

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT No. C.L. C.083 OF 1997

BETWEEN	MICHAEL COOPER	1ST PLAINTIFF
	WILLIAM STEWART	2ND PLAINTIFF
A N D	STEPHEN COORE	1ST DEFENDANT
	RICHARD DALY	2ND DEFENDANT
	WILLIAM CLARKE	3RD DEFENDANT

NOTES OF ORAL JUDGMENT

This is a summons for Injunction to restrain the defendants until trial from, inter alia, using the name "Third World Band".

Over twenty years ago these parties entered into a partnership under the name of Third World Band for the purpose of presenting music to be performed by the band. Over these twenty years the band earned tremendous goodwill both at home and abroad.

Recently, there has been differences among the group - the plaintiffs claiming that because of the behaviour of at least two of the defendants in their use of drugs they (the plaintiffs) cannot continue being partners. They have claimed in their action dissolution of the partnership, and for winding up and taking of account and injunction.

It is agreed that this is a partnership at will with no fixed term. It is further agreed that there was no provision made for the use of the name "Third World Band" when the partnership ended.

The plaintiffs say that until the hearing of the action they will not be using the band name but on the defendants insistence to continue using the name, the plaintiffs ask the Court to restrain the defendants from using the name on the grounds that the plaintiffs could be exposed to a tangible risk of liability.

The defendants claim that as partners with the plaintiffs for over twenty years the name Third World Band which they assisted in creating has

become an asset common to each of them and that each is entitled to use the name even after dissolution, provided that the use does not expose the partners to liability.

See *Banks v Gibson* 34 Beav. 566

Burchell v Wilde (1900) 1 Ch. 551

Series 5 Software Ltd v Clarke and Others (1996)
1 AER 853.

The plaintiffs contend that provided the assets have not been distributed the partners ought not be permitted to use the name on their own account as this would be a breach of duty of good faith and since there is a tangible risk of liability the injunction ought to be granted.

See *Halsbury's Laws of England* 4th Edition

re- issue - Volume 35 at foot note 1 page 107

As established by the well known American Cyanamid case, in considering an application of this nature the Court should first determine whether there is a serious issue to be tried in the substantial issue. It appears from the affidavit evidence that serious issues have to be tried in the division of assets and that taking of Account, not on the question of dissolution of the partnership as that seems to have been already accomplished.

The Court must next consider where does the balance of convenience lie. If the injunction is granted the defendants would have lost the opportunity to use the name which they have assisted in building over a number of years. The plaintiffs on the other hand will have gained nothing if their application is granted. If their application is refused, are the plaintiffs exposed to any real risk of liability? In this business of providing music, is this suggested liability real or merely shadowy?

This is not a case in which the defendants left the group and entered into competition with the plaintiffs. The evidence does not suggest that the defendants intended to make any secret profits. It suggested instead that they were willing to continue the partnership but the plaintiffs brought it to an end even against the 2nd named defendant Richard Daley against whom they had not made any complaints. Is Daley to be deprived of the use of a name which he assisted in creating merely because of the alleged behaviour of the other defendants? I think not.

On the question of the behaviour of the defendants, there is no evidence of when it started. Was it something going on for a long time or is it recently? If for long time, why is the claim only now being brought.

I am not satisfied that the defendants use of this name will expose the plaintiffs to any real risk of liability.

In the unlikely event of any action against the plaintiffs a claim for indemnity against the defendants could easily be established. In any event damages will suffice if any such action succeeds.

On the question of "holding out", to allay the fears of the plaintiffs, it is recommended that the defendants ensure that their promoters cease to use the flyer bearing the photographs of the five individuals and further that for the time being in all future promotions they specifically state that the plaintiffs Cooper and Stewart no longer form part of the band.

Accordingly, the plaintiffs' application for interlocutory injunction against the defendants is refused.

Cost to the defendants to be agreed or taxed.

Certificate for one Counsel granted.

Leave to appeal granted.

Application to extend injunction pending application to Court of Appeal is refused.

M. A. Reckord
Puisne Judge
5.5.97.