

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-00541

BETWEEN

TREVLON HALL

Claimant

AND

THE TOURISM DEVELOPMENT COMPANY LIMITED

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Ms. R. Ramjit instructed by Ms. G. Ramjohn for the claimant

Mr. K. Garcia instructed by Ms. G. Edwards for the defendant

Judgment

1. This is a claim for damages for breach of contract. The claimant is the Founder and President of the Trinidad and Tobago BMX Freestyle Association (“the TTBFSA”). In 2014, he was the main liaison in relation to the Monster BMX Freestyle Exams (“the event”) held at the Jean Pierre Complex on the 26th and 27th April, 2014.
2. According to the claimant, in January, 2014, in his capacity as organizer of the event, he provided an agent and/or servant of the defendant Samuel Sankar (“Sankar”), with a proposal for sponsorship of the event. Sankar was at that time, the Sports Coordinator of the defendant. By this proposal, the claimant asked for prize monies in the sum of \$86,000.00 USD. The claimant alleges that Sankar informed him that his request for sponsorship was being processed and that the defendant and the Ministry of Tourism were onboard with his proposal. The event did in fact occur and on the evidence there appeared to have been at the least a presence of the Ministry by way of pendants and a personal appearances of key Ministry personnel. To date, the prize monies have not been provided to the claimant and the prizes due to the winners are still outstanding. As such, it is the case of the claimant that the defendant breached the oral contract.
3. Consequently, by Claim Form filed on the 26th February, 2016 the claimant sought specific performance of the oral contract, damages for the breach of contract as well as damages for the negative impact on his professional reputation. The parties have agreed that no written contract was executed between the claimant and the defendant for sponsorship of the 2014 event.
4. By Defence filed on the 31st March, 2016, the defendant denies that Sankar represented to the claimant that the request for sponsorship was being processed and that the defendant was onboard with the proposal. The defendant avers that even if Sankar did in fact make such representation, he Sankar, did not have any authority to bind the defendant to sponsorship for the event. As such, it is the case of the defendant that it is not in breach of any contract as no contract was ever concluded between it and the claimant.

Issues

5. The issues for determination are as follows;
 - i. Whether Sankar made representations and/or assurances to the claimant that the defendant would provide sponsorship for the 2014 event;
 - ii. If the answer to (i) is yes, whether Sankar had the authority to enter into a contract with the claimant on behalf of the defendant for sponsorship of the 2014 event and did he do so;
 - iii. If there was a contract, whether the defendant was in fact a party to that contract.

The case for the claimant

6. The claimant gave evidence for himself. The participants of the event were from approximately twenty-five countries which included Canada, USA, France, Japan, Mexico and Czech Republic and the event gained worldwide media coverage. The claimant had organized similar events prior to the 2014 event and also successfully sought and received monetary sponsorship from the defendant for those events. He testified that he previously held communications with Sankar in respect of sponsorship for those events. As such, during cross-examination, the claimant testified that when he asked the defendant for sponsorship in 2014, he had experience with corporate sponsorship.
7. According to the claimant, the TTBF A was granted sponsorship from the defendant for the BMX Freestyle Exams held in 2013 (“the 2013 event”). However, for the 2013 event, there was a written agreement between the TTBF A and the defendant for sponsorship. The claimant testified that he also received sponsorship from the defendant for 1) the BMX Freestyle Get Together Jam held in 2004 and 2) the Launch of the World 1st BMX Flat Land Park held in 2010. During cross-examination, he testified that he understood that the defendant was a body corporate and that as a body corporate it has a management structure which includes a Board of Directors (“the board”). He also testified during cross-examination that he understood that the defendant’s board had to agree to those prior sponsorships before same were awarded to him.

8. In or around January, 2014 the claimant in his capacity as organizer of the 2014 event provided Sankar, the then Sports Coordinator of the defendant with a proposal for sponsorship for the 2014 event. By this proposal, the claimant asked for prize monies in the sum of \$86,000.00 USD. During cross-examination, the claimant testified that even though he did not make mention in his witness statement as to how the prize monies were supposed to be distributed amongst the winners of the 2014 event, the proposal did contain that information. The proposal is not before this court. The claimant testified that subsequent to giving Sankar the proposal, Sankar informed him that his request for sponsorship was being processed and that the defendant as well as the Ministry of Tourism (“MOT”) were onboard with his proposal.
9. During cross-examination, the claimant testified that when he provided Sankar with the proposal, Sankar did inform him that the proposal had to be considered by the defendant’s board. He further testified during cross-examination that he knew that for sponsorship to be accepted by the defendant, the defendant’s board had to agree upon same. He also testified during cross-examination that he appreciated that unless the defendant’s board agreed to the proposal, Sankar did not have the authority to tell him that the defendant was onboard with the proposal. Moreover, during cross-examination he testified that he understood that if the board had agreed to sponsor the 2014 event that agreement would have to be reduced in writing.
10. The claimant testified that after his conversation with Sankar about the sponsorship for the 2014 event, he did raise the issue of a written agreement and was verbally assured by Sankar that a written agreement would be formalized at a later date. He further testified that Sankar told him that he should focus his efforts on securing a large attendance for the 2014 event.
11. During cross-examination, the claimant denied meeting the Acting Chief Executive Officer (“CEO”) of the defendant, Ms. Yolande Selman (“Selman”). He further denied showing Selman a video presentation in relation to the 2014 event. Moreover, he denied that Selman suggested that he should raise his proposal for sponsorship with the MOT. As such, the claimant denied attending a meeting with representatives of the MOT.

