

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-05085

CARL BLANCHE (MANAGER OF SOCA SABOR)

Claimant

AND

NATIONAL QUARRIES COMPANY LIMITED

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Glenford George

For the Defendant: Ms. Nisha Abiraj
Instructed by Mr. Anil Maraj

Date of Delivery: 8th June 2017

JUDGMENT

THE CLAIM

- [1] The Claimant's claim against the Defendant is for the sum of \$250,000.00 representing outstanding monies due on a contract between the parties.
- [2] The Claimant brought this action for and on behalf of the parang band 'Soca Sabor' although the fact that he was acting in a representative capacity did not form part of the intitlement of the matter, nor did he obtain a Court Order permitting him to represent the band.
- [3] The Claimant pleaded that the Defendant was the Claimant's sponsor, and on 3rd November 2009 the Defendant executed two sponsorship agreements – one for the sum of \$100,000.00 for one year and the other for the sum of \$250,000.00 over two years. The Defendant paid \$100,000.00 for the period 2009 to 2010 but the balance of \$250,000.00 remained unpaid.
- [4] The Claimant averred that the details of the sponsorship agreement including agreement to pay the sum of \$250,000.00 is supported by the minutes of a Board Meeting of the Defendant which he annexed to his Statement of Case.
- [5] It was also pleaded that the Claimant sought payment of \$75,000.00 due under the said agreement by letter to the Defendant dated the 30th November 2011 but that request went unanswered. By another letter dated the 8th February 2012 the Claimant again requested payment of \$75,000.00. The Secretary of the Defendant's Board replied by letter dated the 28th February 2012 denying the legality of the contract between the parties for the payment of a further \$250,000.00.
- [6] The Claimant attached to his Statement of Case Minutes of the Board Meeting of the Defendant in which the Board decided to grant Soca Sabor a three (3) year contract valued at \$250,000.00. The CEO recommended the Defendant 'would continue sponsorship of Soca Sabor for the financial

year 2009-2010 at the current sponsorship level of \$100,000.00 per annum'. After discussions by the Board Members, it was agreed that a three (3) year sponsorship should be given to Soca Sabor in the total sum of \$250,000.00 with a financial report to be presented at the end of the each year.

- [7] In the Pre Action Protocol letter sent to the Defendant before the filing of this Claim, the Claimant alleged that on the 3rd November 2009 two parallel contracts were executed by the Defendant and the Claimant on behalf of Soca Sabor - one for \$100,000.00 for one year and the other for \$250,000.00 for a three (3) year period - 2009-2012.
- [8] The Claimant stated further the agreed sum of \$100,000.00 for the period 2009-2010 had been paid leaving outstanding the sum of \$150,000.00 on the three year contract. A formal demand was then made for the sum of \$150,000.00.

THE DEFENCE

- [9] The Defendant pleaded that the band Soca Sabor is an unincorporated association of various persons; it denied ever having entered into any contract with the Claimant and stated that all three former sponsorship contracts had been between the Defendant and the band. The Defendant pleaded further that the Claimant signed as agent/officer of the band; the Defendant at no time was the Claimant's sponsor.
- [10] The Defendant averred that the Claimant was estopped from claiming that the sum of \$250,000.00 was now due and owing when he had asserted in earlier proceedings (CV 2012-01918) between the parties relative to the same contract, that the sum outstanding was \$150,000.00.

[11] The Defendant denied that the document annexed to the Statement of Case and described as a true copy of the minutes of the Defendant's Board Meeting is in fact a true copy of the said minutes. It was pleaded further, in the alternative, that disclosure of the said document amounted to a breach of confidence and exposed the Defendant to the risk of damage.

[12] The Claimant's plea that he sent a letter dated 30th November 2011 to the Defendant requesting \$75,000.00 due under the said contract, was neither admitted nor denied by the Defendant who put the Claimant to strict proof thereof. It was averred by the Defendant that the said agreement relied on by the Claimant does not contain any terms as to method of payment, accrual of entitlement to payments and/or the right of any party to make calls for payment.

[13] It was also pleaded that the parties had a course of dealing with respect to the disbursement of sponsorship monies to the band or the Claimant acting as officer and agent of the said band. The band would:

1. Agree proposed purchases with the Defendant prior to expending monies; and
2. Provide the Defendant with an original invoice from a third party supplier or an estimate of proposed expenditure for approval prior to the disbursement of monies; and
3. Upon receipt of the invoice, the Defendant would issue payment directly to the third party, or upon approval of the estimate of expenditure the Defendant would make a payment to "Carl Blanche" as officer and/or agent of the band.

