

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 122  
CS 02/2019

In the matter between:

**1. DANIEL VADIVELLO**

**2. LIDIANNE AGATHINE**  
*(rep. by Serge Rouillon)*

**Plaintiffs**

and

**1. DYNAMICS (PROPRIETARY) LTD**

**2. GREGORY ALBERT**  
*(rep. by Anthony Derjacques)*

**Defendants**

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**Neutral Citation:** *Vadivello & Anor v Dynamic Proprietary Ltd & Anor* (CS 02/2019) [2020] SCSC 122 (18 February 2020)

**Before:** Twomey CJ

**Summary:** contract- terms of the contract- intention of the parties, breach of agreement- damages

**Heard:** 10 – 11 October 2019, Submissions 13 November 2019

**Delivered:** 18 February 2020

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**ORDER**

The Defendants are to pay the Plaintiffs the sum of SR 108,300 with costs

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**JUDGMENT**

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**TWOMEY CJ**

**The brief facts of the Case.**

[1] The First Plaintiff entered into an agreement with the Defendants to organise a musical event in Seychelles featuring the performance by Beenie Man, an international artist. The terms of the agreement for the show are disputed by the parties.

[2] In January 2019, the Plaintiffs brought a claim stating that the Defendant had breached the agreement and had subsequently slandered him causing them to suffer loss and damage in the total sum of SR 920,000.

[3] The Defendants deny the Plaintiffs' averments putting the Plaintiffs to strict proof of their claim and counter claim in the sum of SR 254,136.49 for loss they have incurred from the Plaintiffs' own breach of the agreement. The Defendants had also averred that the Plaintiff's claim is bad in law as it contained two causes of action. The defence relating to slander was conceded and was not pursued at the trial and is therefore not considered by the Court.

[4] The issues identified by the parties to be decided by the court are:

1. What were the terms of the agreement?
2. Were the terms of the agreement breached?
3. If so, should compensation be paid and in what amount.

#### **Personal Answers of the Second Defendant**

[5] On the day of the trial, the Second Defendant being present in court, was called on his personal answers. He stated that the event was the first of the kind in which he had ever participated. He prepared the agreement between himself and the Plaintiffs. He stated that the idea was that they would share any profits from the event and that he would be allowed a stall at the concert to sell some of his products. The First Plaintiff had indicated that there would be about twenty thousand people at the show.

[6] The Second Defendant's understanding of the terms of the agreement was that he would assist financially with some of the costs of the event and should there be any profit from it, the same would be split between the parties. He admitted that he was in control of the money collection from the tickets at the door but stated that the doors were controlled by the First Plaintiff with the use of bracelets specifically ordered for that purpose.

- [7] The witness agreed that the Plaintiffs were in charge of production, stage sound, lighting, supporting artists and marketing the show. The terms of the agreement were concluded verbally. Cat Coco gave a 20% discount on boat tickets to Mahe for patrons to attend the show. He received some sponsorship from Cable and Wireless but could not remember the amount. Air Travel paid for tickets and asked for their money back subsequently. Air Travel had together with Creole Exchange of which he was director and which were sister companies to his company only extended credit to him for the show. The money owed to them remained on their ledgers as an outstanding debt from the Plaintiffs' business, Hype Production.
- [8] He gave ten thousand bracelets to the Plaintiffs for use at the show but at the time of the bracelets' reconciliation with the ticket sales, the First Plaintiff informed him that he had used a thousand of the bracelets for a different event.
- [9] He also stated that he had expected ten thousand patrons at the show but less than three thousand showed up. He had warned the Plaintiffs about organising the show on the same night as the Regatta which is a very popular show and in the end the clash between the two shows caused the poor attendance at the concert.
- [10] After the concert a spreadsheet of the outgoings and takings by both parties was drawn up. He did not recall if he had made a cheque out to himself for SR100, 000. If he did, it would have been to cover expenses he had made. He lost money on the show and on the sale of drinks. The loss is shown on the spreadsheet. The SR100, 000 is not shown on the spreadsheet but was paid to Creole Exchange shortly after the event. Creole Exchange had sent dollars on his behalf to the artist.
- [11] He had met with the First Plaintiff after the event to discuss the loss from the concert and to come to some agreement to share the same but after several months when the First Plaintiff refused to pay, he brought the case to court. A corporate social responsibility letter was obtained from the Ministry of Finance for the First Defendant for the event. The concert poster also showed an after event party at the nightclub Tequila Boom but this was not part of the agreement in terms of sharing profits from the show.

