

**BARBADOS**  
**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE**  
**HIGH COURT**

**CIVIL JURISDICTION**

**No. 2154 of 2012**

**BETWEEN:**

**TERRY BYNOE**

**Claimant**

**AND**

**GEORGE JACK FARRELL**

**Defendant**

**Before the Honourable Mr. Justice William Chandler, Judge of the High Court.**

**Hearing Date: December 14, 2012**

**Date of Decision: December 14, 2012**

**Mrs. Duana Peterson for the Claimant**

**Dr. Waldo Ramsay QC for the Defendant**

**DECISION**

[1] This is an intended action filed 12<sup>th</sup> December 2012 by the Intended Claimant for the orders set out at paragraphs 1 to 12 of the said application. The orders sought in the application are as follows:

- i. Specific Performance of the oral contract between the Intended Claimant and the Intended Defendant made in or around October 2012 and thereafter by conversations and correspondence between the Intended Claimant and the Intended Defendant;
- ii. An injunction restraining the Intended Defendant whether by himself, or by its servants and/or agents and/or assigns and/or otherwise from staging the Reggae Splash 2012 on the 15<sup>th</sup> day of December 2012 or in the alternative an undertaking in damages from the Intended Defendant to be secured by a payment in to the Supreme Court of Barbados;
- iii. An injunction restraining the Intended Defendant whether by himself or by his servants and/or agents and/or assigns and/or otherwise from advertising and/or

promoting and/or holding himself out as having the requisite permissions for the reggae artiste known as Andrae Sutherland also known as “Popcaan” to perform at the said Reggae splash 2012;

- iv. An Order restraining the Intended Defendant whether by itself, or by its servants and/or agents and/or assigns and/or otherwise from soliciting further sponsorship funds for the said Reggae Splash 2012 show without notice to the Intended Claimant and to account to the Intended Claimant for any funds already collected from sponsors;
- v. An Injunction restraining the Intended Defendant whether by himself, or by his servants and/or agents and/or assigns and/or otherwise from harassing, threatening, abusing or molesting the Intended Claimant pending the determination of the substantive matter to be filed herein;
- vi. That the Intended Defendant be at liberty to apply to set aside this Order upon giving a minimum of two days notice to the Claimant;
- vii. Such further or other relief as the Court may deem just, proper and/or fit;
- viii. Damages in addition to Specific Performance;
- ix. Interest on the said Damages pursuant to 35A of the Supreme Court of Judicature Act, Cap 117A at such a rate and for such a period as the Court thinks reasonable;
- x. That the matter be adjourned for a date to be fixed for the inter parties hearing;
- xi. That the costs of the application be costs in the cause; and
- xii. Further or other relief as this Honourable Court deems fit.

[2] In terms of the urgency of the matter and the fact that it is an intended application only the relief sought at paragraphs ii, iii, iv and v are relevant. In the event that the injunctive relief is granted, then paragraph vi will have to be taken into account as a term of any order granted.

[3] The matter was served on the Intended Defendant who appeared with counsel and the matter proceeded as an inter parties hearing.

### **The Intended Claimant’s submissions**

[4] The Affidavit in support basically alleged that there was an oral contract between the parties relating to the hosting of a reggae show on Saturday 15<sup>th</sup> December 2012 which featured two artistes, Movado and Popcaan who had previously been denied entry into Barbados for the purposes of performing at events here.

[5] Mrs. Peterson submitted that the Affidavit in support of the application disclosed that there existed an oral contract between the parties for the staging of the Reggae Splash event. The Intended Claimant deposed to the history of the business relationship between both parties. He deposed also to the discussions surrounding the history of the event and the difficulties experienced in obtaining permission for the entry into Barbados of the artiste, Movado.

