

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-00898

Between

TELEMUNDO NETWORK GROUP LLC

Claimant

And

TRINIDAD AND TOBAGO FOOTBALL ASSOCIATION

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE M. DEAN-ARMORER

APPEARANCES

Mr. Hamel-Smith, S.C. leads Mr. J. Walker instructed by Ms. Debra Thompson, Attorneys-at-law on behalf of the Claimant

Mr. R. Armour leads Mr. R. Ajodhia instructed by Mr. A. Misir, Attorney-at-law on behalf of the Defendant

RULING

Introduction

1. By Notice of Application filed on the 14th March, 2017, the Claimant moved this Court, for a variety of injunctive orders. These are set out in the Schedule to this Ruling.
2. The Notice of Application was filed in the context of proceedings, which were also instituted on 14th March, 2017. By these proceedings, the Claimant sought (inter alia) declaratory

relief, as to its exclusive right to provide broadcasts of the 2018 and 2022 World Cup qualifying matches to Hispanic audiences, within the United States of America.

3. On the 20th March, 2017, the Defendant filed a Counter Notice seeking a stay of these proceedings, on the ground that the United States of America is the more appropriate forum in which the Claim should be brought.
4. In the course of this Ruling, the Court examined the circumstances in which proceedings would be stayed, on the ground that the jurisdiction of Trinidad and Tobago was *forum non conveniens*. The Court considered as well as the principles which govern the grant of interim injunctive relief.

Evidence

5. In support of its application for injunctive relief, the Claimant relied on the Affidavits of Eli Velazquez¹ and of attorney-at-law, Debra Thompson². The Defendant relied on the Affidavits of David John-Williams filed respectively on the 20th March, 2017 and on the 21st March, 2017.

Facts

6. The Claimant herein, Telemundo Network Group LLC (hereinafter referred to as “Telemundo”) is a provider of news, entertainment and sports in the United States of America. Their broadcasts are mainly aimed at Hispanic and Latino American audiences, both in the USA and worldwide. Telemundo’s parent company is NBC Universal Group Media, LLC.

¹ Affidavit of Eli Velazquez filed on the 14th March, 2017.

² Affidavit of Debra Thompson filed on the 20th March, 2017.

7. The Defendant, the Trinidad and Tobago Football Association (hereinafter referred to as “TTFA”) is the body responsible for all matters relating to football in Trinidad and Tobago. The President of the TTFA is Mr. David John-Williams, who assumed that post in the year 2015.
8. The TTFA is a member of the Federation Internationale de Football Association (FIFA) FIFA, the Confederation of North, Central American and the Caribbean Association Football (CONCACAF) and the Caribbean Football Union (CFU). It is common ground that every four (4) years, FIFA hosts the International World Cup Football Tournament.
9. The Claimant alluded to a chain of contracts, by operation of which Telemundo became entitled to the right to broadcast World Cup qualifying games.
10. In May, 2012, the Trinidad and Tobago Football Association attended the 35th Ordinary Congress of the Caribbean Football Union and accepted a proposal for the bundling of their broadcasting rights and the sale of those rights to a company, Traffic Sports. The acceptance by the Trinidad and Tobago Football Association of the proposal was later notarised in a document dated the 29th August, 2012 and entitled “Transfer of Broadcast Rights”.
11. On the 28th August, 2012, Broadcasting Rights were transferred to Traffic Sports under the Rights Acquisition Agreement (the “Traffic Agreement”) which was executed between the Caribbean Football Union and Traffic Sports USA. This agreement was signed by Gordon Dereck, President of the Caribbean Football Union and Aaron Davidson, President of Traffic Sports USA. The governing law of this agreement is the laws of New York³.
12. Lastly, the Soccer License Agreement or the “*Telemundo Agreement*” was executed in May, 2015. It was made between Media World, LLC (“Media World”), Traffic Sports USA

³ See “E.V. 6” of the affidavit of Eli Velazquez filed on the 14th March, 2017, at Clause 13

(“Traffic”) and Telemundo. The governing law of the Telemundo Agreement is the law of the State of Florida and with regard to any pre action or litigation, proceedings could only be instituted in the Federal or State Courts within the Miami-Dade County, Florida.

