

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-00526

BETWEEN

ANTHONY GOBERDHAN

FIRST CLAIMANT

AND

MICHELLE DEO

SECOND CLAIMANT

DWAYNE GUADA

THIRD CLAIMANT

KENT RENNIE

FOURTH CLAIMANT

**LISA LEGALL also called
LISA THOMAS**

FIFTH CLAIMANT

AND

JOAN ELIZABETH GOBERDHAN

Also called

JOAN LEGALL-GOBERDHAN

FIRST DEFENDANT

LEGALL AND FRIENDS CARNIVAL BAND

Registered on the 23rd September 2013

SECOND DEFENDANT

Before the Honourable Mr. Justice R. Rahim

Appearances:

Ms. M. Maharaj- Mohan for the Claimants

Mr. T. Dassyne instructed by Ms. A. Goring for the Defendant

Judgment

1. The Claimants claim is for the sum of \$25,000.00 being the Claimants' share of prize money in the sum of \$51,000.00 received from the San Fernando Carnival Committee in February 2013 by the band Legall and Friends. They also claim the sum of \$10,000.00 by way of re-imbusement for personal expenditure. The Fifth Claimant did not appear at trial.

Disposal

2. The claim shall be dismissed and the parties shall be heard on costs.

Background

3. The resolution of this claim is based in large measure on matters which touch and concern findings of fact. The Claimants and the First Defendant jointly formed an unregistered organization known as "Legall and Friends" for the purpose of creating and operating a carnival band of the same name (hereinafter referred to as "the Band"). On Saturday 3rd March 2012 at the first committee meeting, various persons, including some of the parties to the claim, were officially appointed to their roles in the organization. The First Claimant was the Treasurer, the Second Claimant the Chairman, and the Fifth Claimant a Director. The Second and Third Claimants were committee members. The First Defendant was at all material times and remains at present the President of the Organization. The First Claimant is the son of the First Defendant, and the Second Claimant the wife of the First Claimant.

4. It is not agreed as to how the organization raised funds for the band's various expenses. It is however an undisputed fact that the organization was ultimately sufficiently financed so as to be able to participate in three carnival band competitions in February 2013. These competitions were the Rudolph Legall Competition in the Medium Category; in which the band placed first, winning \$35,000.00, the Band of the day Competition in the Medium Category; in which they took second place, winning \$6,000.00, and Ancient History; in which they placed first, winning \$10,000.00. The total prize money being \$51,000.00.
5. Following the band's success in the 2013 competitions, the First Defendant registered a business name called "Legall and Friends Carnival Band" (the Second Defendant) on the 23rd September 2013. The winnings were purportedly received by the business and have been used by the Defendants.
6. It is therefore clear that the Second Defendant is not a corporate entity and does not possess corporate legal personality. It follows that the Second Defendant not having corporate personality, it ought not to have been joined as a Defendant in its own right. There is de jure, one Defendant before the court. That Defendant trades under the registered business name Legall and Friends Carnival Band.
7. The contention between the parties concerns the prize winnings for Carnival of 2013. It is the case of the Claimants that the winnings were to be disbursed equally among the leaders of the organization, while it is the First Defendant's case that the winnings were to be reinvested in the band. It is also the Claimants' case that they were to be reimbursed for personal expenditure on band expenses. This is denied by the First Defendant.

Case for the Claimants

8. The First, Second, Third and Fourth Claimants all gave evidence. It is their case that the purpose of the committee was to launch and finance a carnival band by way of

sponsors and fundraisers. They claim however that the committee failed to secure lucrative sponsors, and that its fundraisers failed to raise funds. As such, it is alleged that the unregistered band, Legall and Friends, was funded on registration fees paid by members and the personal financial contributions of the First and Second Claimants, said contributions amounting to \$10,000.00. This was supported by the Third and Fourth Claimants' witness statements at paragraphs 6 and 4 respectively. The First Claimant testified that as the treasurer of the committee, he was solely responsible for the band's finances. The First and Second Claimants attached bills purporting to show said expenditure on their part. These bills were as follows:

