement was probably that The Crown incident was not a pleaded incident at the time and her witness statement's purpose in referring to the Crown was only to identify it as an incident in relation to which using the BMA was discussed, not to meet an as yet unadvanced case put forward by Mr Lydon. So it was not so necessary to give the fuller account of events which emerged in cross-examination.

214. Having had that bad news, Ms Camarata reported back to her clients and Mr Button. It would seem from Mr Jones' evidence that he had known of the proposal to use Sex Pistols material in The Crown before the opportunity was lost, and he was very keen that that should happen because of the effect in further promoting the Sex Pistols. He was very upset and cross when the opportunity was lost. Mr Cook said he was "flabbergasted" that the opportunity was lost; it is not clear whether he knew anything about it until it was lost. Similarly it is not clear that Mr Button knew anything about it when it was lost, but he too was cross at the lost opportunity. He regarded the incident as "pivotal".

215. So the opportunity was regarded by the band members other than Mr Lydon as being a very valuable one. While the opportunity seemed to be lost there was a discussion between the claimants, Ms Camarata and Mr Button as to the possibility of invoking the BMA to overrule Mr Lydon's objections. However, it was then appreciated that the opportunity was truly lost so there was no scope for exercising it. It was therefore not pursued and not mentioned to Mr Lydon. This was therefore one of the very few occasions in the history of the BMA on which its invocation was actively discussed in order to over-ride the wishes or views of one band member.

216. Mr Cunningham's point in his final submissions was that this deal was significant enough to the claimants and Mr Button to justify the use of the BMA, and that they would have had time to use it between 12th and 28th November but they did not do so. This therefore demonstrated that the BMA "had indeed been abandoned in 2015". Furthermore, it was significant that no attempt was made to regularise the position by reliance on the BMA in the period following the loss of the Crown opportunity. I think this means that the claimants did not put down some sort of marker for future dealings, again supporting the inference of abandonment.

217. There is nothing of substance at all in these points. By the time that the deal had been called off by the producers of The Crown there was no scope for exercising the majority voting rules of the BMA. There was nothing that the other band members could compel Mr Lydon to do because the opportunity of consenting had been lost. Mr Cunningham's case rests on the failure to invoke the BMA in the period between 12th November and the calling off of the deal. However, there was no context for its invocation at that time. I accept Ms Camarata's evidence that she was leaving the matter with Mr Stevens for the time being to see where it went, so there was no context in which there was a deal on offer, the other band members had decided to accept it and Mr Lydon was standing in its way. Matters had not yet got that far. So there was no scope for the BMA to be brought into play, and its absence from the scene is in no way attributable to its "abandonment" (whatever that might mean). Since I also accept the evidence that there was a discussion about the BMA after the deal broke down (and that evidence was not really challenged) there is no case at all for saying that on that side that the BMA had actually been abandoned. The converse was true.

218. In short, therefore, this incident does nothing to further any sort of case that the BMA no longer applied. The totality of the facts demonstrates that the other band members gave no encouragement of such a belief in Mr Lydon, and that in fact they held the contrary belief.

The period between the Crown and the new TV series

219. I deal with this period separately because of one sentence in Mr Cunningham's written final submissions. In paragraph 18 he says:

> "Instead of trying to solve the BMA issue at that stage. C's and Ms Camarata deliberately and unconscionably sat on their hands until January 2021."

The words "at that stage" refer to the Crown incident.

220. This is a serious but unpleaded allegation. It suggests some sort of deliberate misleading and a deliberate decision not to take some sort of step which ought to have been taken during that time. That step would seem to be bringing the BMA point out into the open and thrashing it out, litigating if necessary - I assume that that is what is meant by "trying to solve the problem".

221. I acquit the claimants and Ms Camarata of any such charge. It is not apparent what legal or moral duty they had to bring the matter out into the open. They knew that if that were to be done then it would be likely seriously to imperil relationships with Mr Lydon, and none of them wanted that. That is understandable and not culpable. They had managed for many years without having to take that step (though as appears above it had been considered on a couple of occasions) and that situation might have been sustainable into the future for all they knew. There was nothing wrong in maintaining that position, and it was very arguably in the interests of all persons that that should be the case. It was in no way misleading, and the claimants were not obliged to bring the matter out into the open unnecessarily.

222. I have already set out the circumstances of the proposed new TV series in which the present litigation arises. There was nothing in that which demonstrated some sort of unconscionable concealment of the position. Ms Camarata and Mr Jones were entitled to wait for the appropriate moment to ask Mr Lydon for his consent. It was unnecessary for them to refer to the BMA at that stage, because there might have been no need for it. In short, there were no dealings between Mr Lydon on the one hand and the other band members on the other which in all good conscience required them to refer in some way to the BMA, much less positively to assert it so as to clear the matter up. They did not need to pick a fight over something that might never have to be fought over.

