

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2012-04468

Between

GRAPHIX ADVANTAGE LIMITED

Claimant

And

TRINIDAD AND TOBAGO FOOTBALL FEDERATION

1st Defendant

AUSTIN JACK WARNER

2nd Defendant

LOC SOUTH AFRICA 2010 LIMITED

3rd Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. Seunath S.C. for the Claimant
2. Mr. Hinds Jr. for the 2nd Defendant, Mr. Scotland instructed by Ms. Watkins for the 3rd Defendant and no appearances for the 1st Defendant.

Dated: 30th April, 2015

DECISION

1. In this matter the Claimant claimed as against the Defendants the sum of 1,262,431.19 being the balance alleged to be due and owing for work done by way of advertisement services for the Under 17 Women's World Cup 2010.

2. In determining whether or not the Claimant was entitled to the relief sought, the Court had to resolve certain factual issues namely:
 - a. Whether a request was made of the Claimant to supply advertising services and if so who made the request?
 - b. Did the Claimant deliver advertising goods and services?
 - c. On whose behalf were the Claimant's services secured?
 - d. Who is responsible for any payment found to be due and owing to the Claimant?

The evidence

3. The Claimant and the 2nd Defendant testified on their own behalf, no witness statements were tendered on behalf of the 1st Defendant and one witness was called on behalf of the 3rd Defendant.

4. The Claimant's case was that during the relevant time he worked as the 2nd Defendant's secretary on a voluntary basis and at the material time the 2nd Defendant was a Member of Parliament and a Cabinet Minister in the Government of Trinidad and Tobago. The Claimant testified that the 2nd Defendant requested that he provide advertising goods and services for the Under 17 Women's World Cup event and that he had a business that provided such services. The Claimant further stated that the 2nd Defendant told him to bill for the services through the 3rd Defendant and that the 2nd Defendant told him "I am LOC".

5. On the pleadings before the Court and based on the evidence led, it is evident that the 3rd Defendant though duly incorporated, came into being for a specific purpose, namely to oversee the Under 17 Women's World Cup and once that event was executed, the 3rd Defendant virtually ceased to exist.
6. The 3rd Defendant was set up to organize the world cup event on behalf of the 1st Defendant. The 2nd Defendant in the course of his cross examination stated that he was the person responsible for the development of football locally and that he had extensive experience in the organization of football events and often had to utilize his own funds to defray expenses that the 1st Defendant was unable to meet. The 2nd Defendant denied that he contracted the Claimant to provide advertising services.
7. The Court found that the Claimant was very forthright and he instilled in the Court a feeling that he was honest and truthful. His evidence was consistent and he did not materially depart from his pleaded case or from his witness statement. The Court found him to be a witness of truth and accepted his evidence that the 2nd Defendant gave him a contract and found that his version of events was more probable than the version put forward by the 2nd and 3rd Defendants.
8. The 2nd Defendant accepted that due to his vast experience, he was aware of the nature of advertisement that was required to successfully organise and execute an event such as the Under 17's Women's World Cup. It was not disputed that the Claimant was working for the 2nd Defendant as a Secretary and that he was providing his services on a gratuitous basis. Against this backdrop, the Court found that the Claimant's version of events in so far as they related to the request to provide the services was more probable than the 2nd Defendant's denial of any such arrangement.
9. Accordingly, the Court found as a fact that the 2nd Defendant as a special advisor to the 1st Defendant, as the Chairman of the 3rd Defendant and in his capacity as the 'football

man' in Trinidad and Tobago, did in fact engage the Claimant to provide advertising goods and services for the said world cup event.

10. Given the fact that the Claimant was the 2nd Defendant's Assistant/Secretary, it is highly probable that there were discussions between the Claimant and the 2nd Defendant as to the nature of the advertising materials that had to be provided. In **Stimson v. Gray (1929) 1 Ch. 629**, the Court stated that:

“Where one or more of the material terms of an alleged contract cannot be determined, either by interpretation or as being of a kind which the law will supply, there is no contract, even though there has been an act of part performance, and the Court can grant neither specific performance nor damages.”