13. After the execution of the Telemundo Agreement, in May 2015, US Indictments were filed by federal prosecutors against the former executive of Traffic, Mr. Davidson and the former president of CFU, Mr. Webb, with regard to football tournaments and the sales of rights of various games. Both Mr. Davidson and Mr. Webb pleaded guilty to the charges.
14. In February, 2017, the Claimant became aware, that the Trinidad and Tobago Football Federation had purported to transfer broadcast rights of the qualifying matches to another company, namely Elite Soccer Agency (“Elite”). Elite contended that all previous contracts were invalid and that they were entitled to broadcast the following qualifying matches:

T & T vs. Panama, on March 24th, 2017

T & T vs. Mexico, on March 28th, 2017

T & T vs. Honduras, on September 1st, 2017

T & T vs. USA, on October 10th, 2017.

Issues

15. The first issue which arises for the Court’s consideration is whether Trinidad and Tobago is a *forum non conveniens* and, if so whether the Court ought to stay these proceedings.
16. Should these questions be answered in the negative, the Court will then be required to consider whether the Claimant is entitled to injunctive relief and whether such relief should be refused, on the ground that the Claimant has failed to make full and fair disclosure.

Law and Discussion

17. The Claimant and the Defendant relied on the Written Submissions of their respective Senior Counsel. Written Submissions were supplemented by brief oral submissions.
18. In the course of the following Discussion, the Court will treat with the law and with its application to the facts, in respect of each issue.

Whether a stay should be granted

19. In *Spiliade Maritime Corporation v. Cansulex Ltd.* [1987] 1 AC 460, the House of Lords considered the circumstances in which the Court would stay proceedings, which were founded as of right, in the jurisdiction in which they had been filed. Lord Goff of Chively, in summarising the principles pertaining to a stay of proceedings, held that the Court had first to be satisfied of the existence of another competent jurisdiction and that it was then the defendant's burden to persuade the Court to grant the stay⁴.
20. Lord Goff noted however, that where the Court is satisfied, that there is another available forum, which is *prima facie* the appropriate forum for the trial,

*“the burden will shift to the plaintiff to show that there were special circumstances by reason of which justice required that the trial should nevertheless take place in this country...”*⁵
21. Lord Goff emphasised that the Court would hesitate to disturb the plaintiff's choice of forum, and will not do so unless the balance of factors was strongly in favour of the defendant.
22. The learned Law Lord noted however that if another more appropriate forum were available the Court would ordinarily grant a stay. At page 478 (f), Lord Goff had this to say:

⁴ *Spiliade Maritime Corporation v. Cansulex* [1987] 1 AC 460 at 476B

⁵ See *Spiliade Maritime Corporation v. Cansulex Ltd.* [1987] 1 AC 460 at 476 E.

*“If the court concludes ...that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the court will consider all the circumstances of the case...One such factor can be the fact...that the plaintiff will not obtain justice in a foreign jurisdiction...”*⁶

23. Many years later, in ***Donohue v. Armco Inc. and Others*** [2002] 1 All ER, their Lordships considered the specific situation, in which contracting parties had agreed to an exclusive jurisdiction. At paragraph (24) of his judgment, Lord Bingham of Cornhill had this to say:

“If contracting parties agree to give a particular court exclusive jurisdiction to rule on claims between those parties, and a claim falling within the scope of the agreement is made in proceedings in a forum other than that which the parties have agreed, the English court will ordinarily exercise its discretion (whether by granting a stay of proceedings in England or by restraining the prosecution of proceedings in the non-contractual forum abroad...) to secure compliance with the contractual bargain...unless the party suing in the non-contractual forum...can show strong reasons for suing in that forum...”

Lord Bingham expressed the view that the general rule was clear, that where parties had bound themselves by an exclusive jurisdiction clause, effect should ordinarily be given to that obligation, in the absence of strong reasons for departing from it.

24. At paragraph (27), Lord Bingham noted that English authorities may decline to grant a stay,

⁶ See *Spiliade Maritime Corporation v. Cansulex Ltd.* [1987] 1 AC 460 at 478 D.

“...where the interest of parties other than the parties bound by the exclusive jurisdiction are involved ...”

Applying the Law to these proceedings

25. In these proceedings, Trinidad and Tobago is the forum as of right, since the Defendant has been served and has accepted service within this jurisdiction. Accordingly, in accordance with the principles identified by Lord Goff in *Spiliada*,⁷ the first hurdle which the Defendant must surmount is to satisfy the Court of the existence of another more appropriate forum.
26. The Defendant has attempted to accomplish this task by pointing to the exclusive jurisdiction clause in the *Telemundo Agreement*, which identifies the State of Florida as the appropriate jurisdiction.
27. The Defendant has also pointed to exclusive jurisdiction clauses, which appear in the other contracts, which together comprise the chain of contracts, to which the Claimant refers.
28. There was no dispute as to the existence of exclusive jurisdiction clauses in the *Telemundo Agreement* and indeed in the other contracts, which formed the chain of contracts in this claim. It therefore, became necessary for the Court to consider whether, by alluding to the exclusive jurisdiction clause, the Defendant was able to discharge his burden of persuading the Court of the existence of another forum, having competent and more appropriate jurisdiction.
29. The Defendant, through its learned Senior Counsel, Mr. Amour, has sought to persuade the Court that it has discharged its burden by, reliance on the recent and lofty authority of *Donohue*⁸.

