

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv 322 of 1984.

Chrono

BETWEEN

RAWLE ARTHUR
(trading as Brother Idi Super Sounds)

Plaintiff

AND

JOEY LEWIS, and
JOEVAN RECORDING LIMITED

Defendants

Before the Honourable Mr. Justice P. Jamadar

Appearances:

Plaintiff in person

Mr. R. Valare for First Defendant

No appearance Second Defendant

REASONS

Pursuant to the Order of Kangaloo J. made on the 26th October, 1998, the first Defendant issued a summons filed on the 2nd November, 1998, which falls for determination by this court.

The Plaintiff represented himself, as indeed he has done, it seems, throughout these proceedings. In support of the first Defendant's application, is the affidavit of David Hannays filed on the 2nd December, 1998. There is no affidavit filed in opposition. However, the Plaintiff by a 'Notice' filed on the 16th December, 1998 (supported by an affidavit filed on the said date), seeks to have the first Defendant's said summons dismissed. The first Defendant filed an affidavit in opposition to the Plaintiff's said Notice, on the 3rd February, 1999.

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Before this court on the 3rd February, 1999, the Plaintiff accepted service of the first Defendant's said affidavit filed on the 3rd February, 1999 and indicated that he did not intend to file any further affidavits and that he was ready to proceed. It was then agreed that both the first Defendant's summons of the 2nd November, 1998 and the Plaintiff's notice of the 16th December, 1998, be heard together.

The first Defendant's application is that this court should, pursuant to Order 33 rule 3, R.S.C., direct that the following point of law be tried as a preliminary point before the trial of this action. That is, whether the Plaintiff is barred from prosecuting this action/claim, as the same was initiated more than three years after the alleged infringement of the Plaintiff's copyright [see section 10 of the Copyright, Act, 1911 (United Kingdom)].

On the evidence before me, there is no denial of the allegations that:

- (i) On or around the month of January, 1980 the first Defendant produced a gramophone recording which included the tune 'Doh Try Dat'; and
- (ii) On the 26th January 1984 the Plaintiff began these proceedings.

The Plaintiff, by his amended statement of claim, avers that he is the owner of the copyright in the calypso 'Doh Try Dat'. Further, that on or about the 11th October, 1983, he discovered that the first Defendant had committed a breach of his said copyright. As a consequence, the Plaintiff commenced this action and claimed several reliefs, all of which, on the face of them, flow out of the first Defendant's purported infringement of the Plaintiff's said copyright. Clearly, on the undisputed facts (set out above), this action was commenced more than three years after the alleged act of infringement.

Section 10 of the Copyright Act, 1911 provides as follows:

10. **Limitation of actions** -An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

In Nicol -vs- Barranger (1917-23) Copyright Cases 219 (C.A.), at page 229, the court gave the following interpretation to section 10 of the Copyright Act, 1911:-

The section assumes that it is proposed to take proceeding in respect of some particular infringement and provides that an action shall not lie in respect of that infringement, unless it has occurred within the three years which immediately precede the issue of the writ. **The words 'the infringement' point to the reproduction or infringement of which complaint is made.**

(emphasis mine).

Thus, time runs for the purpose of limitation, from the date of the specific act or acts of infringement, in respect of which the particular action is brought.

Counsel for the first Defendant argued that this Court should state the issue of limitation to be tried as a preliminary point, because the resolution of same will:-

- (i) completely dispose of the entire action;
- (ii) save judicial time;
- (iii) save increased and unnecessary costs.

Apart from reading the relevant learning in the 1997 Supreme Court Practice, counsel also cited the case of **Secretary of State for the Environment -vs- Essex Goodman and Suggitt** (1986) 2 AER 69. In that case, the issue of whether the relevant

limitation period had expired was tried as a preliminary point, the determination of which disposed of the entire action. The first Defendant's amended defence pleads at paragraph 8 thereof, section 10 of The Copyright Act, 1911 (amended it seems on the 17th October, 1994).

The Plaintiff raised several points in opposition, arguing that no preliminary issue should be stated. Among his arguments, which I understood were aimed at refuting the proposition that a successful section 10 argument would completely dispose of the entire action, were the following.

First, that his claim was not for an infringement of copyright but for damages. In this regard he cited section 6 of the Copyright Act, 1911. Section 6 provides:-

6. Civil remedies for infringement of copyright.

- (i) **Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.**

By this section, the remedies of injunctions and/or damages are clearly conditional upon an infringement of copyright. Further, a perusal of the Plaintiff's amended writ and statement of claim, shows that the Plaintiff is in fact claiming that his copyright in 'Doh Try Dat' had been infringed and that he is claiming damages, injunctions and other consequential orders as a result thereof.

Second, the Plaintiff cited section 33 of the Limitation Act, 1981 and argued that because of 'concealment', time should run in this case from the date of discovery of the infringement, that is, from the 11th October, 1983. Of course, the Limitation Act, 1981 is not in force. However, by section 14 of Act No.36 of 1997, concealment, where it was deliberate, will shift the point from which time begins to run, to the date of discovery. Indeed, the question may be whether Act No. 36 of 1997 can be prayed in aid by the Plaintiff, notwithstanding the fact that nowhere in the Plaintiff's pleading is 'concealment' raised. But that is not an issue which I must decide.

I have noted these two submissions made by the Plaintiff in deference to him. This Plaintiff has represented himself with passion and conviction. No doubt he has both read and studied the law as it may relate to his case. However, I do not agree with him in the arguments he has advanced before me to refuse the first Defendant's application.

In the circumstances, I will order and direct that the issue of limitation raised by paragraph 8 of the amended Defence, be tried and determined by a Judge sitting in chambers as a preliminary issue in this matter and that the trial of this action be stayed pending the hearing and determination of that stated issue.

This preliminary issue will be set down for hearing on the 8th day of March, 1999. The first Defendant to file and serve skeleton submissions in support, on or before the 17th day of February, 1999. The Plaintiff to file and serve skeleton submissions in opposition, on or before the 26th day of February, 1999. Costs of this application to be costs in the cause.

Dated this 8th day of February, 1999.

P. Jamadar
Judge