

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2022-05019

Between

CASH MONEY BROTHERS PROMOTIONS

Claimant

And

SEAN MOSES

1st Defendant

JULES SOBION

2nd Defendant

OSITA UGEH

3rd Defendant

CHRISTIAN BERNHARDT

4th Defendant

CRYSTAL CUNNINGHAM

5th Defendant

SM ENTERTAINMENT LIMITED

6th Defendant

CAESAR'S ARMY LTD

7th Defendant

DUKE CONCEPT LLC

8th Defendant

TWISTED ENTERTAINMENT INC.

9th Defendant

UNITED TALENT AGENCY LLC

10th Defendant

DAMINI EBUNOLUWA OGULU

11th Defendant

Before the Honourable Mme. Justice Jacqueline Wilson KC

Date of Delivery: 30th July 2026

APPEARANCES:

Mr. Farai Masaisai instructed by Ms. Marika Trim and Ms. Bernelle-Joy La-Foucade Attorneys at law for the Claimant

Mr. Chase Pegus and Mr. Matthew Allahar instructed by Mr. Mathias Sylvester and Mr. Vikash Indar Lal Attorneys at law for the 1st and 6th Defendants

Mr. Christopher George and Ms. Kyrie Roopsingh instructed by Ms. Anuradha Dean Attorneys at law for the 2nd and 7th Defendants

Ms. Shalini Campbell instructed by Ms. Joia Reece Attorneys at law for the 4th and 10th Defendants

Mr. Stefan Mungalsingh Attorney at law for the 5th Defendant

JUDGMENT

1. In its amended claim, the claimant states that it is a partnership registered under the Partnership Act Chapter 81:02 with a registered address at Building No. 25, Old St. Joseph Road. It brings these proceedings against the eleven defendants seeking damages for “Unlawful Means Conspiracy and Lawful Means Conspiracy, Breach of Contract, willful blindness, unjust enrichment, damages and loss.”
2. The claimant seeks the following relief as against the specific defendants:
 - 1) A declaration that the 11th defendant has breached the contract dated the 11th October 2022;
 - 2) A declaration that the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, and 10th defendants have breached the confidence of the claimant and misused private information;

- 3) A declaration that the defendants have conspired as against the claimant;
- 4) A declaration that the defendants were unjustly enriched;
- 5) Damages including aggravated damages as against the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, and 10th defendants for breach of confidence misuse of private information;
- 6) Damages including aggravated damages as against the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, and 10th defendants for conspiracy to injure;
- 7) Damages for wilful blindness, unlawful means conspiracy and lawful means conspiracy;
- 8) Damages including aggravated and exemplary damages for breach of contract as against the 11th defendant.

3. In its amended statement of case, the claimant describes the eleven defendants, stating that:

The 1st defendant, **SEAN MOSES** of SM **ENTERTAINMENT LIMITED** Promotions is and was at all material times a promoter of parties and events within the jurisdiction of Trinidad and Tobago.

3) The 2nd, defendant, **JULES SOBION** is and was at all material times a director of Caesar's Army **Ltd** and was at all material times a regional promoter of parties and events as well as a promoter within the jurisdiction of Trinidad and Tobago.

4) The 3rd defendant, **OSITA UGEH** of Duke Concept Entertainment **LLC** is and was at all material times an agent acting for and on behalf of the artiste formally known as "Burna Boy" who is the 11th Defendant named herein.

5) The 4th defendant **CHRISTIAN BERNHARDT** of United Talent Agency **LLC** is and was at all material times also an agent acting for and on behalf of the artiste formally known as "Burna Boy".