11. Marlon Rose who testified on behalf of the 3rd Defendant said that the 3rd Defendant had entered into a contract for the provision of advertising services for the world cup with Rishi's Artwork and that as part of an arrangement with the said Rishi's Artwork and by way of a sub contract, the Claimant did some work for which he was paid the sum of \$98,555.00. No evidence of any such sub contract was placed before the Court nor was anyone on behalf of Rishi's Artwork called before the Court to give evidence.
12. In the pleadings filed by the 1st and 2nd Defendants there was no denial of the fact that the Claimant did provide advertising services but the pleadings sought to outline a circumstance that the Claimant had no dealings with either of them but with the 3rd Defendant.
13. The 2nd Defendant's case was that any request for goods and services would have been made and paid for by the 3rd Defendant. The 3rd Defendant also asked the Court to consider the fact that all the Claimant's delivery notes were addressed to the FIFA Under 17 Women's World Cup and that the invoices dated 22nd September, 2010 were

addressed to FIFA Under 17 Local Organising Committed. The 3rd Defendant also submitted that:

- a. The Witness, Imamudin Baksh had no personal involvement in the alleged delivery of the items;
- b. None of the Delivery Notes are addressed to any of the alleged sites of installation as set out in the Invoices and/or as alleged in the claim;
- c. Some of the Delivery Notes appear to have invoice numbers on them though the evidence of the Claimant is that the Invoices were prepare subsequent to delivery;
- d. The Delivery Notes make no reference to installation though the invoices speak to the installation of the items;
- e. The following Delivery Notes make reference to “Inv 3142”:
 - i. No. 3948 dated the 4th September, 2010
 - ii. No. 3701 dated the 23rd September 2010;
 - iii. No. 3942 dated the 1st October 2010; and
 - iv. No. 3949 dated the 8th September, 2010
- f. Delivery Note No. 3942 dated 1st October, 2010 is subsequent to end of the tournament in question;
- g. Further, Delivery Note dated 23rd September, 2010 is after the date of the Invoices about which the Claimant’s evidence is that the Invoices were ALL prepared subsequent to delivery;
- h. There is no evidence that these items were either delivered to and/or received by the 3rd Defendant and/or any servant or agent acting on behalf of the 3rd Defendant.

14. The law clearly mandates that as a pre requisite for holding that there exists a valid contract that the parties thereto must be “ad idem”. The Court therefore had to consider whether the contract that the 2nd Defendant granted to the Claimant was reasonably certain. The Court noted that by virtue of the Claimant’s interaction with the 2nd

Defendant, as his Secretary, that the nature of that relationship suggested that the parties would have interacted closely with each other.

15. At paragraph 5 of his witness statement, the Claimant said that he was asked by the 2nd Defendant to print and install signage at the stadiums and at paragraph 7 he said that all the work was directed and approved by the 2nd Defendant. The Court accepted this evidence from the Claimant and found that it was plausible that given the interaction between them there would have been discussion as to the nature of the work that was required.
16. Having found as a fact that the signage work was directed and approved by the 2nd Defendant it cannot be said that the parties were not ad idem and that the contract entered into was void on the basis of uncertainty.
17. The Claimant outlined the goods and services that he alleged he provided. The 2nd Defendant, in evidence, admitted that he saw banners and posters but did not recall whether he had seen any at the airport. In his defence, the 2nd Defendant said that all the goods and services supplied by the Claimant were duly paid for by the 3rd Defendant upon presentation of invoices. The Court accepted the Claimant's evidence as to the works and materials that were supplied. The Claimant generated eleven invoices numbered consecutively from 3131 to 3143, all dated 22nd September, 2010 but only invoice no. 3136 for the amount \$98,555.00 was paid. At paragraph 8 of the 3rd Defendant's defence and at paragraph 11 of the Marlon Rose's witness statement, there was a bare denial of the Claimant's claim for the balance of money due and owing. Given the fact that invoice 3136 was delivered, the Court has no reason to find that the other invoices dated 22nd September 2010 were not also delivered to the 3rd Defendant.
18. The Court accepted the Claimant's evidence, that the 2nd Defendant said that he was "the LOC" and found that given the relationship that they shared and given the position and reputation that the 2nd Defendant had in the world of football, the Claimant would have

had no reason to disbelieve the 2nd Defendant. The Court formed the view that the Claimant was an honest man who displayed maybe misguided loyalty to the 2nd Defendant but he did in fact provide advertising goods and services for the Under 17 Women's World Cup.