Conclusions on assumptions, acquiescence and representations.

223. I therefore conclude, after this long catalogue of incidents said to demonstrate assumptions and representations that would give rise to the estoppel relied on by Mr Lydon, that none of them have that effect. Taking that decision with the prima facie findings that I had made earlier about Mr Lydon's assumptions about the BMA, I find that Mr Lydon fails to establish any of the assumptions, representations and acquiescence he needs to establish to begin to get an estoppel case off the ground. Nor could there be any case of reliance on any such material.

Reliance, detriment and unconscionability - general

224. Having thus found, it is strictly unnecessary for me to decide the other principal element of an estoppel, which is that it would be unconscionable for the representor (or equivalent) to resile from the assumptions or representations. I will, however, deal with the point, in fairness to the parties and since I received submissions on it. Doing so will require me to consider an application for permission to amend made by Mr Lydon.

Reliance, detriment and unconscionability - the amendment application

225. The original pleading of Mr Lydon was as follows:

> "21. Mr Lydon relied upon the said common assumption, rather than merely upon his own independent view of the matter, in connection with the dealings between the parties described at paragraph 16 above, whereby Mr Lydon suffered detriment, or a benefit was thereby conferred upon the Claimants and the Second and Third Defendants, sufficient to make it unjust or unconscionable for any of the latter to assert the alleged legal (or factual) position as against Mr Lydon."

In addition Mr Lydon pleaded that he proceeded on the basis that it was unnecessary to seek the declaration that Mr Grower had threatened in his email of January 2015.

226. There was no real pleading of what the detriment was. This was in a context in which the pleading seemed to be confined to estoppel by convention, so there was no reference to reliance on representations. A Request for Further Information sought confirmation that Mr Lydon's case was confined to estoppel by convention, and the response indicated that Mr Lydon relied on "the doctrine of estoppel generally". It went on to dissect the existing Defence and to extract representations from various events, and I have reflected those above. It referred to reliance by cross-referring to paragraphs 20 and 21 of the Defence. Paragraph 20 reads:

> "20. Further, the Claimants and the Second and Third Defendants assumed some element of responsibility for that common assumption, having conveyed to Mr Lydon an understanding that they expected him to rely upon it in relation to the matters set out at paragraph 16 above. In particular, their failure to respond to Mr Grower's express contention in January 2015 that they were

> estopped from relying upon the BMA conveyed to Mr Lydon the understanding that the majority rule provisions of the BMA did not apply to proposed licences of the Compositions or Properties."

That does not seem to me to contain a relevant pleading of reliance or detriment.

227. Unconscionability is pleaded by a cross-reference to paragraphs 21 (above) and 24:

> "24. In the premises, it would be unfair or unjust to allow the Claimants to rely upon the terms of the BMA so as to require Mr Lydon to acquiesce in or grant approval for a licensing proposal approved by the majority of the members of the Band against his will."

That does not really add anything much about matters said to make resiling unconscionable.

228. Deficiencies in pleading detriment were pointed up in the claimants' skeleton argument. There was a delayed start of the trial caused by a need to self-isolate and that gave an opportunity for a short pre-trial hearing at which the point was raised. I indicated that the first defendant's case on these issues (and other points) needed to be clear so that there were no surprises part way through the trial, and as a result of that Mr Cunningham produced a note for the beginning of the trial which indicated two sorts of detriment that were relied on. They were, first, Mr Lydon's not taking any steps to commence the proceedings threatened by Mr Grower in his letter of January 2015, and second, the carrying out of substantial and effective work on licensing opportunities, and maintaining the integrity of the Sex Pistols brand, on the footing that Mr Lydon had a veto which he could exercise to preserve and enhance the brand.

229. The second of those matters had not hitherto been pleaded, and that was pointed out by Mr Cullen. He indicated that it ought to be pleaded and he would not be consenting to that amendment. Furthermore, he indicated that he would be fighting the case on the basis of the then current state of the pleadings, clearly indicating that if Mr Cunningham wished to introduce these matters then he ought to apply to amend. Although I was not invited to rule on the point at the time, in my view Mr Cullen was plainly right about that.