- 6) The 5th defendant **CRYSTAL CUNNINGHAM** of Twisted Entertainment Barbados **Inc.** is and was at all material times a promoter within the Caribbean and Trinidad and Tobago.
- 7) The 6th defendant, **SM ENTERTAINMENT LIMITED PRODUCTIONS** was at all material times a limited liability company duly incorporated under the laws of Trinidad and Tobago with its main address at Nos. 40-42 Henry Street, Port-of-Spain, Trinidad.
- 8) The 7th defendant **CAESAR'S ARMY LTD** was at all material times a limited liability company duly incorporated under the laws of Trinidad and Tobago with its main address at No. 72 Gallus Street, Woodbrook, Trinidad.
- 9) The 8th defendant **DUKE CONCEPT LLC ENTERTAINMENT** was at all material times an event promotion and production company incorporated and organized under the laws of New York with its main office at No. 124 Birch Road, Staten Island, New York, 10303, United States.
- 10) The 9th defendant **TWISTED ENTERTAINMENT BARBADOS INC.** was at all material times an event and promotions company duly incorporated under the Laws of Barbados.
- 11) The 10th defendant **UNITED TALENT AGENCY LLC** was at all material times a global talent and entertainment company incorporated and organized under the laws of California with its main office at No.9336 Civic Center Drive, Beverly Hills, California 90210.
- 12) The 11th defendant **DAMINI EBUNOLUWA OGULU, also known as "Burna Boy"** (hereinafter referred to as "the Artist") was at all material times the Artist booked to perform in Trinidad at the Queen's Park Savannah on 17 of December 2022 by way of contract dated the 11 October 2022.

THE CLAIMANT'S CASE

4. The claimant states that on 6 October 2022, it entered into an agreement with Spaceship II, Inc F/S/O of 400 N. Roxbury Dr Beverley Hills, CA 90210 (hereinafter called "Spaceship") with a proposal for Burna Boy to perform at the Hasely Crawford Stadium, Trinidad (the Stadium), on 16 December 2022. The contract was prepared by the 10th defendant and signed by Burna Boy and Mr. Michael Durham, a duly authorised partner of the claimant's firm. The contract was not signed by Spaceship, as agent of Burna Boy, as negotiations were ongoing.
5. On 10 October 2022, the claimant made a further agreement with Spaceship with a proposal for Burna Boy's performance at the Stadium on 16 December 2022. The contract was also drafted by the 10th defendant and signed by Mr. Michael Durham on behalf of the claimant. The contract was not signed by Burna Boy as negotiations were still ongoing.
6. On 11 October 2022, the claimant made a final agreement with Spaceship for Burna Boy to perform at the Queen's Park Savannah on 17 December 2022. The contract was signed by Mr. Michael Durham and Ms. Bose Ogulu, the mother of Burna Boy, on behalf of Spaceship.
7. Pursuant to the final agreement, the claimant began arrangements for Burna Boy's performance on 17 December 2022. In October 2022, the claimant secured the approval of the National Carnival Commission to rent the North Park of the Savannah and contacted several sponsors. Between 18 and 20 October 2022, the claimant held telephone discussions with the 1st and 2nd defendants on sponsorships and other matters and, according to the claimant, the 1st and 2nd defendants took responsibility for securing additional sponsorships. The claimant retained M21 Group LLC to

provide consultancy services, including budget preparation and marketing proposals, at a cost of USD \$7,000.00 and paid TTD \$25,000.00 to VIPPS Ltd. for security services. The claimant held discussions with the 1st and 3rd defendants to serve as investors and organisers of the concert.

8. To facilitate the discussions, on 12 October 2022, the 2nd defendant created a WhatsApp group entitled “Burna Boy Trinidad” comprising the 2nd defendant, Mr. Durham and Messrs. Matthew George and Mottley of Caesar’s Army. Using the WhatsApp group, Mr. Durham shared confidential documents and information with group members, including the following:

- (i) The signed contract between the Claimant and Spaceship dated the 11th October 2022;
- (ii) The first approval for the use of the Hasely Crawford Stadium scheduled for 16 December 2022;
- (iii) The second approval for the use of the Queen’s Park Savannah;
- (iv) The detailed planning of the stage designs and equipment;
- (v) Sponsors previously contracted;
- (vi) The lay out of the patrons’ cabanas, VIP sections, general admissions and VVIP;
- (vii) The expected local artistes including “Kes the Band”, Patrice Roberts and others;
- (viii) The detailed financial budget.

9. On 15 October 2022, the 2nd defendant, using the WhatsApp group platform, informed Mr. Durham that the 7th defendant was unable to collaborate further on the matter, stating that:

“Dane we can’t facilitate this sire. My deepest apologies for any inconvenience that may have been caused by our delay in responding to this but if I can’t get my partner to agree to this transaction then I will have to side with them. I hope you are able to pull through with attaining your contract and if you do feel free to contact us again to see how best we can work together on this but for now it’s too imprompt and CA is not in a position to lend money for ventures at this time. Once you get the contract maybe we can consider a working relationship where we can work towards making this initiative a prospective venture for you. Apologies again sire but I wish you only the best in securing this venture in the meantime.”