[6] The Intended Claimant deposed also that he lobbied the Minister responsible for immigration and, in consequence, a meeting was convened between himself, the Minister and the Intended Defendant. In paragraphs 11 he deposed that,

*“After the conclusion of the meeting with the Minister responsible for Immigration, the Defendant and I were confident that the long sought after permission for Movado to enter Barbados would now be granted. The Defendant and I therefore agreed to work together as partners in the promotion of a reggae concert featuring Movado, to be held on Saturday December 15, 2012 (“the Concert”). The defendant and I also agreed that I would apply to the Chief Immigration Officer for a change of date for Popcaan to enter Barbados from November 24, 2012 to December 15, 2012.”*

[7] He further deposed to the information given to the Intended Defendant by himself so that he could contact the Manager of “Movado” to make the booking. Counsel also relied upon correspondence dated 18 October 2012 [“TB5”], a copy of a letter to Banks Holdings Limited signed by the Intended Defendant and himself which is recorded as follows:

*18<sup>th</sup> Oct, 2012*

*Dear Sir/Madam*

*I George Farrell and Terry Bynoe (sic) of Reggae Splash 2012 would like your company to sponsor our show, which will be held on the 15<sup>th</sup> December, 2012 at Kensington Oval, St. Michael. We have one on (sic) of the hottest artiste at the moment as we have received the work permit for Mr David Brooks, better known as Movado, so that he may perform at the show.*

*Also Popcaan as well as RDX will be performing at the event. We are looking to attract a large crowd of people of people, over ten thousand spectators. We would like your company to sponsor us with ten thousand dollars (\$10 000) in cash, radio spots and half hours, television spots and products.*

*In return we will promote your products on flyers, radio, television, Facebook and blackberry messenger. Your products will also be promoted on the night of the show and you will be provided with passes for the event. We will not fail your company, we can guarantee that it has been two years since Movado has performed in Barbados and all of the young people of the nation have been eagerly waiting to see him perform for these last two years.*

*For more information you can contact us at 231-4100, 823-6250 or at 426-0656. Email address: s1a2m3m4@hotmail.com*

*Yours faithfully*

*Original signed by George Farrell and Terry Bynoe*

- [8] Based on the correspondence and the oral discussions between the parties, Counsel submitted that there was a strong case for finding that there was an oral contract between the intended parties for the staging of the event.
- [9] She further submitted that there was ample evidence that the Intended Defendant breached the oral contract based on the affidavit evidence that the Intended Defendant ceased communicating with the Intended Claimant except for requesting the use of his permission from the Chief Immigration Officer for “Popcaan” to perform at the show.
- [10] Counsel did concede in her written submission, that if damages were an adequate remedy, an injunction ought not to be granted. However, she stressed that attempts were made to reach an agreement which were resisted.
- [11] She further submitted that the balance of convenience favoured the grant of the injunction since there would be substantial disadvantage to the Claimant if the injunction was not granted or some relief obtained to secure the interests of the Intended Claimant.

### **The Intended Defendant’s Submissions**

- [12] Dr. Ramsay for the Intended Defendant conceded that he wrote the Chief Immigration Officer on behalf of the Intended Claimant. There is correspondence from the Chief Immigration Officer to the Intended Claimant permitting entry of the artiste into Barbados. Both sides claim to have the permission of the Chief Immigration Officer in relation to Movado’s entry into Barbados.
- [13] The defence filed admitted at many of its paragraphs that there was an arrangement to host a show entered into between the parties. The thrust of the defence was that the Intended Claimant had no money to put into the venture and that the Intended Defendant had invested substantial funds without sponsorship and he provided a list of expenses paid thus far. The Intended Defendant’s position is that the Intended Claimant must find monies to invest into the venture and this is reflected at paragraph 11 of the defence and in other paragraphs.
- [14] In addition, the Intended Defendant’s submitted that the Intended Claimant cannot expect to share in a venture in which he has made no investment. Dr. Ramsay admitted that he worked as Attorney-at-Law for both parties and that the Intended Defendant is the source of the finance whilst the Intended Claimant has no funds, that they have been friends for over 25 years and had done business in relation to the promotion of shows before and that the Intended Defendant had always been the financier.
- [15] Dr. Ramsay submitted that there was no sponsorship and so the Intended Defendant had to foot all the expenses. Yet, he later admitted that a sponsorship cheque of \$7,500.00 from Hanschell Inniss had been received.
- [16] The letter appended to the Affidavit in support Exhibit “TB5”, which is copied in its entirety in paragraph 6 above, is a letter dated 18<sup>th</sup> October 2012 soliciting sponsorship from Banks Holdings, and is written and signed by both the Intended Claimant and Defendant. The Intended Claimant deposed that they sought sponsorship from Hanschell