- a. A piece of paper which purports to demonstrate that the Second Claimant paid \$2,500.00 to Nicholas Skinner for a license for a music truck. This does not appear to be a receipt.
- b. Three receipts for the sum of \$20,000.00 in total paid by Alindo Goberdhan (a name which the First Claimant testified that he also uses) to Nicholas Skinner for the supply of music,
- c. A print order form showing the payment of \$225.00 paid by the First Claimant to Blue Print Creations for the printing of one hundred and fifty tickets,
- d. A rental contract and a cash bill for a tent and twenty folding chairs leased by the Second Claimant from Executive Tent rentals amounting to \$169.00,
- e. Three invoices from Reverse Concepts Ltd amounting to \$1282.00, \$250.00 and \$160.00 each with the customer's name as Legall and Friends for bandanas and T-shirts and other items.
- f. Two cash bills from Samaroo's amounting to \$165.00 and \$112.50, with no customer's name, and
- g. Receipts from Parc Disposals for \$373.75, Coastal Marketing and Trading Co. for \$1,000.00, and Los Amigos Unidos for \$2,500.00 paid by Michelle Deo, the Second Claimant.

9. The Claimants allege that there was an oral agreement within the committee that the Claimants would be compensated for their personal expenses, and that any prize money won by the band would be equally divided among the members. If the band was unsuccessful, the expenses owed to the First and Second Claimants would be paid from the funds made by the band's 2014 launch.
10. The Second Claimant testified that as a result of the First Defendant's abuse, the secretary and the public relations officer resigned from the committee on the 4th of August 2012, after which the meetings were not officially recorded as a secretary was never re-elected and as such there was no one to take notes. It was in this context without formal documentation that the oral agreement was made.
11. In March 2013, after the band received its winnings, the Claimants allege that the First Defendant began to behave in an abusive manner towards the other committee members, including the Claimants, and that she indicated that the prize money belonged entirely and personally to her as the president of the committee. The Second Claimant testified that the First Defendant claimed that the band's success was only as a result of her name in Carnival, and as a result of her expertise. It is said by the Claimants that the First Defendant refused to compensate the First and Second Claimants or split up the monies equally as orally agreed. The Second Claimant testified that the First Defendant said she needed the money to pay off her personal debts. According to the Claimants, the First Defendant then left the band and registered the business name Legall and Friends. It is alleged that the First Defendant, upon enquiry, informed the Claimants that this was her method of collecting the prize monies for herself.
12. Further, the Claimants have exhibited a letter written to the Carnival Committee informing them of the First Defendant's motives for excluding the Claimants from receiving any of the prize monies, wherein they asked the Carnival Committee to hold the payment of the cheques until the matter is resolved. This letter is in the court's view self-serving and offends the rule against narrative. Further, its source is not

independent and is merely an earlier statement made by the Claimants in similar terms to that set out by the claim. It is not directed to the First Defendant. It is therefore of no evidential value and the court shall not give any weight to this previous complaint made by the Claimants to a third party.

13. It is the case for the Claimants that the First Defendant collected the prize money on the 20th of January 2014, and has refused to return the money owed to them and to which they are entitled, despite written requests by Attorney for the First and Second Claimants, which have been exhibited.
14. The Claimants therefore allege that the First Defendant has breached her oral contractual obligation to the Claimants and as such holds the sum of \$25,000.00 under a constructive trust for them and the sum of \$10,000.00 under a constructive trust for the First and Second Claimants.

Case for the Defendants

15. The First Defendant admits that the band won \$51,000.00, and that the winnings were received and held by the Second Defendant.
16. The evidence for the Defendants was supported by witness statements from the First Defendant, June Samlalsingh; the sister of the First Defendant, Jozette Samlalsingh; the niece of the First Defendant, assistant secretary for the committee and main model for the band, and Joel Roney John, a family friend of the Defendant, who worked with the First Defendant.
17. It is the case for the Defendants firstly that there were other persons apart from the Claimants and the First Defendant who were appointed to the committee of the band Legall and friends, the other members being listed in the minutes of meetings which she exhibited.