10. On 19 October 2022, the 1st defendant approached the claimant to collaborate on hosting the concert. The claimant had not engaged previously with the 1st defendant and was informed that the 1st defendant had intended to host a Burna Boy concert on or around Carnival of 2023 but Burna Boy was unavailable at that time due to his contractual obligations to the claimant.
11. The claimant alleges that the 4th defendant deliberately prevented it from paying the deposits that were due under the contract and after prolonged delays in accepting payments, the 4th defendant demanded that the claimant host a similar event in two other islands and increased the contract price to USD \$600,000.00. By email dated 23 October 2022, the claimant informed the 4th defendant that it was ready to pay the required deposit and the 4th defendant advised the claimant to defer payment until 28 October 2022. Thereafter, by email dated 30 October 2022, the 4th defendant informed the claimant that the contract was void as he had failed to comply with the agreement and “kept renegotiating.”
12. The claimant asserts that the 10th defendant, acting through 4th defendant, has breached the agreement and that the defendants have conspired to cause financial

loss to the claimant for their own benefit. It is alleged that Burna Boy made an agreement with the 1st, 4th and 5th defendants to host a concert on 16 December 2022, in breach of the agreement with the claimant, and that the defendants conspired with each other and wrongfully used information provided in confidence by the claimant to enter into a new contract. The claimant contends that the information was provided to the 1st, 2nd, 3rd and 5th defendants in anticipation of their involvement as investors and organisers of the concert and that “they surreptitiously used the information to finagle a new contract” and were unjustly enriched by the profits they had wrongfully made.

Defence of the Second Defendant

13. The 2nd defendant, Jules Sobion, states that he is a director of the 7th defendant, Caesar’s Army Ltd. The second defendant states that the 7th defendant is a full-service professional event and festival management company.
14. The 2nd defendant states that he did not discuss sponsorship with the claimant or undertake to procure sponsors for the Burna Boy concert or enter into a partnership with the claimant. He further denies having telephone conversations with the other defendants, except for representatives of the 7th defendant between 18 and 20 October 2022. He denies knowledge of, or participating in, conversations with the 1st and 3rd defendants on or around 11 or 12 October 2022 or having made a signed contract with the claimant. He states that the 7th defendant and its representatives held consultations with the claimant to determine whether they would collaborate and that there was no collaboration.
15. The 2nd defendant denies that any confidential information was shared on the WhatsApp group chat and states that he and Mr. Wattley, also of the 7th defendant,

met with Mr. Durham on 11 October 2022, at the offices of the 7th defendant, when Mr. Durham shared a copy of the agreement dated 11 October 2022 between the claimant and Spaceship and the claimant's draft budget. He denies that any contract or approvals obtained by the claimant were shared electronically and states that Mr. Wattley reviewed the proposed expenditure for the concert and did not consider the venture to be economically viable and the claimant was so informed.

16. The 2nd defendant denies the alleged conspiracy, breach of contract, breach of confidence or any wrongdoing concerning the claimant. He further denies using confidential information received from Mr. Durham to finagle his way into a new contract with Burna Boy or entering into an agreement with any of the defendants or receiving remuneration from the concert held on 16 December 2022.

Defence of the Seventh Defendant

17. The defence of the 7th defendant is in materially similar terms to the defence of the 2nd defendant.

Defence of the Fourth and Tenth Defendants

18. The 4th defendant states that he is an employee of the 10th defendant, Burna Boy's agent, and engaged with the claimant as the 10th defendant's representative and not in a personal capacity. They accept that Mr. Durham expressed an interest in engaging Burna Boy but deny having made a contract with the claimant for his performance on 17 December 2022 at the Savannah. They state that, by an email dated 26 September 2022, Mr. Durham contacted the 10th defendant, stating that he was a promoter and offering to engage Burna Boy to perform in Trinidad on 29

October 2022 or in Guyana for a sum of USD \$500,000.00 plus expenses. In response, the 10th defendant provided its standard offer form to the claimant for submission.