[14] The Defendant contended that all parties understood that at all material times no cash advances would be paid to the band without the provision of estimates and prior approval of same by the Defendant. The Defendant attached a bundle of correspondence between itself and the band in support of its plea.

[15] It was also pleaded that a prior claim by Soca Sabor Limited against the Defendant (CV 2012-01918) was struck out, whereupon this action was filed by the Claimant in respect of the same sponsorship contract without complying with pre action protocols; as such the Claimant ought to be penalised in costs.

[16] The Defendant averred that the band is in repudiatory breach of their contractual obligations to the Defendant in that they have failed to file financial reports at the end of each sponsorship year and failed to perform for free at five company related functions.

[17] The Defendant denied that it is in breach of the contract or that the Claimant suffered any loss at all.

REPLY

[18] In answer to the Defendant's plea that the Claimant was estopped from claiming \$250,000.00 as the balance due and owing under the said contract when in proceedings (CV 2012-01918) he had claimed that the balance due was \$150,000.00, the Claimant pleaded that in the earlier action another party was the Claimant.

[19] The outcome of this matter depends on the view that I take of the evidence; an outline and analysis of the evidence in this case follows.

EVIDENCE FOR THE CLAIMANT

Witness Statement of Carl Blanche

- [20] The Claimant asserted that he is the Manager of the parang band Soca Sabor and he signed yearly contracts on their behalf from 2003 to 2009 to the value of \$100,000.00. He related that on the 3rd November 2009 he entered into a three year contract valued at \$250,000.00 on behalf of the band which was approved by the Defendant's Board of Directors.
- [21] It was his evidence that the contract for \$250,000.00, entered into on the 3rd November 2009 superceded the other contract also entered into on that date, for the payment by the Defendant to the Claimant of \$100,000.00 annually. This evidence contradicted the Claimant's pleadings that the two contracts were valid and that the Claimant was entitled to the balance \$250,000.00¹.
- [22] Mr. Blanche also stated that as Manager of Soca Sabor he ensured that the band performed its obligation under the contract. He also claimed that the Defendant was in breach of contract by failing to pay the balance of \$250,000.00 due under the contract of the 3rd November 2009.

Cross Examination of Carl Blanche

- [23] In answer to Counsel, the Claimant stated that the band was registered as Soca Sabor Limited and believed that the documents supporting such registration were disclosed in these proceedings. He also confirmed that the sponsorship provided by the Defendant was for the benefit of the band. He disclosed that he was founder/manager of the band and acted as its agent in instituting this claim against the Defendant.
- [24] Significantly, the Claimant stated, contrary to his pleadings, that his claim was for \$150,000.00 and not \$250,000.00. He agreed that the sponsorship contract that he was relying on in this claim was the same contract that

¹ Statement of Case para. 4

he relied on in earlier proceedings brought by Soca Sabor Limited against the Defendant which were dismissed.

[25] Mr. Blanche expressed surprise that the Defendant had pleaded that the band failed to provide receipts for goods and services paid for with sponsorship money and admitted that he did not 'totally' read the Defence. He also admitted that he did not plead in his Reply that financial reports were provided the Defendant in accordance with the terms of the sponsorship contract nor did he say this in his witness statement. He admitted, further, that the financial reports were not disclosed during these proceedings but insisted that he had provided them to the Defendant.

[26] The Claimant also accepted that there was a course of dealing between the band and the Defendant whereby the band, through him, its agent, submitted invoices from third party suppliers for material/services for the band to the Defendant, and the latter paid the suppliers directly.

[27] This witness accepted that he did not plead in his Statement of Case/Reply that he submitted invoices for payment to the Defendant, nor did he include this evidence in his witness statement. Further, in his letter of demand for a tranche of the sponsorship money dated the 30th November 2011, he did not state that he had submitted invoices to the Defendant to the value of \$75,000.00 but had not been paid. He also admitted that in another demand letter dated the 8th February 2012 for payment of the said \$75,000.00, he did not state that that invoices for that sum had been submitted and remained unpaid. This was also the case in the Pre Action Protocol letter sent on his behalf by his attorney on the 18th April 2012.

[28] The Claimant admitted further that after the dismissal of his earlier claim against the Defendant, no new Pre Action Protocol letter was sent before the institution of this claim.

[29] Of note was his admission that he did not get a letter of authorization from the band to bring these proceedings on its behalf, nor did he call any of the band members as witnesses. He also stated that none of the members were present in court but that they were aware and approved the proceedings.