## **The Plaintiffs Evidence**

### *Evidence of First Plaintiff, Daniel Vadivello*

- [12] The First Plaintiff testified that for the past five years, he was a popular radio and DJ presenter and also ran one of the most successful events company in Seychelles under the business name Hype Production. In this regard, he organised and managed events for clients. Clients would ask him to launch a product or a show and he would produce it taking care of the logistics, the stage, the artist, the marketing, radio, tv, posters and everything related to the client's product. He was acquainted with Danny Farah of Tequila Boom which is owned by the First Plaintiff and worked as a DJ there on a regular basis on Friday and Saturday nights. Mr. Farah proposed an event to him but asked him to follow it up personally with the Second Defendant.
- [13] He met up with the First Defendant and discussed different artists for a show and then settled on Beenie Man, a popular artist. No agreement was signed at that meeting. They agreed that they would have a concert to get rid of the Carlsberg stock the Defendants had accumulated. The Defendants would be the sole distributor of alcohol at the event. He agreed to enquire if Beenie Man was available and what his fee would be and then reconvene for a decision.
- [14] At the subsequent meeting, he informed the Defendants that Beenie Man was available and his fee would be US\$21,000 plus three business class tickets and one economy class ticket from New York to Seychelles. He agreed to produce the show, namely the marketing, sourcing the artist, support acts, stage, lighting, the A-Z of producing a concert. The Defendants agreed to pay the artist's fee and the tickets. The concert was to take place on 1 August 2016. This was rendered into an agreement in writing by the Defendants (Exhibit P1). The profits from the ticket sales was to be shared on a 50/50 basis.
- [15] The idea of wristbands was something he had picked up in productions in the UK when he was living there. He ordered wristbands for his productions every year from the same company in the UK. He gave the wristbands for the show together with the tickets he had ordered to the Defendants as they were the only ones dealing with the money. He had

other wrist bands for other productions like the 15 August festival for La Digue. These wrist bands were light blue. For the Beenie Man concert, the wristbands were neon green and for VIP tickets pink.

- [16] There are two ways he charges for productions: he either invoices the client for his services in which case all revenues from the show were kept by the client or, the door sales were shared. For the Beenie Man show it was agreed that they would share the profits from the door sales. Any sponsorship would of course generate more money to be shared out as profits. It was only after the concert that he was informed that Creole Travel and Air Seychelles had not sponsored the event but rather had given items on credit which had to be repaid. The logos on the posters indicated that sponsorship had been received from Dynamics, Creole, Cat Coco, House of Shawarma and Tequila Boom. He had personally negotiated sponsorship from Cable and Wireless and would have tried for other sponsors but was told they would be in competition with the Second Defendant's companies.
- [17] The ticket bus was hired by the Defendants. He never set foot in it and did not know how many tickets were sold from it.
- [18] Eventually the show could not take place on 1 August 2016 as planned. However, Beenie Man contracted a virus – either foot and mouth or Zika, and the Ministry of Health refused him entry into Seychelles. The event therefore had to be postponed to Beenie Man's next available date when he got medical clearance. He proposed two dates and the Second Defendant opted for the 6 October 2016. On the night there were between 3000 to 3500 patrons. The Regatta did not affect the show. Concerts are always a risk; they are not guaranteed business successes. The Defendants were ok with the numbers as they were selling food and alcohol and that is how they would make their main profits. The First Defendant still does a lot of this type of business. At the concert, the Defendants had the exclusive sale of alcohol - selling Carlsberg beer and Sobieski vodka. The Tequila Boom appearance by Beenie Man which was part of the show would also have generated income which should have been shared.