19. Between 26 and 27 September 2022, Mr. Durham returned the form to the 4th defendant who provided convenient dates for the concert and advised that a 50% deposit was required upon signing. Mr. Durham agreed to the deposit and the 4th defendant provided dates and performance fees for concerts in Jamaica, Guyana and Trinidad, stating that contracts for the three concerts would be provided.
20. On 11 October 2022, Mr. Durham returned a signed contract for the Trinidad concert only together with a schedule for payment of the performance fee. The 4th defendant indicated that three concerts were required on the given dates and that deposits were required upon signing the contracts in order for the arrangements to proceed. Mr. Durham confirmed his agreement with the following terms:
 - a. Three performances to be held in Trinidad, Jamaica and Guyana for the sums of USD\$600,000, USD\$700,000 and USD\$400,000 respectively;
 - b. Execution of a performance agreement between the Claimant and Spaceship II, Inc;
 - c. A deposit of 50% in the sum of USD\$850,000 to be paid by the Claimant upon the execution of the performance agreement;
 - d. No announcement of the proposed event until the 50% deposit was paid;
 - e. The balance of USD\$850,000 to be paid by the Claimant on the week of the performance.
21. In breach of the agreed terms, the claimant failed to make the required payments or sign contracts for the shows in Jamaica and Guyana and sought to renegotiate the payment terms. As such, there was no valid or enforceable contract between the

claimant and the 10th defendant and, by email dated 12 October 2022, the 4th defendant informed Mr. Durham that the defendants had made arrangements with other promoters to host performances by Burna Boy in Trinidad and Guyana.

22. The 4th and 10th defendants deny having sought to increase the performance fee for the Trinidad concert or the alleged conspiracy or breach of contract. They assert that when the negotiations with the claimant broke down they engaged in fresh negotiations with other promoters. They deny owing a duty of confidence to the claimant or having disclosed confidential information and documents to third parties. They assert that they were at liberty to negotiate with third parties for hosting a Burna Boy concert and deny liability to the claimant for any loss or damage.
23. They allege that the claimant falsely and wrongfully disclosed Burna Boy's proposed performance to third parties before a deposit was paid and that the claimant's loss, injury to reputation and loss of profit are not recoverable in the absence of a contract.

THE STRIKE OUT APPLICATIONS

24. The defendants have filed applications to strike out the claimant's amended claim form and amended statement of case on various grounds.
 - (i) By Notice of Application filed on 23 December 2022, the 5th defendant seeks to strike out the claimant's amended statement of case on the ground, among others, that the contract alleged to have been breached is governed by the laws of California and the courts of California have sole and exclusive jurisdiction to resolve a dispute.

- (ii) By Notice of Application filed on 5 May 2023, the 4th and 10th defendants seek to strike out the amended claim form and statement of case as an abuse of the process of the court, as disclosing no grounds for bringing a claim and as failing to provide material facts to support the allegations against them;
- (iii) By Notice of Application filed on 10 May 2023, the 1st and 6th defendants seek to strike out the amended claim form and statement of case on the ground that the proceedings are a nullity as the claimant was not a company incorporated under the Companies Act and did not have legal capacity to commence proceedings; and

THE CLAIMANT'S APPLICATIONS

25. On 8 September 2023, the claimant filed an application for default judgment against the 3rd and 8th defendants. On 16 October 2023, the claimant filed a similar application against the 1st and 6th defendants.

THE ISSUES

26. The issues that arise on the defendants' applications are:
- (i) Whether the claimant's amended claim form and statement of case are a nullity and, if not;
 - (ii) Whether the amended claim form and statement of case should be struck out on the grounds advanced in the respective applications.
27. The issue that arises on the claimant's applications is whether default judgment should be granted against the 1st, 3rd, 6th and 8th defendants.

THE LEGAL PRINCIPLES

28. Part 26.2 (1) of the Civil Proceedings Rules (CPR) provides that:

“26.2 (1) The court may strike out a statement of case or part of a statement of case if it appears to the court—

(a) that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings;

(b) that the statement of case or the part to be struck out is an abuse of the process of the court;

(c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim; or

(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.”

29. The principles to be applied in relation to the summary disposal of cases are well established. The objective of resolving issues at an early stage is to save time and costs, which is an important feature of active case management. In deciding whether to exercise powers of summary disposal, the court must consider whether the overriding objective of dealing with cases justly is better served by the summary disposal of a particular issue or by letting all matters go to trial so that they can be fully investigated and an informed decision reached: ***Three Rivers District Council v Bank of England*** [2001] 2 All ER 513.