12. It was the testimony of the claimant that he continued to keep in touch with Sankar in order to confirm sponsorship and was always reassured by Sankar that all arrangements were in place for sponsorship. On the 25th April, 2014, the TTBFAs were part of the contingency that visited the offices of the defendant for a welcome ceremony for all of the participating athletes of the 2014 event.
13. The claimant testified that Sankar as well as the former Permanent Secretary of the MOT, Mrs. Juliana Boodram (“Boodram”) participated in several radio and television broadcasts whereby they publicly vowed their support of the 2014 event.
14. The 2014 event took place on the 26th and 27th April, 2014 and at the event, officials of the defendant were present and assisted in the distribution of prizes. The photographs disclosed by the claimant at “T.H.I” of his witness statement showed that Sankar, Boodram, the former Minister of Tourism, Mr. Gerald Hadeed, the director of the defendant, Naidu Powdur and the HR Manager of the defendant, Simone Young were all in attendance of the event. The claimant also saw visible branding of the defendant and the Ministry of Tourism throughout the venue at the time of the event. *See photographs attached to the claimant’s witness statement at T.H.I.* During cross-examination, the claimant testified that it was helpful to have the support of the MOT and the defendant as having the support of those two bodies gave the 2014 event a certain level of legitimacy.
15. On the 28th April 2014 Sankar told the claimant to have all the athletes gathered for a trip to the Gasparee Caves and Zip Lining at Chaguaramas carded for the 29th April, 2014. The athletes as well as persons associated with the 2014 event were in attendance of the outing.
16. Subsequent to the outing, Sankar informed the claimant that he was required to submit a post event report to the defendant in order to initiate the payment of the sponsorship monies in the sum of \$558,546.00 TTD. He testified that Sankar further informed him that the monies would be available to the TTBFAs for distribution to the participants within six weeks after the submission of the post event report. The claimant duly complied and submitted a post event report dated the 5th May, 2014.

17. He testified that within six weeks after submitting the report, Sankar informed him that the monies were not available and provided a later date for the payment. Thereafter, Sankar continuously postponed the date for payment of the sponsorship monies. During the period of the 5th June to the 15th July, 2014 the claimant exchanged several text messages with Sankar and Ms. Simone Young (“Young”), the defendant’s HR Manager and Acting CEO. By those messages the claimant pled with Young and Sankar to sort out the outstanding payment of the sponsorship monies.

18. The claimant received the following text messages from Young and Sankar;

- i. On the 16th June, 2014 he received a text message from Sankar stating “*Am in the PS office now she is packing up, I got you bro things will happen*”;
- ii. On the 2nd July, 2014 he received a text message from Young stating that “*I spoke to the ministry and they were working on your stuff*”;
- iii. On the 4th July, 2014, he received another text message from Young stating “*And I reminded PS about your payment verbally and in writing*”;
- iv. On the 8th July, 2014 he received another text message from Sankar stating “*Mot needs to get invoice for the BMX tourney*”;
- v. On the 9th July, 2014 he received a further text message from Sankar stating “*Bro wuz up we spoke to Mot today, will be able to swing it @ TDC*”.

19. On the 10th July, 2014, the claimant provided the invoice to Sankar however, he did not receive any money. He became increasingly frustrated with the process and so after numerous fruitless attempts to resolve the issue with Sankar, he was forced to seek the assistance of the former Minister of Tourism, Mr. Gerald Hadeed. He wrote to the former Minister and on the 26th June, 2014 he received a reply which stated that the Minister had received the email and that the matter was being reviewed. He has had no other communication with the former Minister to date. Having regard to the chronology of the events thus far, the court finds that the date set out in the latter letter as testified to by the claimant may have been an error on his part. Further, the said letter was not disclosed to the court so that the court has not had the opportunity to examine the contents thereof.