Inniss and attended a meeting at that company in/or around 22<sup>nd</sup> October 2012, and directed the Intended Claimant to speak to a Mr. Terry Vaughan of Hanschell Inniss. When he contacted Mr. Vaughan, he was informed that the Intended Defendant had already made a sponsorship deal on the previous day.

[17] The affidavit further goes on to aver that sometime later the Intended Defendant ceased communicating with the Intended Claimant.

### **The Issues**

[18] The basic issue is whether the injunctive relief ought to be granted.

### **The Law**

[19] The relevant principles are to be found in the decision in **American Cyanamid Corp v Ethicon Limited** [1975] A.C. 396, the principles of which were distilled in **Toojays Ltd v West Haven Ltd** (Unreported) Civ Appeal No. 14 of 2008, is applicable. The first issue is whether there is a serious question to be tried and secondly, where does the balance of justice lie.

[20] Adequacy of damages is a serious consideration in assessing balance of convenience/justice.

### **Discussion**

[21] Counsel for the Claimant submitted that the Court should strike out the defence which application was resisted by Dr. Ramsay. The Court does not believe that the defence should be struck out because it assists the court in resolving the issue which arises, namely, whether or not there was an oral contract between the parties (that is, whether there was a cause of action in contract and therefore serious issue to be tried).

[22] The defence was filed on the 14<sup>th</sup> December 2012. In paragraphs 1 and 2 thereof the Defendant stated that the Defendant and the Claimant received permission to bring into Barbados the artiste “Movado” to perform on Saturday, 15<sup>th</sup> December 2012. The relevant paragraphs of the Defence are as follows:

1. *The Defendant received permission from the Chief Immigration Officer to bring in the artiste “MOVADO” to perform in Barbados on Saturday 15 December 2012.*
2. *The Claimant received a similar permission to bring in “MOVADO” to perform on Barbados on Saturday 15 December 2012.*
3. *The Claimant and the Defendant agreed that they would combine and produce one show rather than two separate ones.*
4. *To put on the show required not only proper planning and advertisement but considerable sums of money. The Artiste “MOVADO” or any other must be paid substantial retainers, in advance, before they leave home to perform here.*

5. *The Claimant and the Defendant, given the fact that this venture, as is customary, is very expensive, were hoping to receive financial support for the show essentially from Sponsors in Barbados. To this end they sent off a "Joint Letter" exhibited by the Claimant, to sponsors hoping to get financial help from them to under-pin the Show.*
6. *The prospective promoters – the Claimant and the Defendant – received very little or no financial support from Sponsors. Money is scarce in Barbados like everywhere else in these times.*
7. *The Claimant and the Defendant are now faced with the stark reality of having to finance the Show out of their own finances or, bring in a financier who has money and is willing to participate in it.*
8. *The Claimant Terry Bynoe has no money to contribute, but can help physically by working and helping to supervise at the Show and by advertising.*
9. [...]
10. [...]
11. *The Defendant invited the Claimant to find some part of the required financial expense, and he can come in and share the profit or loss of the venture. **LET THE CLAIMANT BRING MONEY TO THE VENTURE.***
12. *At the moment, the Defendant alone stands to lose substantially if the venture is not a success. The Claimant suffers no loss because he has ventures no capital. The Claimant has made no financial input at all, of any amount, not \$1.00, in the Venture so far.*
13. *The Defendant asserts that if the Claimant wants to assist with the physical operations of the Show, the Defendant will pay him for his services. But the Claimant cannot expect to share in a Venture in which he has made no investment.*
14. *The Defendant asserts that it would be unjust, in-equitable, un-reasonable and unfair to stop the Show in question on the Saturday 15, December 2012 because the Claimant says to do so; although he has made no contribution financially to the staging of the Show or to award him a percentage of the profit, but not of the losses, in advance of the uncertain outcome of the venture. **HE WHO SEEKS EQUITY MUST DO EQUITY!***