Witness Statement of Hans-Erich Schulz

[30] Mr. Schulz was the CEO of the Defendant from 2005 to 2011. In his capacity as CEO he and the Claimant, acting on behalf of Soca Sabor, signed several one year sponsorship contracts valued \$100,000.00 for the benefit of Soca Sabor. He executed the contracts on behalf of the Defendant. He testified that the last contract which he executed was a three year contract in 2009 for the sum of \$250,000.00. He explained that the decision to offer a three year contract was made by the Board because both he, Mr. Schulz, and the Board were satisfied with the band's performance.

[31] This witness further testified that at the time of the signing of the three year contract, the usual one year contract had already been signed; however, in the interest of economy and to avoid having to do yearly contracts, the three year contract was entered into by the parties. This witness stated that the three year contract was meant to 'supercede' the usual one year contract and reduce the annual payment from \$100,000.00 a year to \$83,000.00 a year.

Cross Examination of Hans-Erich Schulz

[32] This witness acknowledged that the Claimant acted as agent for the band and signed the sponsorship contract in that capacity. He admitted that the

sponsorship contract for \$250,000.00 superceded the one year contract and that the annual amount payable to the band would be less than the previous figure of \$100,000.00. He explained that the intention of the Defendant's Board was that the three year contract was to come into effect after the last one year contract for 2009-2010.

[33] He agreed that there was a course of dealing referred to above for payment of monies under the sponsorship contract.

[34] With respect to the Minutes of the Board Meeting disclosed by the Claimant, this witness admitted to receiving it in the course of his employment but could not recall giving it to the Claimant or authorizing its disclosure to him. He indicated that at the time of this Board Meeting the Claimant was still employed at the Defendant Company as a Marketing representative and acknowledged that it was not usual for a marketing representative to have these documents. He made it clear that it was when the one year contract ended that the three year contract began.

EVIDENCE FOR THE DEFENDANT

Witness Statement of Ryan Deonarine

[35] This witness testified that in 2009 he was employed by the Defendant as the Accounts Payable Clerk II. During this time his responsibility included the keeping of financial and corporate records, payments of contractors and suppliers and reporting on matters affecting payments including 'particular sponsorships'.

[36] He testified that the method of payment for the Soca Sabor sponsorship was that the Claimant or another representative of the band would bring in invoices from third party suppliers for materials or services for the band; those invoices would be approved for payment by the CEO Hans-Erich

Schulz, and when funds were available cheques were then made payable to the suppliers. He also explained that a cheque would only be issued after a cheque payment voucher was prepared and approved.

[37] It was his evidence that money was never paid directly to Mr. Blanche but rather to third parties and was subject to oversight and approval of the Defendant before payment was made. He prepared a report for CFO Nigel Mahabir in November 2009 showing a summary of invoices submitted by the band, names of suppliers, payment dates and cheque numbers for payments made to the band from October 2009 to September 2010 and annexed a copy of same together with copies of invoices and cheque payment vouchers included in his said report.

[38] Mr. Deonarine testified further that the only contract which came to his attention for the year 2009 to 2010 was the contract for \$100,000.00

[39] He also outlined that the Defendant's records revealed that all payments made under the contract with Soca Sabor were made to different third parties and not to Mr. Blanche.

Cross Examination of Ryan Deonarine

[40] This witness added nothing to the evidence that he gave in his witness statement.

Witness Statement of Wilma Owen

[41] Ms. Owen is the Corporate Secretary of the Defendant and has held that position since 2003. This witness testified that in her capacity as Corporate Secretary she prepared the minutes of the meetings of the Board

of Directors of the Defendant. She asserted that the minutes attached to the Claimant's Statement of Case are not the minutes of the Defendant Company; that minutes are taken on legal size paper and when approved by the Board of Directors they have to be initialed on the bottom right corner of each sheet by the Presiding Chairman and signed by both Presiding Chairman and herself.

[42] The procedure for payment under the terms of the contract between the Board and the Defendant were as outlined supra in paragraph 14.

[43] Mrs. Owen also stated that there was only one instance where payment was made directly to Mr. Blanche and that was for the purpose of assisting the band in completing its band room.

[44] She, too, asserted that the contract for \$250,000.00 worth of sponsorship for the band was intended to supercede the annual \$100,000.00 contract; the \$100,000.00 contract would run from October 2009 to September 2010 while the \$250,000.00 'replacement' contract would run from October 2009 to September 2012. It was her evidence that the Board granted approval for a 3 year sponsorship contract to Soca Sabor in the sum of \$250,000.00 on the 3rd November 2009.