230. In due course Mr Cunningham produced a draft Re-Amended Defence pleading the points arising out of his note. However, that was not until the end of Day 4 of the trial, at the end of Mr Cullen's last witness and immediately before Mr Cullen formally closed his case. The document added the following words to paragraph 21 (the existing wording of which is set out above):

> "Mr Lydon suffered detriment in particular because:
>
> a. He refrained from taking the declaratory proceedings threatened by Mr Grower in his 16 January 2015 letter; and
>
> b. He and Mr Stevens undertook prolonged substantial and effective work on licensing opportunities, and maintaining the integrity of the Sex Pistols 'brand', on the footing that Mr Lydon had a veto exercisable so as to preserve and enhance the Sex Pistols brand."

(The proposed Re-Amended Defence contained other amendments to which Mr Cullen did not in the end object.)

231. However, despite producing a draft Re-Amended Defence, Mr Cunningham did not then apply for permission to amend. Mr Cullen commented on the lateness of the production of this document, and reserved all his rights in the event of an application being made for permission to amend. It was anticipated that Mr Cullen would consider the document and give his response by the next morning.

232. However, Mr Cullen did not give his response (at least not to the court) when the I sat the next morning, and Mr Cunningham did not make his application at that time. He called Mr Lydon and his evidence was given without the point being dealt with or an application being made. Mr Cunningham explained that he did not want to make his application then because did not want to "hijack" Mr Cullen's cross-examination. Once that evidence was over the question of the amendments arose again and Mr Cunningham indicated that he would make his application on the occasion of final submissions. Mr Cullen indicated in very general terms the nature of his objections to the paragraph 21(b) amendment, but said that in the circumstances he considered that Mr Cunningham's proposal was best course for dealing with the application, so that we could get on with the evidence.

233. In those circumstances Mr Cunningham made his application at the very end of his final submissions.

234. In the end the only part of the application that was opposed by Mr Cullen was paragraph 21(b), the allegation that Mr Lydon and Mr Stevens did a lot of work that they would not have done had they appreciated that they did not have a veto. Mr Cunningham sought to support this application by pointing out that it merely (as he would put it) replicated and formalised what had appeared in his note at the start of the trial, and it did no more than reproduce what was said to be already in evidence. He justified his late application by a desire not to disrupt and put pressure on an expedited trial timetable.

235. Mr Cullen opposed that part of the application on the basis that it was late and he was prejudiced in that the allegation that was sought to be pleaded was one that required proper disclosure for it to be tried and tested properly. Disclosure would have established whether the work was really done, its cost, and when it was done (which was important because it was relevant to ascertain whether it was before or after any conduct said to give rise to an estoppel). Without that disclosure proper cross-examination was not possible, and the lateness of the pleading meant that he was deprived of the opportunity to adduce his own evidence on the point. Furthermore, there was insufficient material to show that the amendment had any merit at all. The underpinning allegations were implausible and unparticularised. No good explanation was given for the lateness of the application.

236. The principal factors which the court should take into account on an application to amend are set out in the judgment of Carr J in *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm) at para 38:

> "a) whether to allow an amendment is a matter for the discretion of the court. In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;
>
> b) where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. Rather, a heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission;
>
> c) a very late amendment is one made when the trial date has been fixed and where permitting the amendments would cause

> the trial date to be lost. Parties and the court have a legitimate expectation that trial fixtures will be kept;
>
> d) lateness is not an absolute, but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done;
>
> e) gone are the days when it was sufficient for the amending party to argue that no prejudice had been suffered, save as to costs. In the modern era it is more readily recognised that the payment of costs may not be adequate compensation;
>
> f) it is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay;"

237. This application fails under almost every head. It is undoubtedly "late". It might be unfair to treat it as one made right at the end of the defendant's closing speech (which chronologically it was) because Mr Cunningham might well have been prepared to make it on Day 5 when Mr Cullen indicated that he agreed that the better course, in the circumstances, would be to leave it until final submissions. However, even if it is treated as having been made at that point it is very late. It was after the claimants had closed their case and after Mr Lydon had given his evidence. In chronological terms it could not have been made much later. In procedural terms it was also late because (subject to the one point that I make below as to the overall merits of the would-be case) if I had acceded to it at that point it would have derailed the trial because I agree that it would have appeared that the proper disposition of the point required disclosure (and, in that connection, some particularisation) and an opportunity for the claimants' witnesses to give evidence on the point. That could have meant recalling them, or some of them. Mr Lydon would have had to have been recalled so that he could be cross-examined on the disclosure material, and I consider it likely that he and Mr Stevens would have needed to give some further evidence about the particular transactions to which the disclosure related. The trial would have been thoroughly derailed if it had to accommodate all that. Since this was an expedited trial in which an urgent answer was required, and therefore with no scope for its being derailed and put back on the rails within an acceptable timeframe, it would have been right to disallow the amendment on this ground alone.

