
503/84 Arthur vs. Boyke, Robertson & Cameron

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

NO. 503 OF 1984

BETWEEN

RAWLE ARTHUR — PLAINTIFF

AND

1. ROY BOYKE - for Kirpalani's Group of Companies
2. HUGH ROBERTSON
3. PETER CAMERON - for the Ministry of Sports, Culture & Youth Affairs, Jean Pierre Complex
4. DOMAYNE LIMITED
5. ARNIM SMITH

— DEFENDANTS

BEFORE THE HONOURABLE
MR. JUSTICE IVOR BLACKMAN

Miss Samaroo for Applicant Peter Cameron

Respondent Arthur in person

*REASONS*

On 13th March 1987 I dismissed the plaintiff's claim and my reasons for so doing follow.

2/... The plaintiff

The plaintiff filed a writ on 6th February, 1984 alleging infringement in 1980 by the defendant and others of a copyright in a certain song entitled "Doh Try That". The defendant by summons dated 28th May 1984 applied to strike out the writ, Statement of Claim, and all subsequent proceedings.

The ground on which it was sought to have the writ struck out was that it was frivolous and vexatious and an abuse of the process of the court as the action if there was one was statute barred. In support of the application two affidavits sworn to by Carol Hernandez were filed on 28th May 1984.

In Ronex Properties v John Laring 1982 3 AER 961 at p.p. 965 - 966 Donaldson L.J. said:

> The matter is not in fact free from authority. It was considered in Riches v D.P.P. 1973 2 AER 935 [1973] 1 W.L.R. 1019, in which the earlier cases were reviewed. There the grounds put forward in support of the application to strike out included an allegation that the claim was frivolous and vexatious and an abuse of the process of the court. Accordingly, the court was able to consider evidence and it is understandable that the claim could be struck out. Of the cases referred to, it seems that only in Dismore v Milton 1938 3 AER 762 was an attempt made to strike out solely on the grounds that the Limitation Acts applied and accordingly no cause of action was disclosed.

3/... Greer

> Greer and Slesser L.J.J. held that such an application must fail for the reasons which I have already indicated and contrasted the effect of the statute of limitations with that of the real property limitation Acts. That being a two-judge Court, we are not strictly bound by its decision, but I have no doubt that it was right. Where it is thought to be clear that there is a defence under the Limitation Act, the defendant can either plead that defence and seek the trial of a preliminary issue or, in a very clear case he can seek to strike out the claim that it is frivolous, vexatious and an abuse of the process of the court and support his application with evidence.

By a Proclamation dated 12th June 1912, the then Governor of Trinidad and Tobago, acting under Section 37 of "The Copyright Act 1911" (1 and 2 George V.C. 46) proclaimed that that Act should take effect in Trinidad and Tobago from 1st July 1912.

By the Copyright Act 1985 (No. 13 of 1985), the Copyright Act 1911 so far as it applied to this country was repealed. The Copyright Act 1985 was passed by both Houses of Parliament as at 30th April 1985 but it was to come into effect on Proclamation by the President. The Copyright Act of 1985 was proclaimed on 3rd January, 1986.

It is clear therefore that between 1980 - the date when the alleged infringement of the copyright occurred - and 1984 - the date on when the writ was issued by the plaintiff - the law in force in Trinidad and Tobago in relation to the infringement of the alleged copyright was The Copyright Act 1911. Section 10 of the Copyright Act 1911 reads as follows:

4/... An

> An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

If the alleged infringement took place in 1980 and the writ was issued in 1984 it is manifest that by the time the writ was filed the period of three years would have expired and therefore the plaintiff's claim must have been statute barred. Since it was clear that the plaintiff's claim was statute barred, the application of the defendant to strike out the claim on the ground that it was frivolous, vexatious and an abuse of the process of the court was sustained and the action dismissed with costs. This I did being guided by the principles stated in the Ronex case. I did not in the circumstances find it necessary to deal with the other grounds raised in the application. In fact Attorney for the applicant never really pursued them.

Dated this 8th day of February, 1988.

Ivol Blackman
Judge