18. The Defendant contends that to date, she has not received from the First and Second Claimants, as well as another committee member Michelle Des Etages, an account for the remainder of proceeds from the band fees that were supposed to be collected. These three individuals were responsible for the band fee collection. It is averred by the First Defendant that in order for a band to enter the medium category competition, which they so did, and placed, it must have had at least one hundred and fifty persons in the band as it crossed the judging point. According to the First Defendant, the band had around one hundred and seventy persons, one hundred and fifty of whom would have had to pay the band fee of \$300.00. Further, that the seven section leaders were responsible for paying the band fee for their section in order to cover music and security. The First Defendant further testified that the band fee was originally to be \$400.00 per person, but that only \$300.00 was collected for the band fee by the three aforementioned persons responsible for collection. Joel Roney testified to paying the band fees as a section leader to the First Defendant, who in his presence handed his payment directly to the First Claimant.

19. It is the case of the First Defendant that the band fee for one hundred and fifty persons should have amounted to \$45,000.00, and that the expenses of the band were to be met from that sum. The expenses for the music and music truck amounted to \$20,000.00, security \$200 per person for four persons on each Carnival day amounting to \$1,600.00, in total amounting to expenditure of \$21,600.00. It is the case for the Defendants that an account of the balance was never provided by the First and Second Claimants.

20. The First Defendant further testified that the band being not all-inclusive, there were no food and drink expenses. Further, that each section leader had to bear the cost of production for the costumes of their section, and they would receive the sole profit from the sale of their costumes.

21. The First Defendant disputes that the First and Second Claimants spent \$10,000.00 of their personal funds on payment for music. She claims that the funds for such payment came from the fundraisers held by the committee prior to Carnival and from her

personal funds. The First Defendant alleges that \$5,000.00 paid on 11th January 2013 came from five fundraisers; the band launch, a bar-b-que, a curry-que, an after work lime and an old year's party, that \$3,000.00 paid on the 23rd January 2013 and the \$2,500.00 paid as the license fee for the music truck came from the band fees, that the \$12,000.00 paid on the 13th February 2013 came from cash from the First Defendant in the sum of \$6,000.00, and Dave Seon in the sum of \$3,000.00, and that this cash was handed to the First Claimant as the treasurer of the committee.

22. The First Defendant's witness, her sister June Samlalsingh, testified to doing the assembly and manufacturing of the carnival costumes for the band free of charge as a tribute to their father, a well known carnival personality. That in light of the family nature of the band, work for the band was to be done on a voluntary basis. Further, that the only persons earning an income from the band would be the section leaders, as they were to market and sell the costumes at their own price on the condition that they paid the band fee.

23. It is the case for the First Defendant that as the treasurer, the First Claimant directly conducted all financial transactions on behalf of the band, and that the receipts issued should have been made in the name of the band, and not his own name. She testified however that there was no monitoring of records as the First Claimant was her son and she trusted him. Jozette Samlalsingh and June Samlalsingh testified that the First Claimant was the second treasurer elected by the committee, as the first was not attending committee meetings. June Samlalsingh testified that the First Claimant was chosen as he worked at the bank and indicated that he had accounting experience and would be able to easily set up an account for the band. Jozette Samlalsingh testified that the First Claimant was requested by his father, Andrew Goberdhan, who was an accountant, to produce the bills and receipts of the committee, and that the First Claimant failed to do so. The committee agreed at that point that the First Claimant would continue to be treasurer "to avoid further conflict" and that his wife, the Second Claimant, would assist him to ensure that the documents would be submitted at a later date.