30. Although the above principles were adumbrated in relation to the summary dismissal of cases, the discretion to strike out is subject to similar considerations and, where the allegation involves the failure to disclose grounds for bringing or defending a claim, is exercisable where the claim is bound to fail on its merits or as a matter of

law. An important consideration is that the court, when faced with an application to strike out, must consider whether the justice of the case militates against this nuclear option and requires a more proportionate response: ***Real Time Systems Limited v Renraw Investments Ltd.*** [2014] UKPC 6.

31. The authorities postulate that in many cases there will be alternatives which enable the court to deal with a case justly without taking the draconian step of striking it out, having regard to the armoury of powers available under the CPR, including the power to order a party to supply further details or to file an amended pleading within a specified time subject to conditions stating the consequences of non-compliance (which may also include striking out): ***Asiansky Television Plc. v Bayer*** [2001] EWCA Civ. 1792; ***Real Time Systems Limited*** (supra).
32. Even if a case may be considered as weak, the authorities suggest that a weak case is not necessarily bound to fail as it may be fortified by evidence or adverse inferences: ***Brian Ali*** (supra) at p 9. Appropriate cases for striking out on the ground of failure to disclose grounds for bringing or defending a claim include cases where the statements of case raise an unwinnable case, where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides or where a claim or defence is not valid as a matter of law: ***Brian Ali*** (supra).

THE SUBMISSIONS

The Fifth Defendant's Submissions – 29 December 2023

33. Counsel for the 5th defendant submits that the agreement signed by the claimant's representative provides that it is governed by the laws of California and that the courts of California have sole and exclusive jurisdiction over any suit or proceedings.

Accordingly, the claimant must submit to the jurisdiction of California for the resolution of the dispute.

34. Counsel relies on the decision of the Privy Council in ***Vita Food Products Inc v Unus Shipping Co Ltd (in Liquidation)*** [1939] AC 277 at 290 stating that:

“But where the English rule that intention is the test applies, and where there is an express statement by the parties of their intention to select the law of the contract, it is difficult to see what qualifications are possible, provided the intention expressed is bona fide and legal, and provided that there is no reason for avoiding the choice on the ground of public policy.”

35. No exceptions are identified by the claimant to require a departure from the jurisdiction clause and the proceedings are, therefore, an abuse of the process of the court.
36. Counsel submits further that the 5th defendant was not a member of the WhatsApp group allegedly used by the claimant to disseminate confidential information and there was no direct communication between the claimant and the 5th defendant. Therefore, no cause of action properly arises against the 5th defendant.

The First and Sixth Defendants’ Submissions – 31 January 2024

37. Counsel for the 1st and 6th defendants submits that in its claim form and statement of case filed on 16 December 2022, the claimant asserted that it was a company incorporated under the Companies Act with its registered address at No. 25 Old St Joseph Road, Port of Spain. On 16 January 2023, the 1st and 6th defendants filed an application to strike out the claim form and statement of case on the ground that the

claim was a nullity as it had not been commenced by a party with legal personality. Thereafter, on 8 February 2023, the claimant filed an amended claim form and statement of case seeking to rectify the defect by describing the claimant as a partnership.

38. On 10 May 2023, the 1st and 6th defendants filed a similar application to strike out the amended claim form and amended statement of case, stating that the claim was a nullity that could not be cured by an amendment. The application was supported by the affidavit of Vikash Indar Lal, also filed on 11 May 2023, who stated that searches at the Companies Registry revealed that, as of 7 February 2023, there was no company registered as “Cash Money Brothers Promotions” in Trinidad and Tobago. Therefore, at the time of filing the proceedings, the claimant did not possess legal personality.
39. In ***Attorney General v Alison Ayres*** Civ App No. P247 of 2019, Pemberton JA made a distinction between a “misnomer” and a “misidentification” and concluded that a misidentification was fatal to a cause of action and could not be cured by amendment. She stated that:

“23. The general rule is that any person with legal personality capable of being identified may sue or be sued. Each party must be a legal person, whether natural or artificial and the parties must be sued by their correct name.

.....