238. It is no answer to this to say that the points appeared in the evidence and then were made clear in the note prepared at the beginning of the hearing. The evidence should relate to the pleaded case, not the other way round, and detriment is an absolutely central element in any estoppel case. What Mr Cunningham now seeks to introduce is that key element at a late stage. Mr Cullen was entitled to have the matter pleaded properly at the appropriate time. Nor is the problem fixed by the note. In this respect the note was not clarifying some existing matter that required clarification. It was referring to something that needed pleading and which had not been hitherto pleaded, as Mr Cullen pointed out.

He made it clear that his intention was to meet the pleaded case (save insofar as he then did not object to elements of the note and the new pleading), and he was entitled to take that attitude. Furthermore, the evidence, to which I refer below, was devoid of any particularisation, and the point required that there be some. I am afraid that what the note did was to point up an important matter which was absent from the pleading, and it did nothing to fix that difficulty.

239. Nor was any good (or indeed any) explanation advanced for the lateness of the application. There are two aspects of lateness. The first is the lateness of the application in the context of the action as a whole. It is of course understandable that further and better ideas occur to parties' legal representatives during the overall course of an action. That lies behind a large proportion of applications for permission to amend. That might or might not have been the case here; it was not given as a reason. In this context I make due allowances for the fact that steps in the action were condensed in order to get this matter to trial by July when it had been started only in the previous March. In that context it would be right to be more sympathetic to accommodating further thoughts (if that is what happened here) occurring closer to the trial than would otherwise have been the case. But still, no explanation was given. The second aspect of lateness is the late production of the draft Re-Amended Defence in the context of the trial. That an amendment would be required ought to have become apparent when the note was prepared, and one would have expected an application for permission to amend along with the note. However, it was not made then, and the draft pleading was not produced for another 3 days. No satisfactory explanation has been given for that. Mr Cunningham has demonstrated a concern not to disrupt the trial, which is commendable, but that does not explain why it took 3 days to produce a draft pleading.

240. The disclosure and evidential difficulties which this late amendment presented, and the lack of explanations, are sufficient by themselves to justify the dismissal of the amendment application in relation the paragraph 21(b) amendments. Mr Cullen also submitted that Mr Lydon had not produced a sufficiently strong evidential case on the merits of the amendment to justify it (see the reference to the strength of the new case in paragraph (b) of Carr J's judgment above). There is a lot to be said for this point now that I have heard all the evidence and (as will appear below) reached a conclusion on what it reveals, but I am not sure that the same conclusions would have arisen out of the more limited consideration which would have been given at the application stage. I prefer to base my decision on the lateness point which I have just dealt with.

241. I therefore would not allow the amendment to introduce paragraph 21(b). Having said that, I nonetheless consider the merits of the detriment/reliance/unconscionability case its merits on the basis of the material that I had before me at trial and consider that it fails as a point on the merits anyway.

Reliance, detriment and unconscionability - the facts

242. In order for it to become unconscionable for a person to resile from the representations or assumptions giving rise to an estoppel the counter-party must have relied on the representations or assumptions in some way, and done something that they would not otherwise have done (or refrained from doing something that they otherwise would have done) to an extent which requires the estoppel. That will usually require detriment, and that is what Mr Lydon's pleading actually relies on in the re-amended paragraph 21. He first relies on his not taking the declaratory proceedings threatened by Mr Grower in his January 2015 email.

243. I assume for these purposes, contrary to my determination above, that the non-response to Mr Grower's email could be a relevant representation or an acquiescence in Mr Lydon's assumption that the BMA was not operative. Even on that assumption I am afraid that I cannot see, and the evidence did not seek to establish, why not commencing proceedings in 2015 is a detriment to Mr Lydon. If he had sued in 2015 the answer on the estoppel point would have been the same then, one way or another, as if he had sued later (ie now). True it is that the intervening period provides further events which can now be put in evidence, but it is not suggested that somehow those intervening events would somehow unfairly weaken the case that would otherwise have been made in 2015. Mr Lydon actually relied on them as strengthening his case. What Mr Lydon lost by not seeking a declaration in 2015 was the opportunity to win or lose earlier. That is not a detriment to him, and the loss of that opportunity does not make it unconscionable for the claimants to assert the BMA now.

244. The only other source of detriment or unconscionability is the allegation that in reliance on a belief that unanimity was required Mr Lydon and Mr Stevens invested significant time and effort in considering licence applications and granting or refusing consent (paragraph 21(b). It is said that they would not have done this had they known that they could be overruled by the majority on any issue.