19. The Claimant would have had no rational reason to conclude that the 2nd Defendant did not have the authority to retain his services to provide the requested advertising services. By virtue of the positions that the 2nd Defendant held coupled with his football reputation, the 2nd Defendant was vested with the requisite authority to enter into contracts on behalf of both the 1st and 3rd Defendant.

20. The Court must voice its alarm at the employment arrangement that existed between the 2nd Defendant who was at the time a Government Minister and the Claimant. Public officers must always jealously guard the integrity of their office and the acceptance of gratuitous labour by holders of high office is unacceptable. Such arrangements undermine the integrity and independence of the office and create the unfortunate impression that less than transparent factors operate and/or influence the office holder when it comes to the provider of the gratuitous service. A perception is thereby created that such arrangements are reflective of a situation where the provider of the gratuitous service expects and/or receives remuneration in other unconventional ways. It is unfathomable that a member of the executive, who has the support systems provided by the State and funded by tax payers, would have to rely on the gratuitous secretarial services of anyone. The circumstance that operated in this case also creates an impression that the 2nd Defendant by virtue of his position, may have received an unaccounted benefit by the receipt of the free secretarial services that were provided and this possible benefit may be a circumstance that may warrant an investigation by the Integrity Commission. Inappropriate behavior in public office has to be condemned and cannot be tolerated.

21. On the evidence before it, the Court found as a fact that the 1st Defendant as a result of the efforts of the 2nd Defendant was responsible for the hosting of the world cup event and the 3rd Defendant was at all material times acting as an agent of the 1st Defendant. Further the Court found that the 2nd Defendant had significant control over both the 1st Defendant and the 3rd Defendant and he had the ability to make decisions and issue directions as he was undoubtedly considered as 'the man' behind football in Trinidad and Tobago. He therefore had the requisite authority to enter into contracts for and on behalf of both the 1st and 3rd Defendants.
22. Based on the 2nd Defendant's evidence the Court also formed the view that the 2nd Defendant operated on the premise that he was the sole arbiter of all issues relating to football in this jurisdiction.
23. The Claimant did not establish a pleaded case that sought to pierce the veil of incorporation nor did he plead that the incorporation of the Defendants was a sham. Further there was no evidence to suggest that the 2nd Defendant received any financial benefit from the hosting of this event nor does the evidence reflect that there was ever any understanding that the requested work was done for the 2nd Defendant's personal benefit.
24. The Court has an obligation to resolve issues on the basis of the case outlined and the evidence as presented by the parties. In the circumstances, the Court cannot pierce the veil of incorporation and thereby attach personal liability to the 2nd Defendant. Accordingly, the case against the 2nd Defendant in his personal capacity has to be dismissed.
25. The Court therefore orders that there shall be judgment in favour of the Claimant as against the 1st and 3rd Defendants in the sum of \$1,262,413.19 with interest to accrue thereon at the statutory rate of interest from the date of this judgment until repayment.

26. The 1st and 3rd Defendants are to pay to the Claimant costs which is to be calculated on a prescribed cost basis and there shall be a stay of execution on the payment of the judgment sum and the costs order of 14 days.

27. In relation to costs as it relates to the 2nd Defendant, the Court having found that the 2nd Defendant was the person who was responsible for the granting of the contract and having also found that the Claimant relied on the 2nd Defendant's authority which resulted in his financial detriment since he was not paid when he should have been, notwithstanding the 2nd Defendant's position of authority and influence over the 1st and 3rd Defendants, the Court hereby orders that there shall be no order as to costs in relation to the dismissal of the claim against the 2nd Defendant.

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FRANK SEEPERSAD
JUDGE