39. In ***International Bulk Shipping & Services Ltd v Minerals & Metals Trading Corp of India***, the Court of Appeal held that, ‘The general rule is that an action commenced in the name of a non-existent person, or company is a nullity’. Here,

Evans LJ opined that ‘a distinction must be made ... between “the identity of the person intending to sue” and the name of that party. A mistake as to the latter can be corrected, but as to the former not’. This principle applies to the plaintiff and defendant alike if either of them do not exist, the proceedings are a nullity and must be set aside.

43. *“The **CPR** cannot be used to create a valid claim where there is none in law. For the reasons provided above, where the error arising is one of misidentification of the proper party to be sued, a trial judge has no jurisdiction at any time whether during the first CMC or other outings to revive proceedings that are a nullity.”*

40. The present action was commenced by a non-existent company rendering the claim a nullity ab initio that cannot be cured by amendment. Therefore the claim should be struck out as an abuse of the process of the court.

Fourth and Tenth Defendants’ Submissions – 31 January 2024

41. Counsel for the 4th and 10th defendants submits that the constituent elements of the various causes of action brought by the claimant are not established on the pleadings. As regards the alleged breach of confidence, Counsel cites the decision of Megarry J in **Coco v Clark** [1968] FSR 415 establishing a three-limb test as follows:

1. The information itself must have the necessary quality of confidence:
2. The information must have been communicated in circumstances importing an obligation of confidence.
3. There must be an unauthorised use (or misuse) of that information to the detriment of the rights holder.

42. Counsel submits that the constituent elements are not satisfied as the claimant expressly admits having disseminated confidential information to various parties and the 4th and 10th defendants played no part in sharing or divulging the information to anyone.
43. As regards conspiracy to injure, Counsel for the 4th and 10th defendants submits that conspiracy is an economic tort that may comprise lawful means conspiracy or unlawful means conspiracy. ***Crofter Hand Woven Harris Tweed Co Ltd v. Veitch*** [1942] AC 435 provides the following requirements to establish a lawful conspiracy, none of which was pleaded by the claimant:
1. A person acts together with others;
 2. There is a real and predominant purpose to injure another in their trade or person, or their other legitimate interests;
 3. An overt act in pursuance of the agreement and undertaking; and
 4. Damage.
44. In ***Kuwait Oil Tanker v. Al Bader***[2000] 2 All ER (Comm) 271 at 312, Nourse LJ identified the following elements of the tort of unlawful means which, similarly, have not been pleaded by the claimant:
1. A combination or concerted action between two or more persons;
 2. Use of unlawful means;
 3. Knowledge of the unlawfulness;
 4. An intention to injure the claimant;
 5. An overt act in pursuance of the understanding or agreement; and
 6. Damage.

45. Counsel further relies on the decision in **Ivy Technology v. Martin** [2019] EWHC 2510 (Comm) where it was held that:

“12. Conspiracy to injure must be pleaded to a high standard, particularly where the allegations include dishonesty:

- i) Allegations of conspiracy to injure ‘must be clearly pleaded and clearly proved by convincing evidence’ (Jarman & Platt Ltd v I Barget Ltd [1977] FSR 260,267...*
- ii) The more serious the allegations made, the more important it is for the case to be set out clearly and with adequate particularity: Secretary of State for Trade and Industry v Swan; CPR PD 16, para 8.2 in respect of the obligations on a party pleading dishonesty; Mullarkey v Broad on the burden and standard of proof for such claims and reiterating the well-established principle that an allegation of dishonesty must be pleaded clearly and with particularity (citing Belmont Finance Corp v Williams Furniture.)”*

46. As regards unjust enrichment, Counsel relies on the decision in **Attorney General of Trinidad & Tobago v. Trinsalvage Enterprises Ltd** [2023] UKPC 26 at para 18 stating that:

“a restitutionary claim in the law of unjust enrichment has three central elements which the claimant must prove. These elements are that the defendant has been enriched, that the enrichment was at the claimant’s expense, and that the enrichment at the claimant’s expense was unjust (ie that there was an “unjust factor”). If those three elements are established by the claimant, the claim succeeds unless the defendant can establish a defence, such as change of position.”

47. Counsel submits that none of the constituent elements is established on the claimant's pleading and that the cause of action fails.