245. This is, of course, the point on which I have refused permission to amend. However, once again for the sake of completeness, and lest Mr Lydon should think he has somehow been defeated on this issue by a technicality, I will consider this point on the merits on the basis of the evidence I heard. I bear in mind, of course, that if this point had been properly and timeously raised the parties and I would have had the benefit of disclosure, additional evidence from the claimants and additional cross-examination of Mr Lydon and Mr Stevens. However, I shall express my views on the basis of the evidence that was presented, which is what Mr Cunningham would have had available to him at the end of the trial on the basis of a successful amendment application.

246. The evidence on this was contained in similar paragraphs in the witness statements of Mr Lydon and Mr Stevens. Mr Steven's evidence in his witness statement was that enormous effort was devoted by him to checking proposed uses of Sex Pistols material, whether its use was accurate in a historical context, and the form of its use, to make sure it was in keeping with the approach of "top quality, accuracy and integrity". The work is said to have involved many hours of cross-checking and questioning and testing a proposed licencee's intended use. He and Mr Lydon had always operated on the basis that they had a veto. Then he adds this:

> "If it were the case that a majority rule provision applied we would have almost certainly acted differently with possibly different outcomes, in the knowledge that Anita could just grant the requested approval without reference to us. Why would we then have spent all of the time and effort to protect the brand, maintain the quality and preserve the legacy of the Sex Pistols with regard to any licensed products if at any time that quality control could have been snatched away from John?"

247. Then he refers in general terms, without giving them, to "a number of examples where without John's quality control a use would have gone through "on the nod" by Anita, who is happy to say that something is okay to be used when it should not be used because she is only looking for the next opportunity to monetise and does not appear to care in the same way that John cares about the legacy, quality, integrity and authenticity of the Sex Pistols' brand."

248. Mr Lydon refers in general terms and at slightly greater length to the importance of maintaining the standard of the Sex Pistols brand, and the effort he put into that. Again, the statements are unparticularised. His paragraph 52 says:

> "52. I work closely with John in maintaining the very high quality and integrity in Sex Pistols' product. I do that because it is my product and I can control it by using a power of veto which has always been there and has always been used to ensure the quality is maintained at all times wherever possible. If I did not have control then there would be no point in spending all the time and effort maintaining the high standards and the integrity in the product that is put out. Blood and sweat has been spent over many years maintaining the integrity of the Sex Pistols and John and I have worked tirelessly to keep the Sex Pistols as an iconic, authentic and top quality brand for our fans and for the legacy that we will leave behind us. If we were simply to grant any licence at all that would produce revenue in the short term, the brand would become devalued and it would lose its authenticity. It would be like selling blancmange and I am not interested in doing that. If I thought for

> one moment that Anita could take control of the licencing of Sex Pistols products and overrule my concerns about quality, integrity, accuracy and maintaining the history of the Sex Pistols in such a diligent way, why would I have bothered over the years to do what I have done and invest all of that effort only for it to be taken away?"

249. That is the extent of the evidence in chief on the point. Mr Cullen cross-examined on these allegations so far as he could, and put an example to each of them of instances where it was said by him that not all that much work went into their consideration of licences. The result of that is that the allegation that a large amount of effort habitually went into these things was untested. I am certainly prepared to accept that they were both keen to preserve the integrity and force of the Sex Pistols brand. They were not alone in that - Ms Camarata and the claimants were similarly so concerned, which is why on occasions Ms Camarata did not wish a licence to be granted. However, I am not prepared to give the averments much force in the absence of particularisation. That is the first problem for Mr Cunningham.

250. The second problem is that I do not consider that the protestations that they (and particularly Mr Lydon) would not have bothered to do the work if they had believed they did not have a power of veto to be credible. I have found that Mr Lydon must have known about, and appreciated the effect of, the BMA when it was granted. There is no suggestion that at that stage he was any less concerned to preserve the Sex Pistols brand than he was in more recent years, yet he still signed the BMA. He must have been content to do his assessments of transactions under the shadow of the majority voting regime at that stage. The same applies as time goes on. I have identified the events in 2009 when Mr Lydon must have known, or been reminded of, the existence of the BMA, yet at that point that was still no disincentive to his activities in considering carefully the use of the brand.

251. Furthermore, Mr Lydon had actually signed away his power to control the use of music rights to his publishing and music companies. He assigned publishing rights to Warner Chappell Music without retaining any significant rights of control, and in the very deal which prompted the BMA he sold publishing rights to BMG retaining only qualified rights of approval which could be overridden if he was being unreasonable. It may be that those companies, for their own reasons, chose to seek his permission from time to time, but ultimately they could act as they saw fit. Mr Lydon gave them those rights, which are inconsistent with the view that he would just give up supervision if someone could go against his will.