[45] Ms. Owen testified that by letter dated 8th December 2012 the Claimant demanded payment of the balance of \$150,000.00 under the said sponsorship contract; a claim was then filed by Soca Sabor Limited against the Defendant for the said sum of \$150,000.00 which was struck out; thereafter the Claimant commenced this action against the Defendant for \$250,000.00 alleging that this was the balance due under the said contract.

[46] Mrs. Owen testified that the band was in breach of its contract with the Defendant in that:

- i. National Quarries Company Limited was never provided with the agreed financial report at the end of the financial year;
- ii. No jingle was ever created for National Quarries Company Limited by the band;
- iii. The band failed to perform for free for up to a maximum of 5 company related functions. The last performance by the band at a National Quarries Company Limited function was in 2008.

Cross Examination of Wilma Owen

[47] In earlier proceedings² between Soca Sabor Limited v National Quarries Limited relative to this sponsorship contract, the Defendant pleaded³ that it “engaged in a contract with Carl Blanche, Manager of the band Soca Sabor for sponsorship of the said band”

ANALYSIS

[48] The first issue that falls to be determined is whether the Claimant is a proper party to this claim. The undisputed evidence is that the contract was for the benefit of the band Soca Sabor, an unincorporated group of persons and that the Claimant was Manager of the group. He acted as agent for the group, signing contracts on their behalf. However, in his Statement of Case the Claimant pleaded that the Defendant was his sponsor⁴.

[49] It is also an undisputed fact that there are 12 members of the band Soca Sabor. The Civil Proceedings Rules provides for the procedure by which an

² CV 2012-01918

³ Defence para. 5 CV 2012-01918

⁴ Statement of Case para. 2

unregistered body comprising more than five persons may institute proceedings in court.

[50] **CIVIL PROCEEDING RULES 21.1 (1-3)** provides:

1. *This rule applies to any proceedings, other than proceedings falling within rule 21.4 where five or more persons have the same or a similar interest in the proceedings.*
2. *The court may appoint—*
 - a. *one or more of those persons; or*
 - b. *a body having a sufficient interest in the proceedings, to represent all or some of the persons with the same or similar interest.*
3. *A representative under this rule may be either a claimant or a defendant.*

[51] The Learned Authors of **Blackstone's Civil Practice 2014**⁵ opine:

“An unincorporated members’ social or sporting club is not a separate legal entity and may not sue or be sued in the name of the club. Thus, in Oxford University v Webb [2006] EWHC 2490, it was held that the Animal Liberation Front, an unincorporated association, could not sue or be sued in its own name because it was not legal person. It could only be joined through representative proceedings under CPR r. 19.6. Nor can the secretary or any other officer of such a club sue or sued on behalf of the club. Where proceedings are necessary, there are two main options:

⁵ Paragraph 14.41.

- (a) *Bring proceedings against individual members of the club. However, members who are not made parties will have no direct interest in the claim, and any judgment obtained may not be enforced against them.*
- (b) *Bring representative proceedings (Campbell v Thompson [1953] 1 QB 445; Artistic Upholstery Ltd v Art Forma (Furniture Ltd [1994] 4 All ER 277). A judgment in a representative action binds the members represented, but may not be enforced against any member who is not a party to the proceedings, without the court's permission."*

[52] The Claimant argued that as agent for the group, he had the capacity to create legal relations on behalf of Soca Sabor with the Defendant, therefore, by implication, his submission was that he could lawfully bring these proceedings on behalf of the group without having first obtained a court order.

[53] This submission does not address the issue of the Claimant's capacity to institute proceedings on behalf of a group of persons without first obtained a Court Order appointing him a representative to act on behalf of the group. He cannot bring an action on behalf of Soca Sabor without first having obtained an order appointing him a representative acting on behalf of the group.

[54] **CIVIL PROCEEDINGS RULES 21.1** requires that an application to be appointed a representative must be supported by evidence identifying every person to be represented individually or by description where individual identification is not possible. This requirement is important having regard to the consequence of such an order – any order made by the court binds such persons. The contract under consideration by this court was for the benefit of all 12 members of Soca Sabor. Any order made

in this case can only bind the Claimant or Defendant and can only be for the benefit or burden of these parties. In the light of the clear evidence before me that the Claimant Carl Blanche was a member/manager of the group who was the beneficiary of this contract, he is not the proper party to institute proceedings on behalf of the group.

[55] I therefore hold that Soca Sabor being an unincorporated group, the Claimant, its agent, cannot institute a claim on its behalf. This point is sufficient to dispose of this matter, however I would outline below further grounds upon which this claim must fail.