20. On the 16th July, 2014 the claimant received a letter from Ms. Joan Mendez (“Mendez”) an employee of the defendant wherein he was asked for evidence of a written contract between the defendant and the TTBFA. He was not in possession of such a contract and so informed Mendez accordingly. He testified that during this time he was still in contact with Sankar who continued to assure him that the prize monies were forthcoming.
21. Further, during this time he received a number of phone calls and messages from the athletes who participated in the 2014 event as well as from their attorneys demanding the payment of the prize monies. He verbally informed Sankar of those communications and was instructed by Sankar to provide his (Sankar’s) cell phone number to the athletes and other interested parties so that he (Sankar) could allay their fears of the non-payment.
22. According to the claimant, the participants in their frustration by the non-issue of the prize monies were also forced to contact other agents of the defendant namely, Ms. Simone Medina (“Medina”), the Acting Senior Research Officer of the MOT, Mr. Richard Madray (“Madray”), the Acting Permanent Secretary of the MOT, Ms. Meera Bahadoorsingh (“Bahadoorsingh”), the Clerk at the MOT and Ms. Juliana Boodram (“Boodram”), the former Permanent Secretary of the MOT.
23. On the 12th August, 2014 one of the participants of the 2014 event, Viki Gomez (“Gomez”), wrote to Sankar, Boodram and the claimant via email. In this email, Gomez vented his disappointment of the manner in which the parties treated with the issue of the outstanding prize monies. Gomez also indicated that he was considering legal action if the matter was not resolved.
24. On the 29th October, 2014 another participant of the 2014 event, Jesse Puente (“Puente”) wrote to Bahadoorsingh asking for the issue to be resolved as he began to receive emails from fellow participants demanding answers with respect to the issue of the outstanding monies. The claimant testified that Puente forwarded the emails to him. On the 29th October, 2014 Bahadoorsingh responded to Puente’s email by indicating that his email was received and that it would be submitted to the Permanent Secretary for review and action.

25. On the 11th November, 2014 Puente sent another email to Bahadoorsingh asking for an update on the issue. He received no response to this email. Puente also forwarded this email to the claimant.
26. The claimant testified that during that period, he continued to receive phone calls and emails from angered participants seeking information on their outstanding prize monies. As a result of his inability to provide answers, he was forced to remove himself from all forms of social media. He further testified that the constant negative communications began to affect his mental and physical health. Despite the adverse effect on both his professional reputation and mental health, he persisted in his efforts to have the issue resolved.
27. On the 24th November, 2014 he wrote an email to Madray, Medina, Mr. Keith Chin (“Chin”), the CEO of the defendant and Ms. Marsha Victor (“Victor”), the Manager of Corporate Communications of the defendant. This email outlined in great detail the issue of the non-payment of the prize monies. On the 26th November, 2014, the claimant received an email in response to his email stating that the issue was forwarded to the defendant specifically for the attention of Chin.
28. On the 7th December, 2014, the daily newspaper, NEWSDAY published an article in relation to the claimant’s trouble in seeking to obtain the outstanding monies for the participants of the 2014 event. According to the claimant, the article contained comments made by some of the foreign participants which adversely affected his professional reputation as well as that of the TTBF A.
29. On the 9th December, 2014 the NEWSDAY published a further article referring to the comments made by Dave Bobb (“Bobb”), the Director of Sport at the Ministry of Sport and the former Minister of MOT. Bobb stated that the matter regarding the payments of the prize monies was supposed to be handled by the defendant.
30. On the 30th December, 2014 the claimant received a letter from the Acting Permanent Secretary of the MOT, Donna Ferraz. This letter stated that research was conducted to ascertain whether there was any financial commitment made to the claimant and that it was

found that no such commitment had been made by the MOT or the defendant. The letter further stated that the MOT was therefore not in a position to accede to the claimant's request for sponsorship.

31. After receiving letter dated the 30th December, 2014, the claimant attempted to contact any individual with authority who would assist him in obtaining the prize money promised by the defendant. He wrote further correspondence to the Ministry of Sport and to the office of the then Prime Minister. To date, he has not received any responses from those offices.
32. On the 31st December, 2014, the claimant received another harsh email from a participant of the 2014 event, Daniel Sandoval ("Sandoval") which stated that the BMX world was talking about the claimant and that the claimant has lost a lot of respect from the BMX community.
33. On the 12th March, 2015, he visited the offices of Rehka P. Ramjit and Associates, Attorneys at Law. Subsequent to his instructions, a pre-action protocol letter dated the 21st April, 2015 was sent to the defendant. During cross-examination, the claimant was referred to his pre-action protocol letter. He agreed that his pre-action protocol letter was addressed to the Acting Permanent Secretary of the MOT, Ms. Donna Ferraz. He testified that a similar letter was sent to the defendant, however no such letter is before this court. He further agreed that the pre-action protocol letter stated that the MOT (and not the defendant) was in breach of the agreement to pay the prize monies.
34. On the 22nd June, 2015 another participant of the 2014 event, Terry Adams ("Adams") sent an email to the claimant and copied same to other fellow athletes. According to the claimant, this email contained a scathing and derogatory reference to him termed "*The Trevlon Hall Scam Exam*". On the 24th June, 2015 the claimant responded to this email and attempted to provide an update as well as an explanation of his circumstances and the breach of contract between the TTBFSA and the defendant. During cross-examination, the claimant was referred to his email dated the 24th June, 2015. He agreed that this email made mention of promises made by the MOT and not by the defendant.

35. On the 24th July, 2015 a web based magazine, The Come Up, posted an online article entitled “*The Trinidad Government Stole \$86,000 from BMX Pros*”. This article contained references to the NEWSDAY articles written in 2014 as well as comments from fellow athletes.
36. According to the claimant, despite the damage to his professional reputation as well as the negative impact on his character caused by the breach of the oral agreement by the defendant, he attempted to host a similar event in 2015. This event however, never materialized as his efforts to secure other sponsorship was denied because of the unresolved issue of the outstanding prize monies owed by the defendant. The claimant testified that he was forced to give up hopes of securing sponsorship for further events. He was however, able to continue with school tours with his local peers in his quest to continue with the promotion of sport.