252. The allegations also lack credibility in the context in which Mr Lydon, the claimants and Ms Camarata were operating. They presuppose that the absence of a Lydon veto meant that Ms Camarata and Mr Button could <u>and would</u> override Mr Lydon in every

transaction which they favoured, ignoring his views and regardless of damage to the brand. Some of the protestations assume that Ms Camarata (and presumably Mr Button) would never bother to ask Mr Lydon about anything because they could always get their way without doing so. That is simply not credible. There is no evidence that Ms Camarata was simply interested in monetising the brand regardless of quality. She was as interested in preserving quality, in principle, as Mr Lydon, though their views might differ as to how to do that in any particular case. The evidence I saw showed that she had a concern about the effects of any particular use which went beyond simply a desire to get in money on any proposal. She did not, and would not, give the impression that she (and her clients) would override Mr Lydon every time they disagreed, and there is no reason why Mr Lydon would have that impression. A regime such as that which operated throughout, which was one of consultation and respect for opposing views, with the BMA in the background, was perfectly operable, and indeed was operated. It is inconceivable, in my view, that Mr Lydon, who on his own evidence was very keen to preserve the brand, would take the very damaging step of disengaging from the exercise of preserving it just because he could, if a particular transaction warranted it, be out-voted. He had a continuing financial interest in the brand, and withdrawing from co-operation would be one of the most damaging things he could do. I consider it highly unlikely that he would do that, or that he really believes now that he would do that. This part of the case was, in my view, a contrivance to bolster an otherwise absent detriment case, which no doubt explains its late appearance on the scene.

253. It follows, therefore, that even if I had allowed the amendment this particular part of the case would have failed on the facts. I have already found that the non-suing for a declaration did not amount to a step causing disadvantage to Mr Lydon. No other acts of detriment were propounded by Mr Cunningham. In the absence of detriment, or acting differently, there would seem to be no other case for saying that it would be unconscionable for the claimants to resile from any representation or assumption about the BMA (had there been any), so this element of the estoppel case is missing.

254. For the sake of completeness I record that Mr Cunningham sought to rely on what he said was improper concealment of the TV series, and its late disclosure to Mr Lydon, as amounting to unconscionability for these purposes. I have found that there was in fact no wrongful behaviour here, but even if there had been it would not have been relevant to the unconscionability element of the estoppel claim. It would have related to something else. In other words, even if the claimants (which must mean Mr Jones and his agent Ms Camarata) had somehow behaved badly towards Mr Lydon in that matter, there is no basis for linking that behaviour back to the BMA for the purposes of this element of the estoppel case.

Remedies and implied term

255. The consequence of my finding so far is that the claimants are entitled to invoke the majority voting rules against Mr Lydon in relation to the use of Sex Pistols material in the new Pistol TV series. The last point that arises is one going to the relief sought. Paragraph 11 of the Amended Particulars of Claim pleads that as a matter of interpretation of the BMA or as an implied term:

> "… the parties thereto are under an obligation to give such consents and to sign and execute all such licences and other documents as may be necessary to give effect to the decisions of the relevant majority in relation to use of the Compositions and the exploitation of the Properties."

256. Based on that, the claimants seek an order requiring Mr Lydon to comply with his obligations, and in particular that he grant his consent in writing to the entering into of the sync licences for the new TV series.

257. Mr Cullen submits that the obligation flows as a matter of construction from clause 1, which is likely to require active steps to be taken to give effect to the BMA. Alternatively, the obligation arises as an implied term in order to give the agreement business efficacy. Mr Cunningham submitted that the agreement on its true construction did not contain such an obligation because there were no words which were capable of conveying that meaning. So far as implication was concerned, he said I should consider whether the BMA was "incoherent" without it and come to the conclusion that it was not. What the claimants were seeking to do was to improve the agreement, and not add something that was necessary. Clauses 1 and 5 are perfectly operable without the implied term, as would have been apparent to the experienced lawyers who drafted its elaborate terms.

258. This seems to me to be a straightforward point. I do not consider that the obligation can arise as a matter of construction. There are no words which have the effect contended for. However, it does arise as a matter of implication. I accept that the implication of terms in an apparently fully drafted and considered agreement, particularly where lawyers were concerned, may be more difficult than in a less formal agreement (see eg *Philips Electronique Grand Public SAv British Sky Broadcasting Ltd* [1995] EMLR 472 at 481-2) , but they can still be implied where the terms and circumstances require.