[56] By the Claim Form and Statement of Case, it was pleaded that the Claimant sought the sum of \$250,000.00 representing monies due and owing on a contract dated 3rd November 2009⁶. However, during his cross examination, the Claimant clearly stated that this claim was for the sum of \$150,000.00, the balance due on the three year contract for \$250,000.00 dated 3rd November 2009.

[57] This evidence also contradicted that of his witness Hans-Erich Schulz who testified⁷ that the contract dated 3rd November 2009 for \$250,000.00 was meant to supercede the contract dated the 3rd November 2009 for \$100,000.00 which had disbursed for the benefit of the band. He made it clear that for the period October 2009 to 2012 the band was due a further sum of \$250,000.00. This was also his evidence under cross examination. The Claimant's evidence on this issue represented a significant departure from his pleaded case and served to both undermine his credibility and weaken his case.

[58] I also had regard to the fact that in the prior claim based on the same sponsorship contract (CV 2012-01918), it was claimed that the Defendant owed a balance of \$150,000.00 to the band under the contract. The

⁶ Claim Form para. (a), para (4), Statement of Case para (1), Reply para (4)

⁷ Witness Statement of Hans-Erich Schulz para 2

explanation that this claim was brought by a different claimant is ridiculous given that the action was brought purportedly on behalf of the same group – Soca Sabor. In the earlier action the group was described as an incorporated entity Soca Sabor Limited and Carl Blanche, the Claimant, herein, signed the Certificate of Truth on its behalf. This claim was dismissed, no doubt as a result of the Defendant’s plea that no contract existed between it and the Claimant in that case. In cross examination before me, Mr. Blanche asserted that the group was incorporated and expressed surprise that the incorporation documents had not been disclosed.

[59] I also had regard to the fact of the course of dealing between the Defendant and the group, insofar as the disbursement of the sponsorship money was concerned:

- i. that the parties would agree proposed purchases before expenditure;
- ii. the band would provide the Defendant with an original invoice from a third party supplier or an estimate of proposed expenditure for approval prior to the disbursement of funds; and
- iii. upon receipt of the invoice of the disbursed payment directly to the third party or upon approval of the estimate of expenditure the Defendant would make a payment to Carl Blanche as officer/agent of the band.

[60] This course of dealing was accepted by the Claimant during cross examination. I note that it was neither pleaded in his Statement of Case nor in his Reply by way of response to the plea on this issue in the Defence.

[61] Evidently, the Claimant was in breach of this term of the contract, at the time he made his demand for payment, in that he neither supplied invoices for services or materials nor did he provide an estimate of expenditure which, if approved by the Defendant, would then entitle him to receive a

cheque as agent of the band. The pleading in the Statement of Case and Reply appear to outline a different case – that the Claimant was entitled to receive payment under the terms of the sponsorship contract without providing invoices or an estimate of proposed expenditure. Indeed, the Claimant’s case appeared to assert, contrary to the course of dealing, that payments could be made directly to Mr. Blanche in the absence of any form of documentation.

[62] Mr. Blanche’s surprise upon being informed that the Defendant had pleaded that no such invoices or financial reports had been disclosed by him or relied on in this case was not believable. He insisted that he had provided the invoices and reports to the Defendant but could not say why this was not stated in his Reply or disclosed to this court. The failure by the Claimant to produce documents which were in his possession, and which, if disclosed, would support his claim, led me to draw an adverse inference against him – that he did not have such documents.

[63] As a result of the above, therefore, even if the Claimant could have properly brought this claim against the Defendant, the claim would have been dismissed on the grounds that he:

- a) was in breach of the sponsorship agreement by failing to provide financial reports to the Defendant;
- b) was also in breach of the sponsorship agreement by failing to provide invoices before making the claims which are the subject matter of this action;
- c) was not entitled to any sums due under the sponsorship contract without first obtaining agreement from the Defendant for payment of materials or services and submitting those invoices to the Defendant;

- d) there was a material conflict between his pleaded case and his evidence relative to the figure that he claimed was due under the contract;
- e) there was a material discrepancy between his evidence and that of his witness Hans-Erich Schulz about the balance due under the sponsorship contract;
- f) the Claimant was not a credible witness and failed in the round to establish his claim on a balance of probabilities.

CONCLUSION

[64] In conclusion, for the reasons outlined above, including the unreliability of the Claimant's evidence, the departure from his pleaded cases and his failure to produce documents in proof of his case which must have been in his possession, I dismiss the Claimant's case.

[65] I therefore Order:

- i. Judgement for the Defendant against the Claimant;
- ii. The Claimant to pay the Defendant's prescribed costs on \$250,000.00

Joan Charles

Judge