Claimant's Submissions in Response – 18 March 2024

48. Counsel for the claimant submits that the defendants' applications are misconceived and should be dismissed. He submits that striking out is a remedy of last resort and should not be granted where alternatives exist: **Fairclough Homes v Summers** [2012] UKSC 26, per Lord Clarke; **Real Time Systems** (supra). It is further submitted that the pleadings are adequate, coherent and provide a short statement of the facts on which the claimant relies to support the causes of action and, thereby, satisfy the requirements of the CPR: **Bernard v Seebalack** [2010] UKPC 15. Pleadings are required to mark the parameters of a case and the need for extensive pleadings is reduced by the requirement for the exchange of witness statements: per Lord Woolf MR, **McPhilemy v Times Newspapers** [1999] 3 All ER 755 at 792. The sufficiency of a pleading is to be determined by the nature of the case: **First Citizens Bank Limited v Sheppard** Civ App No P231 of 2011.
49. As regards the question of legal standing, Counsel for the claimant submits that the claim form and statement of case were amended prior to the first case management conference in order to rectify the inaccurate terminology and to clearly identify the claimant. The claimant's identification is further established by the Certificate of Registration.
50. The claimant denies the asserted misidentification and states that it is, and has always been, registered as a legal entity with personality pursuant to the Registration of Business Names Act. The facts are to be distinguished from those in **Alison Ayers** where proceedings were found to be void ab initio when they were brought against

the Ministry of Sport, which was not a legal entity capable of suing or being sued. Contrary to **Alison Ayers**, the claimant in these proceedings was known to the defendants as a duly registered partnership as its registration documents were annexed to the original statement of case. The claimant's name was stated correctly in both the original and amended claim form and the amended statement of case corrected the minor error without undue delay or prejudice to the defendants.

51. In **Allana Marisa Mohan v Prestige Holdings Limited, Ishwar Seeram Trading as Mini Shak Trading Company** Civ App No. P-364 of 2017, Ag CJ Mendonca affirmed that a partnership may be sued in the firm name, if any, or the individual partners may be sued in their names trading as the firm name, if any. Where a claimant gets the right description but the wrong name, there is unlikely to be any doubt as to the identity of the person intended to be sued. But if he gets the wrong description, it will be otherwise: per Lloyd LJ, **The Sardina Sulcis** [1991] 1 Lloyd's Rep 201 at 207; per Devlin LJ, **Davies v Elsby Brothers Ltd** [1960] 3 All ER 672.
52. As regards the forum for resolution of the dispute, the claimant submits that the appropriate forum is the jurisdiction in which the matter has the most "real and substantial" connection. Relevant factors include the availability of witnesses, the law governing the transaction and the places where the parties reside or carry on business: **Compagnie Tunisienne De Navigation S.A. v Compagnie d'Armement Maritime S.A.** [1971] AC 572 at 603. Trinidad and Tobago is the appropriate and natural forum for resolving the dispute as it is the jurisdiction in which the cause of action arose and where most of the defendants reside. The venue, production and sponsorships are located within the jurisdiction and the causes of action are actionable therein.

First and Sixth Defendants' Submissions in Response – 19 April 2024

53. In response to the claimant's submissions filed on 18 March 2024, Counsel for the 1st and 6th defendants submits that there is no order or direction that the court can make to cure the claimant's misidentification in the original pleadings. The claim is a nullity ab initio and cannot be cured by amendment. The annexure of the certificate of registration to the statement of case does not cure the misidentification as it does not support the material facts pleaded in the statement of case. The registration of a business name pursuant to the Registration of Business Names Act, Chap. 82:55 does not create legal personality for the purpose of commencing or defending legal proceedings.

Claimant's Further Submissions in Response - 8 October 2024

54. In a further response, Counsel for the claimant submits that in ***Alana Marisa Mohan***, the second defendant, Ishwar Seeram trading as Mini Shak Trading Co., was described in the amended statement of case as a duly incorporated company. Acting Chief Justice Mendonca stated that:

"The second defendant is named as "Ishwar Seeram trading as Mini Shak Trading Co". He has been described in the amended statement of case as a duly incorporated company. That is clearly an error and it is now common ground that Mini Shak Trading Co. is a partnership comprising of three partners and Ishwar Seeram is one of them."