⁷ *Spiliade Maritime Corporation v. Cansulex Ltd.*[1987] 1 AC 460

⁸ *Donohue v. Armco Inc. and Others* [2002] 1 All ER

30. In my view however, *Donohue*⁹ is distinguishable from the instant case for a number of reasons. In the proceedings before this Court, the respective parties are not the parties to the contract which carries the exclusive jurisdiction clause. Whereas it will be necessary in the course of hearing the substantive claim, to interpret the *Telemundo Agreement*, it will not fall to the Court to enforce that agreement. The litigants before this Court are not the contracting parties and are therefore not contractually bound to honour the exclusive jurisdiction clause. This factor, in my view, takes the instant case out of the words of Lord Bingham, that where parties have bound themselves to an exclusive jurisdiction, effect should ordinarily be given to that obligation.
31. Even if I am wrong in arriving at this conclusion, however, it is my view that there are further strong reasons for refusing the stay.
32. The instant proceedings pertain to the alleged right of the Claimant to broadcast games which are scheduled to take place in Trinidad and Tobago. The hearing of the claim in another forum, will render the enforceability of a decision against the Defendant virtually impossible.
33. Moreover, the grant of a stay at this juncture will have the effect of entirely frustrating any hope of the Claimant obtaining injunctive relief, and may result in the inability of the Claimant to enforce any judgment, which they might obtain from a foreign court.
34. It follows that it is my view that a stay of proceedings is not appropriate and ought to be and is hereby refused.

⁹ *Donohue v. Armco Inc. and Others* [2002] 1 All ER

Whether the Court should grant injunctive relief

35. The law, which governs the grant of interim injunction, is well settled and learned Senior Counsel have agreed that the authorities by which the Court should be guided are threefold. ***Jet Pak***¹⁰, ***East Coast***¹¹ and ***Olint***¹².
36. It was common ground that, in order to obtain an injunction, the Claimant must satisfy the Court that there is a serious issue to be tried. The Court will then proceed to consider whether the balance of justice is tilted in favour of the Claimant or of the Defendant. The Court is required to assess where the greater risk of injustice lies in the grant of or in the withholding of the injunction.
37. It was my view, that the Claimant has presented a serious question to be tried. The Claimant has not relied on the law of contract. Rather, the Claimant contends that the Defendant has disregarded the rights accruing to the Claimant under the chain of contracts and has wrongfully attempted to sell those rights to a third party. Accordingly, the Claimant contends, and I accept, Telemundo is entitled to approach the Court under the ***Protection Against Unfair Competition Action 1996***¹³.
38. I turn therefore to consider where lies the greater risk of injustice. Should I grant the injunction, the Defendant will be prevented from selling broadcasting rights to Elite Soccer. The Defendant has contended that upon accession to office, the President David John Williams found TTFA to be in financial shambles and that the sale of broadcasting rights was a means of reducing the burden of debt which the Defendant carried. The obvious result

¹⁰ Jet Pak Services Ltd. V BWIA International Airport Ltd. (1998) 55 WIR 362

¹¹ East Coast Drilling & Workover Services Ltd. v. Petroleum Company of Trinidad and Tobago [2000] 58 WIR 351

¹² National Commercial Bank Ltd. v. Olint [2009] 5 LRC 370

¹³ Protection Against Unfair Competition Action 1996, Chapter 82:36

of the grant of the injunction will be therefore that the Defendant will be deprived of the proceeds of the sale of broadcasting rights and the debt burden will not be reduced.