The case for the defendant

37. The defendant called one witness, its Sports Tourism Specialist, Samuel Sankar (“Sankar”). Sankar assumed his current position two years ago. He was the defendant’s Sport Tourism Coordinator in 2014. During cross-examination Sankar testified that he understood that the defendant was the implementation arm of the MOT. That the defendant would implement policies of the MOT.
38. Sankar’s duties as Sport Coordinator included the following;
- i. implementation of the marketing plan for sports tourism;
 - ii. assisting in the developing of a marketing plan to position this country as a sports event destination so as to capture emerging new visitor revenue sources;
 - iii. organizing marketing campaigns for sports tourism;
 - iv. researching and identifying trends and concerns related to sports tourism so as to assist in the generation of status reports;
 - v. assisting in special sports related assignments and projects as may be required from time to time;

vi. acting as the point of contact between the defendant and sports stakeholders.

39. Sankar testified that his duties as Sports Coordinator did not include negotiating on behalf of the defendant to provide sponsorship for sporting events held by third parties. It was his testimony that the committing of the defendant's money for such purposes is within the domain of the defendant's board. Sankar further testified that at no time did he hold himself out as having the authority to negotiate for or to bind or make the defendant liable in relation to sponsorship of sporting events held by third parties as he has no such authority. During cross-examination, Sankar testified that sponsorship could be cash, kind or service.
40. Sankar testified that he knows the claimant. During cross-examination, he testified that he and the claimant had a relationship of trust to the extent that the claimant referred to him as "*Sam*" and he referred to the claimant as "*bro*". Sometime in January, 2014, the claimant spoke to Sankar with regard to the possibility of the defendant providing sponsorship for the 2014 event. According to Sankar, prior to the 2014 event, the claimant had made proposals to the defendant for it to sponsor contest prize money for events he (the claimant) had held. During cross-examination, Sankar testified that he had dealt with the claimant's application for sponsorship for the 2013 event.
41. Sankar testified that on all such prior occasions, the claimant was informed that in order to obtain sponsorship from the defendant, he needed to make a written proposal for sponsorship, the written proposal had to be reviewed by the defendant's board and the board had to make the decision as to the extent or amount of sponsorship, if any, the defendant would be providing. He further testified that on all prior occasions the board's decision was communicated to the claimant in writing and a formal agreement between the defendant and the claimant was executed which set out the terms and conditions of the sponsorship.
42. According to Sankar, for the 2014 event the aforementioned was the procedure which had to be followed by the claimant. He testified that he informed the claimant that he (Sankar) would have to take his proposal to the defendant's then Acting CEO, Selman who in turn would have to present the proposal to the defendant's board for approval. He further testified that when he informed the claimant of the aforesaid, the claimant asked him to

arrange a meeting with Selman so that he (the claimant) could personally make a presentation of his proposal to her.

43. Sankar testified that he did arrange the meeting and that it did take place but that he could not recall the exact date of the meeting. During cross-examination, Sankar testified that as an appointment was made for the claimant to meet Selman, he could have appraised himself of the date of the meeting but failed to do so. He was present at the meeting with the claimant and Selman. He testified that at the meeting, the claimant showed Selman a promotional video presentation relating to his proposed sporting event. He further testified that the video was simply a footage of past sporting events and that it did not contain anything in relation to the sponsorship the claimant was asking for.
44. According to Sankar, after looking at the video, Selman informed the claimant that he should raise his proposal for sponsorship with the MOT. During cross-examination, Sankar testified that Selman instructed the claimant to raise his proposal for sponsorship with the MOT because decisions pertaining to sponsorship were sent back to the MOT.
45. Subsequent to that meeting, as per the claimant's wishes, Sankar arranged a meeting with the MOT for the claimant. Sankar does not recall when this meeting took place but testified that this meeting took place at the offices of MOT and that he was present at the meeting with the claimant and MOT's Acting Director of Research and Planning, Mrs. Satie Jamraj-Marimuthu ("Jamraj-Marimuthu").
46. According to Sankar, at that meeting, the claimant showed the same promotional video that he had shown to Selman. After the video was over, the claimant told Jamraj-Marimuthu that he was looking for sponsorship for the 2014 event and he asked her whether the MOT would agree to sponsor contest prize money for the event. Sankar testified that Jamraj-Marimuthu told the claimant to submit his formal proposal for sponsorship to the Permanent Secretary of the MOT for further consideration.
47. Sankar testified that as far as he knew, after that meeting, the claimant dealt with the MOT in relation to his request for sponsorship for the 2014 event. He further testified that he was

sympathetic to the claimant's bid for sponsorship and so from time to time, would assist the claimant in his interactions with the MOT. For example, Sankar on the claimant's behalf would contact officials at the MOT to enquire whether there was any progress on the claimant's proposal for sponsorship. After his enquiry, Sankar would inform the claimant of whatever was told to him by the officials of MOT. He testified that he provided the claimant with his cell phone number and so would sometimes communicate with the claimant via text messages.