55. Counsel for the claimant submits that, in the exercise of its discretion, the court identified the proper party and a similar approach should be taken on the facts of this case.

DISCUSSION AND FINDINGS

56. When the proceedings were first brought, the claimant described itself as a company incorporated under the Companies Act. The claimant, thereafter, accepted that the statement was incorrect and sought to correct the error by filing an amended claim form and statement of case.
57. In the amended statement of case, the claimant described itself as “a duly registered partnership/firm registered under the laws of Trinidad and Tobago and pursuant to the Partnership Act Chapter 81:02” and relied on “Certificate of Registration Documents” at Appendix A. The documents attached at Appendix A to the amended statement of case are unrelated to the claimant’s registration. However, the registration documents, though inaccurately described in the amended statement of case, were annexed to the original statement of case and comprise:
- (i) a certificate of registration dated 6 February 2020 stating that on 28 January 2020, CASH MONEY BROTHERS PROMOTION was registered pursuant to section 5 of the Registration of Business Names Act and that the names of its partners are Chelsea Simone Abrihet De Four, Dane Michael Durham and Shane Bevon Borel; and
 - (ii) a partnership agreement dated 3 March 2020 between the said partners.
58. The partnership agreement post-dates the certificate of registration and no other agreement has been provided.
59. The Partnership Act provides the essential features of a partnership and its manner operation. A partnership is defined under section 3(1) as “the relationship which subsists between persons carrying on business in common with a view of profit.”

Under section 6, persons who have entered into a partnership are known as a firm and the name under which their business is conducted is called the firm-name. Section 11 provides for the joint liability of partners for the debts and obligations of a firm and section 26 provides that the interests of partners in partnership property is determined by express or implied agreement or by the rules prescribed under its provisions.

60. By its long title, the Registration of Business Names Act is “An Act to provide for the registration of firms and persons carrying on business under business names and for purposes connected therewith.” Under section 2(1) a “business name” means “the name or style under which any business is carried on, whether in partnership or otherwise” and a “firm” means “an unincorporate (sic) body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit.” Section 3(1) requires the registration of firms and individuals carrying on business in Trinidad and Tobago under a business name.
61. The claimant’s documents establish that it is a partnership and not a company. A partnership has the legal capacity to sue in the firm name or through its partners. However, the claim was brought by the claimant in the capacity of a company incorporated under the Companies Act when the claimant did not, at any time, so exist and had no legal power to sue in that capacity. The result is that the proceedings brought by the claimant were a nullity and were incapable of being revived by an amendment to the pleadings.
62. This distinguishes the present case from that of a mere misdescription or misnomer and puts it squarely within the category of cases where the misidentification of a party resulted in the proceedings being a nullity, as established in ***Alison Ayres***. In

Alana Mohan the identity of the defendant, as the misdescribed party, was never in doubt. However, the distinguishing feature of this case is the capacity in which the claimant has brought the proceedings and not the name or description used. The misidentification of the claimant as a company incorporated under the Companies Act was a fatal flaw that resulted in the proceedings being commenced by a party without legal capacity to sue. This was not an error that could be cured by amendment and, for this reason, the claim must be struck out as an abuse of the process of the court.

63. In light of the finding that the claim is a nullity, no live issues arise for determination on the applications filed on 23 December 2022 and 5 May 2023 and those applications must, therefore, be dismissed.
64. For the same reasons given above, the claimant's applications for default judgment against the 1st, 3rd, 6th and 8th defendants are dismissed.

IT IS ORDERED AS FOLLOWS:

1. The claimant's amended claim is a nullity and is hereby dismissed.
2. The claimant shall pay the defendants' costs of the amended claim on such basis and in such amount as determined by the Registrar in default of agreement.
3. The amended claim having been found to be a nullity, the notice of applications filed on 23 December 2022, 5 May 2023 and 10 May 2023 are dismissed.
4. The claimant shall pay the defendants' costs of the applications filed on 23 December 2022, 5 May 2023 and 10 May 2023 to be assessed by the Registrar in default of agreement.

5. The claimant's notice of applications filed on 8 September 2023 and 16 October 2023 are dismissed.
6. The claimant shall pay the defendants' costs of the applications filed on 8 September 2023 and 16 October 2023 to be assessed by the Registrar in default of agreement.

Jacqueline Wilson KC

Judge