259. The conditions for the implication of a term are set out in a number of cases, but for present purposes I can take them from a case cited by both parties, namely *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266, per Lord Simon at 283:

> "… for a term to be implied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

260. I consider that those conditions are amply fulfilled by Mr Cullen's term. It is reasonable and equitable - why should a minority be able to frustrate the will of the majority when he has agreed to abide by that majority will? It is necessary to give business efficacy to the contract. If it does not exist the process stops at the taking of the majority decision. No effect can be given to majority decision, which becomes writ in water. The contract is ineffective without the term. In the course of argument I asked Mr Cunningham where, on his case, the parties went once a majority vote had been taken to grant a licence and the minority still refused to co-operate in granting it (where that co-operation was required). He was, with the greatest respect to him, simply unable to give a real world practical answer to that on his case in the absence of the proposed implied term. He suggested that the parties could talk or litigate. Obviously they could talk, but if they were to litigate then there must be some point in the litigation.. There could only be such a point if the litigation would produce a remedy; and there can only be such a remedy if there was Mr Cullen's implied term to base it on. So even pursuing Mr Cunningham's reluctant logic, one ends up with the implied term.

261. In those circumstances the term is also so obvious that it goes without saying; and the last two conditions in the authority are plainly fulfilled.

262. I therefore hold that the contract contains the implied term contended for by Mr Cullen. That justifies his mandatory relief.

Conclusion

263. It follows from the above that the claim succeeds and the defence to it fails. The form of relief which the claimants should have can be agreed between the parties in the course of agreeing (as I hope they can) the form of order which should be made as a result of this judgment. The precise form of relief has not been the subject of debate yet (save insofar as it has been decided as a result of my decision on the implied term point), but, if it

helps, I cannot detect any problems with the relief sought in the prayer, though I wonder whether the claimants need to press their claim for damages.

264. I mention one point about one paragraph of the prayer, because it featured heavily in Mr Cunningham's cross-examination and it may help if I head off any unnecessary debate about it. Paragraph (2) of the prayer seeks a declaration in these terms:

> "(2) A declaration that, under the BMA, the parties thereto are under an obligation to give such consents and to sign and execute all such licences and other documents as may be necessary to give effect to the decisions of the relevant majority in relation to use of the Compositions and the exploitation of the Properties."

265. This paragraph was put to some witnesses as being a demonstration that the claimants' case involved effectively reducing Mr Lydon to some sort of servile state in which he had to do the bidding of an oppressive majority. I do not consider that it has such an effect. It is a declaration as to the effect of the BMA (in the light of the implied term which I have found to exist) and seems to me to be relatively straightforward. I say that, albeit without having heard argument on the point, in the hope that it reduces the scope for debate about the terms of the order.

Appendix 1 - the BMA

AGREEMENT

AGREEMENT made this_____ , by and among John Lydon, Paul Cook, Steve Jones, Glen Matlock and Peter Button, as the duly authorized representative of the Estate of Simon Beverly (p/k/a Sid Vicious) (jointly and severally referred to hereinafter as the "Writer(s)").

WHEREAS the Writers are the composers and/or authors of the musical compositions appearing on the Exhibit A hereof (the "Compositions"); and

WHEREAS the Writers wish to establish a procedure for their respective approval of certain licenses or permissions for use of the Compositions and to the "Properties" as described in paragraph 5 below which may hereafter arise.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby mutually acknowledged, the Writers have agreed and do hereby agree as follows:

1. No license or permission for use of any of the Compositions (the "License") in a manner requiring approval or consent for such use (including but not limited to synchronization licenses and advertising or commercials permissions, arrangements, adaptations, and/or translations, but excluding mechanical licenses where compulsory licensing is available or where accepted industry custom and practice mandate the issuance of such a license) shall be issued or given anywhere in the world by any of the Writers or by their respective designees (including any music publisher authorized to administer any or all of the Composition or any parts thereof) except in accordance with the following procedure:

(a) the individual Writer(s) (or Writer(s)'s designee) requesting the License or the individual Writer(s) (or Writer(s)'s designee) receiving a request for the License shall notify the other contributing Writers of the musical composition in question of the requested use, specifying the nature, term, extent of, and payment for, such use;

(b) the Writers receiving such notice shall have three (3) business days from their receipt thereof to object to the requested use;

(c) failure to so object shall be deemed approval of the requested use;

(d) both the notification referred to in subparagraph (a) above, and the objection referred to in subparagraph (b) above, shall be in writing and shall be deemed received upon personal delivery, or 24 hours after transmittal by facsimile, to the addresses listed on the Schedule I attached hereto.

(e) approval by a majority of the Writers of the subject Composition(s) shall constitute approval of the License.

