

4. Void and voidable contracts

a) Misrepresentation

(1) Spice Girls Ltd v Aprilia World Service BV [2002] EMLR 27 (Court of Appeal)

Facts:

In 1998, the Spice Girls (as Spice Girls Ltd – SGL) made a contract with Aprilia for the promotion of Aprilia's new motor scooters – to be known as "Spice Sonic Scooters". On 4 May 1998, the five Spice Girls (including Geri Halliwell) participated in a commercial advertising shoot and contracted with Aprilia in relation to the use of that material for a period up to March 1999. The band had known on 25 April 1998 that Geri Halliwell intended to leave in September 1998.

Morritt V-C

51. At the outset it is necessary to reiterate certain well-established principles. **First, though the representation must be one of fact representations as to the future or of opinion frequently contain implied representations with regard to the present or to the knowledge of the representor.** (...) **Second,** a representation once made is likely to have continuing effect. So if made for the purpose of an intended transaction it will continue until the transaction is completed or abandoned or the representation ceases to be operative on the mind of the representee. (...) **Third, if at a time when it is continuing, the representor discovers that the representation was false when made or has become false since he should correct it.** (...) **Fourth,** the meaning and effect of a statement or of conduct must be ascertained in the light of the circumstances pertaining at the time. Those circumstances will include the course of the negotiations and any earlier representations.

54. First, shortly after the conclusion of the heads of agreement on 4th March 1998 SGL supplied the logos, images and designs depicting each of the Spice Girls which were to be used by Aprilia in the promotion of the scooters. It must have been quite obvious from all such material and the judge's finding quoted in paragraph 19 above that the same five girls were required for all of them.

55. Second, the events of 9th March 1998 were such as to bring to the attention of four of the other five directors of SGL the fact that Ms Halliwell had declared her intention to leave in September 1998. It follows that the representation implicit in the approval and use of the promotional material was false when made, or to the extent it was made before 9th March, became false on 9th March 1998. The fact that the other Spice Girls mistakenly as it turned out did not take Ms Halliwell seriously is immaterial. (...)

59. Sixth, it is clear that far from correcting the previous misrepresentations SGL continued and affirmed them. There was the draft agreement originally issued on 24th March and reissued on 30th April. No doubt the phrase "currently comprising" points primarily to the present and in that limited sense was true. But to our minds, in the context of the surrounding circumstances, it was concerned with an agreement which would continue into the future, in much the same sense as the conduct of SGL in approving the promotional material or of the Spice Girls in participating in the commercial shoot, in each case, for future use.

60. Seventh, as the judge held, participation in the commercial shoot necessarily carried the same implication and was likewise false. It did nothing to correct the previous misrepresentations, indeed it gave them additional force.

(2) Misrepresentation Act 1967, s 2

Damages for misrepresentation

4 Void And Voidable Contracts Uni Bayreuth

Annelies Wilder-Smith



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