24. It is the case for the Defendants that there was never an oral agreement that the prize money would be split equally between anyone, nor that the band would pay for the personal expenses of anyone, including that of the First and Second Defendant. It is further denied that any agreement whether written or oral was made to pay person expenses out of the funds from the 2014 band launch.
25. It is the case for the Defendants that there was an oral agreement that if the band won anything in 2013, the winnings would go towards the band's expenses for Carnival in 2014, so as to avoid the hassle of fundraisers. The First Defendant testified that the band was launched on a volunteer system as it was the first launch, and that the band was made in tribute to Rudolph Legall, the First Defendant's father who was a well-known 'mas man' in San Fernando. Joel Roney John testified to the existence of such an agreement, stating that any income earned was to be used to cover band expenses in 2014, particularly the band launch. Roney further testified that he was also made to pay an extra fee of \$600.00 for an additional music truck, though he was not previously informed of this expense. Further, that he did not make a profit from his section as he sold his costumes cheap so as to attract more persons to the band for Carnival 2014.
26. Jozette Samlalsingh as the assistant secretary for the committee, also testified that an agreement was made at the first meeting that all earnings and income from the band would go towards band expenses.
27. It is the case for the First Defendant that she never had access to the band's bank account, but that the authorized persons were the First Claimant, who she accepts is also called Alindo, and Michelle Des Etages. She testifies to being informed that Michelle Des Etages' name was removed days after Carnival 2013 so that only the First Claimant had access to the band's bank account. The First Defendant further testifies that the prize monies were only distributed in January 2014, approximately six weeks before Carnival 2014. The First Defendant collected the winnings, pursuant to a letter from the National Carnival Bands Association of Trinidad and Tobago sent to

the San Fernando Carnival Committee authorizing her to collect such as the leader of the band. The First Defendant then deposited the winnings into her own account on the 21st January 2014, presumably as she did not have access to the band's bank account in the name of the First Claimant, and the First Claimant had by that time resigned.

28. The First Defendant further testified that she used the money from the winnings to purchase items for the 2014 band launch, such as costume material, printed t-shirts, business cards, banners, PARC disposals, music truck and DJ, security, food and other required items, the receipts for which she attached to her witness statement. These cheques and receipts were made out towards Legall and Friends, and/ or Joan Legall. Jozette Samlalsingh confirmed the late receipt of the prize winnings and the consequent use of it for the 2014 band launch. She further testified that as a result of the late receipt of the winnings, the band had a short space of time to prepare for Carnival 2014 resulting in a low success rate. As such, funding for Carnival 2015 is low and all band members (mostly family members) are volunteering their service to the band.

29. It is further denied by the First Defendant that she was abusive towards anyone as the Claimants have claimed. It is claimed further in response to the Claimant's allegations that she left the committee, that it was in fact the Claimants who all resigned from the band on the Saturday after Carnival 2013. It was at a meeting after Carnival where the First and Second Claimants resigned, after informing the First Defendant that no monies were available apart from \$500.00, which was then given to the music DJ as a tip from the First Defendant. June Samlalsingh testified that the First and Second Claimants resigned after the First Claimant was unable to account for receipts, bills or monies received as band fees, as well as incurred expenses, and an argument began. It is further denied that any conversation was had between the First Defendant and the Claimants concerning the registration of the Second Defendant, and that consequently and further to which any statement by her that she was entitled to the prize monies and the Second Defendant was her medium for doing so is denied.

30. It is the case for the First Defendant that the Claimants are not entitled to the sum of \$35,500.00, and that said sum is not held on constructive trust by her for the Claimants.

ISSUES

31. The issue to be determined are as follows;

- a. Whether there was an agreement that any prize winnings of the band in 2013 was to be shared equally among the Claimants.
- b. Whether there was agreement that committee members were to fund band expenses personally and were to be reimbursed from the winnings.
- c. If the answer to issue b is yes, whether these Claimants in fact so expended any of their own funds.
- d. If the answer to issues above or any of them is yes, whether the First Defendant holds part of the prize money on trust for the Claimants.