2. Notwithstanding anything to the contrary set forth above or elsewhere in this agreement, the approvals and consents provided for herein shall be subject to any existing agreements of which the parties have been advised prior to the date hereof which agreements may limit or restrict any party's right to give or withhold such approvals or consents. The pertinent provisions of any such agreements shall promptly be provided to all parties to this agreement. John Lydon ("Lydon") represents and warrants that the pertinent provisions of the publishing agreements between Lydon and (i) BMG Music Publishing and [(ii)] Warner Chappell Music (the "Warner Chappell Agreement") which have heretofore been provided to the other parties hereto are true,

complete and correct copies of the original and that Lydon shall, promptly following execution hereof and of the so-called BMG comfort letters, utilize his reasonable good faith endeavors to secure an amendment of the Warner Chappell Agreement so as to more closely reflect the approval and consent provisions hereinabove set forth. To the extent the Writers or any of them retain rights of approval pursuant to such existing agreements, the Writers agree to exercise their rights of approval or disapproval, as the case may be, consistent with the provisions and intent of this Agreement.

3. Unless otherwise agreed in writing among the Writers, the Writers' respective contributions to the musical composition(s) in question are as set forth in Exhibit A.

4. Each of the Writers agrees to promptly notify their respective music publisher and/or administrator designees from time to time of the requirements of this agreement.

5. All decisions regarding the exploitation of Sex Pistols recordings, videos, artwork and merchandising (the "Properties") shall:

(i) with respect to the Properties originally created prior to and including 1978 and all subsequent repackaging and exploitation thereof including without limitation audio tapes, CD's video, name and likeness and artwork and all other merchandising exploitations and which are owned or otherwise under the control of Sex Pistols Residuals, (including rights in and to the name "Sex Pistols") be made upon the majority consent of Messrs. Lydon, Cook, Jones and Peter Button, on behalf of the Estate of Simon Beverly; and

(ii) with respect to Properties which are presently owned by or otherwise under the control of the "Quid Group" (as defined in the following sentence) and its affiliated and related entities, be made upon the majority consent of Messrs. Lydon, Cook, Jones and Matlock to the extent the products or services of such individuals are embodied in the Property(s) in question. The Quid Group shall mean and refer to Quid Touring LLC, Quid Merchandising LLC, and Quid Records LLC, jointly and severally.

6.(a) In the event that at any time hereafter any one or more of the parties hereto contemplates or receives an offer to sell or otherwise dispose of their interest in and to the Properties or any of them or any part of them, including any individual party's right to receive income from the exploitation of the Properties, such individual ("the Disposing Party") must offer to the other relevant parties hereto (for themselves or their designee(s)) the right of first refusal to jointly acquire the interest of the Disposing Party and without prejudice to the generality of the foregoing the Disposing Party shall notify the other relevant parties in writing hereto of the proposed terms of any offer received from, or proposed to, a third party an offer to enter into an agreement jointly with the other relevant parties hereto containing the same terms described in the notice and other relevant parties hereto shall have the right for a period of sixty (60) days after receipt of such notice to accept such offer. In the event that the other relevant parties hereto reject such offer or do not respond to the Disposing Party at all within such sixty (60) day period the Disposing Party may enter into the proposed agreement with the third party on the same terms as set forth in the Disposing Party's notice. If the Disposing Party does not enter into such proposed agreement with the third party then the other relevant parties hereto shall have the right of first refusal in connection with each subsequent proposed offer received by or made by the Disposing Party as set forth above until the Disposing Party has entered into an agreement with a third party the terms of which have been rejected by the other relevant parties hereto.

(b) For the avoidance of doubt the "other relevant parties hereto" referred to in sub-clause 6(a) above shall mean the persons referred to in subclause 5(i) above when referring to Properties the subject of sub-clause 5(i) above and shall mean those persons referred to in sub-clause 5(ii) above when referring to Properties the subject of sub-clause 5(ii) above.

7. The parties each for themselves represent and warrant that they have the full right and authority to make and enter into this agreement and to perform their respective obligations and undertakings in accordance with its terms.

8. The validity construction and effect of this Agreement and any or all modifications hereto shall be governed by the laws of England and any legal proceedings that may arise out of it are to be brought in the High Court of Justice in London.

SCHEDULE I

1. 1. Anita Camarata is is authorized until further notice to to give or to to withhold approved for and on behalf of each of Steve Jones, Paul Cook, Glen of of Matlock and Peter Button (an authorized representative of the Estate of Simon c/o Beverly) and all requests for approval should be sent to her do Jersey Records, 31010351 Santa Monica Blvd., Suite 200, Los Angeles, CA 90025, fax number 310203-1052.

2. Eric Gardner is is authorized until further notice to give or to to withhold approval for and on behalf of John Lydon and all requests for approval should be sent to him at Panacea Entertainment, 2705 Glendower Avenue, Los Angeles, CA 90027, fax number: 213-666-9471.