48. During cross-examination, Sankar testified that he did ask the claimant via text message to resend his proposal. He further testified that the claimant was asked to resend the proposal so that he (Sankar) could have forwarded same to the MOT and so that the proposal could have been easily accessed. Sankar also testified during cross-examination that since he shared a relationship with the claimant, he facilitated the claimant's communications with the MOT.

49. Sankar testified that the defendant did not at any time agree to provide sponsorship or contest prize money for the 2014 event. He further testified that he never made any promise to the claimant that the defendant would provide sponsorship or contest prize money for the 2014 event. Moreover, he testified that neither did he have the power or authority to make such a promise nor did he hold himself out to the claimant as having the power or authority to make such a promise.

50. In his witness statement, Sankar denied informing the claimant that his proposal for sponsorship was being processed and that the defendant and the MOT were onboard with the proposal. He testified that he did not give the claimant any assurances that a written agreement would have been formalized at a later date. He further testified that he did not tell the claimant that he should focus his efforts on securing a large attendance. However, during cross-examination he testified that he did tell the claimant that the defendant and the MOT were onboard with the proposal and that the claimant should focus on obtaining a large attendance to the event.

51. During cross-examination, Sankar testified that he did speak about the 2014 event on radio but he stated that the purpose for doing so was to promote Trinidad and Tobago as a sport destination. He also testified during cross-examination that the participants of the event were taken to the Gasparee Caves but he denied that the defendant paid for same.
52. According to Sankar, sometime after the 2014 event, the claimant was asked for a post event report for evaluation and monitoring purposes only. During cross-examination, he testified that the MOT had asked for the post event report and that he asked the claimant to submit the report without informing him of the purpose for the submission of the report. He testified that he did not ask the claimant to submit the report in order to initiate payment of the sponsorship monies in the sum of \$558,546.00 TTD. He further testified that he did not inform the claimant that the monies would be available to the TTBFBA for distribution to the participants within six weeks after the submission of the report. As such, Sankar denied informing the claimant of any date for payment of the sponsorship monies and further denied that he continued to postpone such date for payment.
53. Sankar testified that based on the claimant's past dealings with the defendant in relation to his previous bids for sponsorship, he (Sankar) firmly believes that the claimant at all material times knew fully well that on this occasion, he (Sankar) could not make any promise of sponsorship on behalf of the defendant, that only the defendant's board could make such a promise and that in any event there had to be a written agreement for any such sponsorship to be provided. According to Sankar, on this occasion, there was neither a promise by the defendant's board nor a written agreement in place between the defendant and the claimant for any such sponsorship to be provided.
54. During cross-examination, Sankar testified that the welcome ceremony for the participants of the 2014 event was held and paid for by the MOT. He further testified during cross-examination that staff members of the defendant including himself were present at the 2014 event as they received complementary tickets to the event from the claimant. He also agreed that at the event, there were visible branding done by the defendant. Moreover, during cross-examination he testified that at the event he was introduced as a sponsor when

he was called upon to distribute prizes and that he did not deny at that point in time that the defendant was not a sponsor of the event.

55. During cross-examination, Sankar testified that he did have informal conversations via text messages with the claimant post the 2014 event and that some of those messages were in relation to the payment of the prize monies for the event. He further testified during cross-examination that he did not inform the claimant during those conversations that because there was no written agreement, there was a difficulty with his application for sponsorship.

56. During cross-examination, Sankar agreed that he told the claimant via text message that the MOT needed the invoice for the 2014 event. He further agreed that the MOT would have only asked for the invoice if it had a commitment to pay and therefore needed to justify the payment. However, he testified that MOT did not have any commitment to pay and simply asked for the invoice for due diligence purposes.

Issue 1- *whether Sankar made representations and/or assurances to the claimant that the defendant would provide sponsorship for the 2014 event*

57. Upon an analysis of the evidence, the court finds that Sankar both verbally and by his actions (including but not limited to the several text messages exchanged between the two), led the claimant to believe not that approval had been granted but that the defendant would eventually provide sponsorship for the 2014 event. It is pellucid from the evidence that Sankar was in constant communication with the claimant up to the date of the event, throughout the event and post event. By those communications, Sankar unequivocally made representations and/or assurances to the claimant that his proposal was being actively considered. His statement to the claimant that the defendant was “on board” as ambiguous as it may be would have certainly given the claimant the impression that the defendant was not adverse to sponsorship. Coupled with those communications, Sankar would have further reassured the claimant that the sponsorship was forthcoming by his attendance at the event and assistance with the distribution of prizes when called upon to do so **as a sponsor** of the event. Sankar admitted during cross-examination that he did not deny that he was a sponsor of the event when he was introduced as same during the event.

He therefore went as far as to have the defendant participate in the event as sponsor with the full knowledge on his part that there had been no approval for the sponsorship monies.