Issue a

32. The Second Claimant testified that the committee was established on the 3rd March 2012 at a meeting. The Claimants as well as the First Defendant were present at this meeting. The Second Claimant annexed the minutes of the 3rd March along with several subsequent meetings. These minutes cumulatively show the progress made by the committee in all areas. In relation to fund raisers, it highlights the numerous fund raising events proposed along with some of the required expenses such as those for the printing of jerseys. The minutes are however silent on the issue as to whether there was an agreement in relation to any potential prize winnings. The reason for the patent

absence of evidence of the agreement in the minutes, according to the Second Claimant, is the fact that on the 4th August 2012, the secretary who had been recording the minutes resigned forthwith from the committee because of abuse dealt to her by the First Defendant. As a consequence, minutes were not recorded for subsequent meetings and it is at one of these meetings that it was agreed that the prize money would be shared equally.

33. This evidence is fraught with difficulty. Firstly, the minutes of the 4th August in no way show any resignation of the secretary forthwith. Should this have been the case one would have reasonably expected the minutes to reflect this very dire circumstance.
34. Further, the evidence on the issue by the Second Claimant under cross-examination is unbelievable to say the least. The Second Claimant testified that those present when the First Claimant agreed to the sharing of the prize money were the First and Second Claimants and the First Defendant alone. If her evidence is to be believed, it would mean that there were only three persons present at the meeting at which the agreement was made on the 20th August 2012. This is highly implausible having regard to the high attendance at the previous meetings. In answer however the Second Claimant maintained that there were only three persons present and testified that all the other members had resigned by then but produced no record to support that statement. Further, even if the secretary had in fact resigned, no reason is provided as to why someone who was present at that meeting did not record minutes.
35. Neither does the evidence of the First Claimant independently support the evidence of the Second Claimant, save and except for a statement at paragraph two of his witness statement that the witness statement of the Second Claimant is true and correct. This attempt by one witness to adopt the evidence of another is quite unacceptable and improper. In the ordinary course of events, witnesses are to give their evidence from their own recollection. The action of the First Claimant in this case is tantamount to a witness sitting in court and listening to the evidence of one of his fellow witnesses and then proceeding to testify under oath that he agrees with everything that the other

witness says and adopts same. This practice is to be frowned upon. It cannot be the case that the CPR was designed to permit one witness to piggy back as it were on the evidence of another by reading that other witness' evidence and simply adopting it. **Part 29.5 (1) (d) CPR** requires that the witness statement must so far as reasonably practicable, be in the witness' own words. The witness statement offends this rule in relation to this issue. The rule is designed to ensure that there is no collusion between witnesses and that each witness gives his independent, uninfluenced recollection as far as is practicable. As a consequence this court gives no weight to that which the First Claimant says in his witness statement on the first issue.

36. Of grave concern to the court were the clear inconsistencies between the evidence of the Second Claimant and that of the Third and Fourth Claimants on the issue of the meeting of the 20th August 2012. Firstly, the Second Claimant did not in her witness statement give the date of the meeting at which the agreement was made save and except for saying in her witness statement that the agreement was made in the last week of August. It is passing strange that the Second Claimant does not mention the date of the pivotal meeting which forms the basis for the most material issue of her case.
37. But the evidence of the Third and Fourth Claimants are even more diametrically opposed to that of the Second Claimant in that they testify to being present at the meeting of the 20th August when in fact the Second Claimant testified under cross examination that the only persons present were the First and Second Claimants and the First Defendant. This inconsistency is material and goes to the root of whether any such agreement was in fact made at any such meeting.
38. Further, there is also material inconsistency between the witnesses on the terms of the alleged agreement. The Second Claimant testified that the agreement was that all Claimants would be compensated for their personal expenses towards the launching of the band and if the band won any competitions the prize money would be divided amongst the remaining members equally or in the alternative, if the band was

unsuccessful the personal would be paid out of funds generated by the 2014 (subsequent year) expenses of the First and Second Claimants. Of note is the fact of agreement that personal expenses would be paid firstly then the balance shared among the “remaining members”, thereby giving the impression that those who were reimbursed were not to share in the prize money. Further, the agreement, at least based on the evidence of this witness appears to cater for payment only to the First and Second Claimants from funds made in 2014 to the exclusion of the other Claimants. (*See paragraph 8 of the witness statement of the Second Defendant*).