[23] The emphases in the Defence were supplied by Dr. Ramsey.

[24] Having analysed the affidavit evidence of the Intended Claimant and the defence, it appears that there was some contractual arrangement between the parties, and this was conceded in the defence. The Intended Claimant submitted that it was breached by the Intended Defendant and the Intended Defendant appears to submit that it ended at an uncertain time but in circumstances which allowed his client to host the show alone.

These circumstances were not articulated in the Defence or by counsel in his submissions.

## **Findings**

- [25] The Court is of the opinion that the Intended Claimant has established that there is a serious issue to be tried, grounded in a cause of action based on a contract. The terms of the contract are in dispute, namely, whether the Intended Claimant was to contribute monies/services in terms of expertise in the area of hosting shows. This is a matter to be resolved when the substantive matter comes off for trial. Dr. Ramsay did concede that the Intended Claimant does have skills in terms of being a barman, on site manager and last minute advertising which he can contribute and for which he would be paid.
- [26] The next issue is whether the balance of justice favours the grant. If the injunction is granted to restrain the hosting of the show, the basis upon which the claim is made would cease to exist, namely, that there was a contract to host the show.
- [27] Substantial sums have been invested and considerable effort as well in the preparation for the hosting of the show. If the show is cancelled, there will be nothing in respect of which substantial damages could flow if a breach of contract was later found to exist. The claim is for 50% of profits. If the show is cancelled there would be no possibility of profits.
- [28] The show is scheduled to be held tomorrow and advertising has already been booked. It would be difficult if not impossible to restrain the advertising at this stage. The Court is of the opinion that given that this matter is predicated on a claim for breach of contract for the hosting of a show which may make substantial profits that damages would be an adequate remedy if the Claimant was to succeed in the substantive action.
- [29] The issue of whether the Intended Claimant should contribute money now is irrelevant for the purposes of these proceedings since the Intended Defendant has already conceded that he has none. What is his consideration for the contract, whether money or services, is to be determined at the substantive hearing when the claim is filed.
- [30] The Intended Defendant, through his counsel, admitted that the VAT office is present at the show (to audit income) and he says that they keep proper accounting records. In the circumstances, I am of the opinion that the balance of justice favours allowing the show to continue, not restraining the advertisements but to allow the Intended Claimant and an appointed representative to be present to audit the income made from the show, and also when the income and expenditure of the show is tallied.
- [31] Given the acrimony that is evident between the parties, an injunction is granted in terms of paragraph 4 restraining the Intended Defendant, his associates and/or agents from harassing, threatening or intimidating, attempting to intimidate or prevent the Intended Claimant his servants and/or agents from overseeing the receipts and accounts as order by this court or in any other manner howsoever.

## **Disposal**

[32] In the circumstances:

- (1) I dismiss the application for the injunctions and,
- (2) The Intended Claimant is permitted at his own expense to enlist the assistance of the Royal Barbados Police Force in ensuring that this order is carried into effect. Dr. Ramsay is in agreement with the supervision since the potential for volatility exist, and any violence may tarnish the international reputation of Barbados since this is an international show.
- (3) It is further ordered by consent the net proceeds of the show are to be paid into an account held in escrow in the name of the Intended Defendant.

**William J. Chandler**  
Judge of the High Court