58. The court also accepts the claimant's evidence that subsequent to the event, Sankar did inform him that he was required to submit a post event report to the defendant in order to initiate the payment of the sponsorship monies and that the monies would be available for distribution within six weeks. But it is equally the finding of the court that the claimant must have understood this to mean that payment would be forthcoming so long as same was approved as by then he had not yet received a written contract as was the case with past events. Sankar's ambiguity and lack of frankness may have led the claimant to believe that prize money would be forthcoming. It is clear from the text messages sent by Sankar to the claimant that there was no approval for the sponsorship by the defendant and that Sankar was still attempting to have the proposal approved but instead of being forthright with the claimant, he, Sankar continued to reassure the claimant that the sponsorship monies were forthcoming. By then of course, the defendant had already shown to the national and international community that it was a sponsor of an international biking event, without having paid any money by way of sponsorship.

59. In that regard, it was Sankar's evidence that sponsorship can manifest itself in several ways other than a monetary payment. That testimony did not assist the case for the defendant as it was clear from the beginning that the sponsorship sought was that of prize money. No other form of sponsorship was sought on the evidence nor was a promise made in respect of any other.

60. During cross-examination, Sankar testified that although there was a difficulty with the claimant's sponsorship due to the fact that there was no written contract, he did not inform the claimant of same after the event had taken place. As such, having regard to his acceptance of facilitating the communications and the contents of the text messages, the court accepts that Sankar explicitly made representations and/or assurances to the claimant that the defendant would provide sponsorship for the 2014 event in the form of the type sought by the claimant namely for prize money.

Issue 2 & 3

The submissions of the defendant

61. The defendant submitted that as its employee, Sankar did not have authority to bind the defendant (or the MOT) to a contractual arrangement to the tune of \$86,000.00 USD (or roughly \$ 558,546.00 TTD) especially in the absence of a written agreement. According to the defendant, the evidence elicited from the claimant during cross-examination showed that the claimant fully well knew that (1) there could be no binding agreement for the provision of prize monies in the sum of \$86,000.00 USD unless and until the defendant's board had approved his sponsorship proposal, and (2) an agreement to that effect had to be put into writing and signed.
62. The defendant further submitted that the claimant led no evidence that its board had agreed to his proposal or that there was any written agreement in place. As such, the defendant submitted that the claimant failed to fulfil the burden of proving his case as to the existence of a binding oral contract.
63. The defendant relied on the decision of this court in **Dipcon Engineering Services Limited v Urban Development Corporation of Trinidad And Tobago CV 2014-01058**. In **Dipcon Engineering** supra, the defendant's witness (Atiba De Souza) testified that a decision to pay the claimant's (additional) claim would have had to be made by the defendant's Board of Directors. The defendant submitted that it was always the position that its board's approval was required to enter into the oral agreement being alleged by the claimant. This court found that the Board of Directors of the defendant had to give approval for the payment of the additional claim and therefore accepted the evidence of defendant's witness, De Souza that the board's approval was required, having regard to the manner in which companies make binding decisions by way of its boards. This court also found that in any event it was a reasonable inference that a board would have to approve such substantial payments. This court further found that the claimant's submissions that the board's approval was not an issue as it was entitled to assume that such internal policies were followed were without merit since by virtue of certain correspondence in the case, the

claimant had clearly acknowledged that the preparation of a board note for approval was necessary. At paragraph 113 of the judgment, this court held that the defendant having led evidence that the board's approval was required for the payment of the additional sum, the evidential burden lay upon the claimant to prove that the board's approval was in fact obtained but that the claimant had not fulfilled that burden.

64. The defendant submitted that even if the claimant could prove the existence of a binding contract, that contract based on the preponderance of evidence and in particular, the contemporaneous documentary evidence would have been with the MOT, and not with the defendant.

65. The defendant submitted that the claimant during cross-examination did deny that he met with the MOT representatives about his proposal for sponsorship in 2014 and that his dealings in relation to his proposal (which he had initially provided to Sankar), were thereafter with the MOT. The defendant further submitted that whatever was the impression left upon the court by the claimant's oral evidence in that regard, when that oral evidence is checked against the contemporaneous documentary evidence, it is clear that the claimant has all along regarded the MOT as the contracting party, and that he has, in this action, trained his guns on the wrong party.

The submissions of the claimant

66. According to the claimant, the cause of action in this claim is breach of contract and in the alternative, a claim in estoppel. The claimant however did not plead or rely on the doctrine of estoppel in his pleadings. As a consequence this court will not permit him to raise the issue at this stage.

67. The claimant submitted that the evidence establishes that an oral contract arose between the defendant and the claimant as a result of 1) the assurances and representations made by Sankar prior to and after the event and 2) the actions of the defendant during the event. He further submitted that it was based on those assurances and representations that he formed the opinion that he would have received sponsorship from the defendant.

68. The claimant submitted that the fact that he supplied Sankar with a post event report indicated that a contract existed between the defendant and him. He further submitted that by providing the post event report to the defendant within the stipulated six weeks, he was operating and conducting his affairs as per any stakeholder the defendant was engaged with based on contract. According to the claimant, when the post event report was submitted, the existence of an oral contract was firmly established.