39. The evidence of the Third Claimant on the issue of the terms of the agreement is quite different. This witness testified that the agreement was that all claimants would be compensated for their personal expenses and if the band accrued any prize money it would be equally distributed amongst members. (*See paragraph 7 of the witness statement of the Third Claimant*). It is self evident that these terms are patently and materially different in substance to those testified to by the Second Claimant. Support for the same terms as those set out by the Second Claimant does however in fact come from the Fourth Claimant but in the court’s view this is insufficient to assuage all of the court’s serious doubts on the veracity of all of the evidence on the issue. The court has formed the clear impression that the Claimants were not all being truthful with the court and there was an attempt to bolster the case which attempt has tarnished all of the evidence and has affected the credibility and reliability of the Claimants’ case.
40. The evidence of the First Defendant on both issues is preferable as being more plausible. It is clear on the witness statement of the First Defendant, an experienced mass producer, along with her witnesses that the band being a new band, any money which accrued, whether by way of prizes or band fees or otherwise would have to be reinvested in the band for the next Carnival season if the band was to continue. This is a rational and common sense inference to be drawn from the evidence and from common everyday experience in a society in which bands, and in particular new bands, enter carnival competitions on a shoestring budget. It is not inconceivable and is in fact highly probable that this was the arrangement between the parties as testified

to by the First Defendant and her witnesses. Further, it is quite believable that the expenses for the band were to be paid from band fees, fundraisers and sponsors. The First Defendant testified that in addition to such expenses and recognising that the effort was a voluntary one, the section leaders made their own costumes and expended their own money which they recouped from selling the costumes. It is her testimony that she paid many of the other expenses including that of the DJ by giving the money to the First Claimant who was the treasurer at the time. This is why the Claimant's name is written on the receipts. Further, she testified in cross-examination that she made the costumes for the models who played with the band. Those models formed their own section but did not pay for the costumes. The First Defendant attempted to give an explanation as to why she could not register the band in 2012 but was stopped by attorney at law from providing such an explanation. She managed to add that her son was at that time responsible for all such business and he knew why. In the court's view, the cross examination of the First Defendant and her witnesses revealed no material inconsistencies. That being said, in the court's view, the version of events given by the First Defendant and her witnesses was highly plausible and probable and accorded with common sense. The court therefore had no difficulty whatsoever in believing the First Defendant and her witnesses.

41. Additionally, the court accepts the evidence of the First Defendant that the First Claimant being her son, she reposed a high level of trust in the First Claimant and that he refused despite repeated requests to provide any accounts for all the money spent.
42. The court therefore remains dissatisfied with the evidence on this issue. As a consequence the court finds that it is more likely than not, that no such agreement was entered into between the Claimants and the First Defendant.

Issue b

43. Having regard to the finding of the court in relation to the first issue, it means that the court is also dissatisfied with the evidence of the Claimants in relation to the promise of re-imbursement for expenses for the same reasons set out above, the allegation being that the both promises were in fact made by the First Defendant on the same occasion at the same time.
44. Additionally, however, none of the minutes suggest either directly or by inference that the fund raisers were unsuccessful. In that regard, the Second Claimant attempts to rely on a document which appears not to form any part of the minutes but is inserted within the minutes of the 16th June 2012, without reference to it or context supplied by the minutes itself. The document is undated and does not reflect any income from any of the fundraisers set out in totality in all of the minutes. It is headed “Statement of Affairs BarBQ” and appears only to relate to one event. This document is therefore highly unreliable and carries no weight when it comes to a finding of whether the fund raisers on the whole were not doing well, which is disputed by the First Defendant. In the court’s view, such evidence ought to have either been reflected in the minutes or have been reflected in the witness statement of the treasurer (First Claimant), who on the evidence of the First Defendant has failed to provide proper accounts to this day. One statement of affairs in relation to one minor event is not indicative of an entire state of affairs and the court therefore does not find that the evidence shows that the fund raisers were not doing well.
45. As a consequence of the finding of the court that it is more likely than not that no promise was made to either the First and Second Claimants only or to all of the Claimants to reimburse them for personal expenses it has become unnecessary for the court to make a finding as to whether the First and Second Claimants in fact expended the sum of \$10,000.00 of their own funds.