39. On the other hand, should the Court withhold the injunction, the Claimant stands to lose, in the first place, the specific sum of Fifty Thousand Dollars (\$50,000.00) and Eighty Thousand Dollars (\$80,000.00), which they would receive for the matches in question. They also stand to lose an unquantified sum in the loss of their reputation and to suffer a depletion of their fan base to other competitors in the United States of America. According to the evidence before me, the greater risk of injustice will redound to the Claimant.
40. The Defendant has contended that the Claimant has failed to make full and fair disclosure and has relied on the case of *Coosal's Quarry v. Team Work Ltd.*¹⁴
41. A cursory perusal of the judgment of Sharma J, (as he then was) would confirm that the learning as to full and fair disclosure, relates to an applications for an *ex parte* injunctions, where the Court, relies exclusively on the evidence and representation of one party. In this application, I had directed, at the outset, that proceedings be served on the Defendant. I therefore had the benefit of evidence from both sides. Accordingly, it is my view that arguments as to material non-disclosure, are not applicable to the instant application.
42. I will accordingly grant the injunctive relief, in respect of the matches to be aired on the 24th and 28th March, 2017. The qualifying matches for 2020 are scheduled to be heard in the distant future, and there is a great likelihood that the substantive claim would be determined by then.
43. The Defendants have invited the Court, according to its powers at Part 26.1.3 of the *Civil Proceedings Rules (CPR)*, to order that the Claimant make a deposit into an interest bearing

¹⁴ Coosal's Quarry v. Team Work Ltd. HCA# 5011/85

account. It was my view, that this would have been a useful direction. However, no evidential basis has been provided as to the appropriate quantum to be deposited. The Court is therefore unable to make such a direction at this time.

44. The Court therefore grants relief in terms of the Notice of Application filed on the 14th March, 2017, in respect of matches for the 24th and 28th March, 2017.

Dated this 24th day of April, 2017.

M. Dean-Armorer
Judge

SCHEDULE

Orders sought by way of a Notice of Application filed on the 14th March, 2017

“1. An Order and injunction restraining the Defendant until the hearing and determining of an Application to continue the injunction pending the trial of this Action (whether by itself, its officers or employees, its servants or agents, or otherwise howsoever) from:

a. Licensing, authorizing, facilitating or otherwise permitting (or attempting to license, authorise, facilitate or otherwise permit) any party other than the Claimant to provide Spanish-speaking television or digital media broadcasts within the United States of America of:

i. The World Cup home qualifying match to be played between Trinidad & Tobago and Panama on Friday 24 March 2017; or

ii. The World Cup home qualifying match to be played between Trinidad & Tobago and Mexico on Tuesday 28 March 2017; or

iii. Any subsequent 2018 World Cup home qualifying matches of the Trinidad & Tobago Men’s National Team;

b. Selling, reselling, licensing, marketing, commercialising or otherwise trafficking (or attempting to sell, resell, license, market, commercialise or otherwise traffic) the right to provide Spanish-speaking television and digital media broadcasts within the United State of America of:

i. The World Cup home qualifying match to be played between Trinidad & Tobago and Panama on Friday 24 March 2017; or

- ii. *The World Cup home qualifying match to be played between Trinidad & Tobago and Mexico on Tuesday 28 March 2017; or*
 - iii. *Any subsequent 2018 World Cup home qualifying matches of the Trinidad & Tobago Men's National Team;*
- c. *Engaging and/or allowing and/or authorising and/or soliciting and/or inducing and /or encouraging any other party to sell, resell, license, commercialise, market or otherwise traffic (or attempt to sell, resell, license, market, commercialise or otherwise traffic) the right to provide Spanish-speaking television and digital media broadcasts within the United State of America of:*
 - i. *The World Cup home qualifying match to be played between Trinidad & Tobago and Panama on Friday 24 March 2017; or*
 - ii. *The World Cup home qualifying match to be played between Trinidad & Tobago and Mexico on Tuesday 28 March 2017; or*
 - iii. *Any subsequent 2018 World Cup home qualifying matches of the Trinidad & Tobago Men's National Team;*
- d. *Taking any other steps to prevent, impede, hinder, constrain or restrict the Claimant (or that would have the effect of preventing, impeding, hindering, constraining or restricting the Claimant) from enjoying or exercising in the exclusive right to provide Spanish-speaking television and/or digital media broadcasts within the United States of America of:*
 - i. *The World Cup home qualifying match to be played between Trinidad & Tobago and Panama on Friday 24 March 2017; or*

- ii. *The World Cup home qualifying match to be played between Trinidad & Tobago and Mexico on Tuesday 28 March 2017; or*
 - iii. *Any subsequent 2018 World Cup home qualifying matches of the Trinidad & Tobago Men's National Team;*
2. *Such further and other order or relief as to the Court may seem just;*
3. *Costs.*" ¹⁵

¹⁵ See Notice of Application filed on the 14th March, 2017