69. The claimant submitted that Sankar had actual and/or ostensible authority to make the representations which he made on behalf of the defendant. That Sankar's evidence during cross examination established quite convincingly the important role that he as an agent of the defendant played in the event. As such, the claimant submitted that the notion that Sankar as Sport Tourism Specialist of the defendant did not have the authority to bind the defendant to a contractual agreement because he was not part of the directing mind and will of the defendant is incorrect.

70. According to the claimant, the principle of law which governs representations made by public officers was enunciated by Lord Denning in **Falmouth Boat Construction Ltd v Howell [1950] 1 All ER, 538 at 542** as follows;

"...Whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority and he ought not to suffer if they exceed it..."

71. The claimant further relied on the case of **Lever Finance Limited v Westminster (city) London Borough Council [1971] 1 QB 222**, wherein the Court of Appeal held as follows;

"A public authority may be bound by a: representation made by one of its officers within the scope of his ostensible authority on which another acts (post, p. 230E). As in the case of a company, a person dealing with a local authority is entitled to assume that all necessary internal resolutions have been passed (post, p. 231B)."

72. According to the claimant, Sankar's position as an agent of the defendant and as a public officer is undeniable. The claimant submitted that in his representations and assurances to him, he (Sankar) was acting in his capacity as Sports Tourism Specialist of the defendant. The claimant further submitted that Sankar had assumed authority in the matter of sponsorship, a matter in which the claimant was seeking clarity. As such, the claimant submitted that he was only acting on what was told to him by Sankar and that he was entitled to rely on the authority Sankar had assumed to possess.
73. The claimant submitted that he cannot be expected to suffer for forming an opinion that the defendant was onboard with his proposal for sponsorship and that he would subsequently receive the prize monies as that opinion was directly caused by the representations and assurances of Sankar who was at all material times acting on behalf of the defendant. That the constant communication with Sankar up to the date of the event, throughout the three days of the event and following the event caused him to rely on Sankar's assurances. As such, the claimant submitted that he could not have been expected to know the limits of Sankar's authority. Consequently, the claimant submitted that the representations made by Sankar were binding on the defendant because Sankar had ostensible authority.
74. The claimant does not agree with the defendant's submission that if there was any binding contract with respect to sponsorship of the event that such contract was with the MOT and not with the defendant.
75. The claimant relied on **Part 19 of the CPR** which deals with the addition and substitution of parties. The claimant submitted that **Part 19.3** prevents his claim from failing merely because his contract is with the MOT and not the defendant. Part 19.3 provides as follows;
- “The general rule is that a claim shall not fail because—*
- (a) a person was added as a party to the proceedings who should not have been added; or*
- (b) a person who should have been made a party was not made a party to them.”*

76. The claimant submitted that there is nothing to suggest that even if his action is with the MOT and not the defendant, the issues in dispute in this matter would remain unresolved. That the primary issue remains that the claimant was acting on the assurances of Sankar who is an employee of the defendant. The claimant further submitted that the fact remains that the defendant is a state enterprise of the Government of Trinidad and Tobago and the implementation arm of the MOT.
77. The claimant also submitted that it is imperative to note that Sankar during cross-examination when questioned on the claimant's proposal for the sponsorship admitted to being a "point man" or facilitator between the defendant and the MOT.

Findings

78. The onus of proving that Sankar had actual or ostensible authority to enter into a contract on behalf of the defendant for sponsorship of the 2014 event lay with the claimant: **Halsbury's Laws of England, Volume 1 (2017) paragraph 25.** For there to be a finding of ostensible or apparent authority, there must be at the least some representation whether in words or by acts, made by the defendant to the claimant, (intended to be and in fact acted upon by the claimant), that Sankar had authority to enter into a contract for sponsorship on its behalf. In relation to ostensible authority, it must be reasonable to conclude in all of the circumstances that one party was acting as agent for the principal even though he had no such actual authority either expressed or implied.
79. Having regard to the testimony of Sankar, and the viva voce admissions of the claimant, it is clear to the court that Sankar acted as the point of contact between the defendant and sport stakeholders but that the defendant's board of directors was the entity responsible for approving any contract for sponsorship. This was the clear evidence of Sankar at paragraph 9 of his witness statement when he testified that he would have to take the claimant's proposal to the defendant's then Acting CEO, Selman who in turn would have to present the proposal to the defendant's board for approval. The court accepted Sankar's evidence that the board's approval was required and he did not have actual authority to bind the defendant. The court also finds that the claimant was aware of this and so knew that Sankar

had no actual authority, neither did he, Sankar, represent to the claimant that he had actual authority.

80. The court further finds that claimant's submissions that he was entitled to rely on the authority Sankar had assumed to possess (ostensible authority) as he (the claimant) could not have been expected to know the limits of Sankar's authority were without merit since during cross-examination the claimant testified that he appreciated that unless the defendant's board agreed to the proposal, Sankar did not have the authority to tell him that the defendant was onboard with the proposal. He therefore knew and accepted that board approval was necessary and that Sankar did not have the authority to enter into such a contract with him. The claimant testified that he had experience with corporate sponsorship and also had past dealings with the defendant. He was therefore fully aware that the defendant's board would have had to agree to sponsor the 2014 event and that agreement would then have to be reduced in writing as was the case when the defendant sponsored the claimant's previous events. A reasonable onlooker informed of the relevant facts could not therefore have concluded that Sankar was vested with the authority necessary to bind his principal, the board of the defendant. It means that the claimant's submissions on ostensible authority must therefore fail.