Issues c and d

46. The court having found that there was no agreement for sharing of the prize money or for reimbursement issues c and d do not arise for consideration. There was on the court's finding no duty on the First Defendant to share the prize money or reimburse. The First Defendant was therefore free to reinvest the winnings in the band to finance the band for the following year. The evidence from both sides is that the Claimants left the band and so they are no longer involved in the production. The registration of the business name of the band does not appear to the court to derogate from the original agreement to form a band and to continue it from year to year. In any event the claim as filed does not touch and concern the change in management of the band or misappropriation of funds or breach of duty. Both the claim form and the statement of case clearly demonstrate that the claim is one for monies owed by agreement simpliciter. It is in this context that the Claimants allege that a trust arises in respect of \$25,000.00 only. The court having found that there was no such agreement, a trust does not arise. It also follows that any issues which may arise from the registration of the band name as a business name in the name of the First Defendant and the use funds by the First Defendant are not for this court's determination they not having been included in the claim.

Adverse Inference

47. It is submitted by Attorney for the Defendant that the court is entitled to draw an adverse inference from the absence of evidence of the Fifth Claimant who gave a witness statement. This is a well known principle as set out in the case of **Ian Sieunarine v Doc's Engineering Works (1992) Ltd** HCA No 2387 of 2000. It is submitted by the Defendant that the absence of the Fifth Claimant's evidence in circumstances where her evidence was reasonably expected in order to assist with the issues in the case should weigh heavily against the Claimant's case.

48. The court agrees that in the usual case, the absence of a witness who gave a witness statement as to material issues but has not appeared to give evidence at trial and no

reasonable explanation has been provided for her absence would lead the court to draw such an inference. In this case however, the Fifth Claimant is but one of the possible witnesses who could have been called in an attempt to prove the agreement but she did not give a witness statement. So too were the others who were in fact called and did testify. In such a case, it is not that the Claimants have refused or failed to lead any evidence on the material issue from any witness at all. All of the Claimants except for the Fifth have given evidence. Therefore in these circumstances, the Claimants are not in the court's view, obliged to call every witness who can testify to one particular issue. In fact the calling of all possible witnesses on an issue may amount to a waste of the court resources in some circumstances. So that the Claimants are free to call some only of the witnesses on one issue if they so choose. That is a judgment call to be made the Claimants as it is not reasonably to be expected that the Fifth Claimant would have given different testimony as that of the other Claimants on the issue of the agreement. The court will therefore not draw an adverse inference against these Claimants for the absence of the Fifth Claimant. The Fifth Claimant having however not taken any part in these proceedings, her claim will be dismissed on the basis of the findings of the court at the trial in her absence.

Conclusion

49. On the evidence the picture emerges of a well-experienced mas producer envisioning and bringing to a life a mas band in tribute to her father. This she did by seeking the participation of others including her son and relatives. She reposed tremendous confidence in her son and left many matters to him. Through the combined efforts of all, including that of personal sacrifice, the band succeeded at several competitions. The First Defendant then reinvested the winnings in the 2014 production as this was necessary to ensure the band's continuation. The prize money would have been used for all expenses related to the 2014 production, including Chinese food for the staff. It is a matter of practicality that with many volunteers working late into the night as is

the regimen of the mas maker, the leader is bound to provide sustenance. Although heavy weather was made of this, the court sees nothing objectionable in such an expense which is simply one of the expenses to be covered in the 2014 production.

50. However, the First Defendant appeared to have been disappointed by those in whom she reposed trust who now turned against her, left the band and sought their pound of flesh by demanding a share of the prize money and money for expenses, the First Claimant having provided no proper account for most of the expenses which he was duty bound to pay as treasurer and which was provided to him by the First Defendant. The Claimants have therefore failed to prove their case to the court's satisfaction.

Dated the 11th May 2015

Ricky Rahim

Judge