81. The claimant therefore has failed to prove that Sankar was possessed of either actual or ostensible authority to enter into a contract with him on behalf of the defendant for sponsorship of the 2014 event and the court so finds. The court further finds that although, Sankar did represent to the claimant that the defendant was on board with his proposal, this statement could not have been interpreted by the reasonable onlooker to mean that Sankar had in fact bound the defendant to an agreement and that approval was merely a formality.

82. Further, although Sankar made representations to the claimant that the board's approval was forthcoming, the requisite elements of a valid contract that is, agreement, an intention to create legal relations and consideration were patently absent. There could have been no binding agreement for the provision of prize monies unless and until the defendant's board

had approved the sponsorship proposal. It follows that there was no intention to create legal relations between the defendant and the claimant.

83. Additionally, and *ex abundante causa*, the court wishes to make it clear that it is equally its finding that the submission of a post event report by the claimant, at the request of Sankar did not at that stage create a contract as it was still clear to the claimant that approval of the Board was necessary and that the approval had not yet been granted, even though the event had concluded.

84. The matter however does not end there. The court also understood Sankar to be saying that not only did he not have the authority to enter into a contract with the claimant on behalf of the defendant for the sponsorship but that decisions relating to sponsorships were sent back to the MOT. It was for this reason Sankar testified that he arranged a meeting for the claimant to meet with MOT's Acting Director of Research and Planning, Jamraj-Marimuthu. The claimant however denied meeting Jamraj-Marimuthu. Sankar did not produce any minutes to support his contention that the defendant refused to provide the sponsorship and sent the issue on to the MOT. Further, Jamraj-Marimuthu was not called to give evidence and no explanation was given for her absence and it is reasonable to presume that she would have had information on the history and progress of the proposal which would have been helpful to the court.

85. However, the claimant failed in his Reply to the Defence to treat with this issue although same was pleaded by the defendant. He is therefore deemed to have accepted that he did in fact meet with Jamaraj-Marimuthu. Further, the fact that the claimant's pre-action protocol letter dated the 12th March, 2015 was addressed to the Acting Permanent Secretary of the MOT and never sent to the defendant coupled with the representation set out therein that the MOT was in breach of the agreement to pay prize monies appears to lend some support to the testimony that the issue of sponsorship was sent to the MOT. The court however makes no finding thereon as it is unnecessary to so do having regard to its other findings as set out above. See also the claimant's email dated the 24th June, 2015 which stated that promises were made by the MOT.

86. Consequently, the court finds that claimant failed to prove that there was any contract between he and the defendant for the defendant to sponsor the 2014 event. Additionally, there is no evidence before this court that there was in fact a contract between the MOT and the Claimant despite the claimant's emails to the MOT and his meeting with it so that the court does not accede to the submission of the defendant that it should find that there was a contract between the claimant and the MOT, either on its own or through the defendant as the implementation arm of the MOT. The claim will therefore be dismissed.
87. Before closing, it would be remiss of the court not to express its utter disappointment in the treatment meted out to the claimant in respect of the sponsorship request. Sankar at the time was performing a function which involved his interaction with the public and person who on the evidence was well known within the sporting arena in the particular sport of BMX Cycling he having organized several annual events. As a consequence he owed a duty to both the claimant and the sporting public as a whole to be forthright and upstanding in his dealings in matters concerning sporting activities, especially in respect of those which attracted international attention and participation. It is clear that Sankar took the claimant for a ride (pun intended). Sankar was aware that the defendant had not approved any funds for sponsorship but nonetheless went on about the business of pretending that the defendant was a sponsor of the international event and that funds would eventually be approved for payment of prize money as a matter of course.
88. The defendant also used the event to its advantage in that it is reasonable to infer that the newspaper articles depicting the defendant's involvement and sponsorship would have given some credibility in the eyes of the public to the defendant as a sponsor of an international sporting activity. In totality, the evidence smacks of unfairness to the claimant in that it appears to be the case that he was used and then discarded. The behaviour of both the defendant and Sankar fell way below the standard to be expected of persons and institutions in whom both the public has confidence and whom the government of the day trusts to implement its policy towards the improvement of the life of its citizens whether in sport or otherwise.

89. But the claimant must also bear some responsibility for his actions. He was fully aware of the process of approval and of the issuance of a written contract but failed to exercise vigilance in ensuring that he obtained the approval from the right source prior to advertising the prize money. He has since suffered the consequences of his error in judgment by way of the injury to his reputation as disclosed by the evidence.

Costs

90. Having regard to the matters set out by the court in relation to the conduct of both parties and the defendant's witness Sankar, the court is of the view that it is only just that each party bears its own costs of the claim.

Disposition

91. The court will therefore dispose of the claim as follows;

- i. The claim is dismissed; and
- ii. Each party shall bear its own costs of the claim.

Dated the 11th April, 2018

Ricky Rahim
Judge