- [19] His outgoings included the payment for all logistics, that is the sound, the lights the rehearsals, power, marketing etc. All those receipts were handed over to the Defendants (Exhibit P5) and are listed in the spreadsheet (Exhibit P3). Altogether the outlay was SR183,400.
- [20] After the concert he was informed by the Second Defendant that they had made a loss and that he had to pay his creditors. Some of these creditors were calling him and he was calling the Defendants' accountant to pay them. He called the Second Defendant and asked him to release the money from the ticket sales but he said he was deducting SR91,000 from the takings to pay his creditors who the witness thought were sponsors. In the end he made deals with a lot of the unpaid persons and paid them in kind with business until he eventually paid off the amount owed. He had to keep down tow or their jobs to pay the bills. He was therefore claiming SR 186,00 for his outlay and another SR350,00 for the loss of profits. He based those profits on his estimate of 3000 people in the stadium paying SR 250 per ticket and a few VIPs paying SR 1000 per ticket. He was also claiming moral and physical damage in the sum of SR300,000. He found the stress of people calling him after the event when they should have been paid by the Defendants overwhelming. The Second Defendant was in a position of power and well known and the fallout meant that he personally lost business from being bad mouthed by him. He developed high blood pressure and had to take medication.
- [21] He denied the Defendant's assertion that he had let in 1300 to 1400 persons free into the concert and said that this was nonsensical. There were two entries into the stadium and they were both controlled by the Defendants. It was his job to look after the stage on the night, not to look after ticket sales. It would have been a scandal had he allowed people without tickets in and word about it would have got around very fast on social media and others would have gate crashed.
- [22] In cross-examination, he stated that the agreement was between himself and the First Defendant and was drawn up subsequent to their verbal agreement. It was also agreed that he would foot the bill for the production and the Defendants would pay for the air tickets and the cost of the tickets for the show. He was not of the view that the clash with

the Regatta caused a drop in attendance. In any case the date of the show was agreed by the team and not him personally.

[23] The bracelets for the concert were handed to patrons at the van at the time tickets were purchased and not at the entrance gate.

[24] He stated that apart from the spreadsheet of expenses prepared by the Defendants he had little to go on. He was only aware of his own expenses and was not in a position to confirm the expenses incurred by the Defendants for the concert.

[25] The First Plaintiff asserted that he was in the production business. There were two ways to charge for his services: the first way was that the client paid upfront for the production and then took all the profits from the ticket sales, the second way was that the ticket sales were shared. In the present case, the agreement was that each party would bear their own costs and the ticket sales would be shared. The First Defendant had additional revenue streams apart from the ticket sales, for example the sale of alcohol and food at the event.

[26] The witness stated that his going into the event with Defendants was a calculated risk. After looking at the ticket prices and the expense of bringing in the artist and other associated costs he thought it was worth the risk.

[27] He denied that the agreement between himself and the Defendants was on the basis of sharing all losses and profits.

[28] He accepted that the concert wrist bands were ordered by him but handed over to the Defendants' employees at Providence. This was under the direction of the Second Defendant.

[29] The wrist bands were distributed by the Defendants at the concert. He did not handle the tickets or the wrist bands. The Defendants and their team from a van near the entrance to the stadium handled these. He provided security for the show but his security people were not involved in handling the tickets and the wristbands. The wrist bands were used to control entry into and out of the stadium by ticket holders only.

[30] He had no knowledge that wristbands were distributed before the 6 October 2016. The clearing of the bracelets from customs was done by the Second Defendant's own clearing company and kept with him. The clearing agent is housed in the same building as the First Defendant. At no time did the witness take possession of the wristbands.

[31] He denied using the same wristbands at another event he organised at La Digue, and insisted that on the latter occasion he had used blue wristbands as opposed to the pink and green ones used for the Beanie Man concert.

[32] He stated that he was pursued by the Second Defendant's employees to pay the Defendants' losses by instalments, which he refused to do.

*Evidence of the Second Plaintiff*

[33] The Second Plaintiff gave evidence that she worked with the First Plaintiff as partner with their business Hype Production since 2001. She was not aware of the nature of the agreement they had with the Defendants but after the Beanie Man event, people told her that her partner was a crook and that he owed people money. The First Plaintiff then struggled to pay bills. They argued and had many difficulties in their relationship. She was pregnant at the time and developed high blood pressure. She travelled to Sri Lanka for treatment but miscarried.

[34] Whatever was said of her partner got to her and she was claiming moral damages for the injury she had suffered.

*Evidence of Nadege Malbrook, formerly accountant of the First Defendant*

[35] Nadege Malbrook an accountant, presently with SeyVine had been the First Defendant's accountant at the time of the event. She stated that she was aware that there was an agreement as contained in Exhibit P1 between the parties for the concert and that profits or losses of the concert would be shared equally between Hype Production (the Plaintiff's business) and Dynamics (the First Defendant). The alcohol sales were independent of the show and the First Defendant had exclusivity for the sale of alcohol on the night.



- [36] She was not aware of the takings from the alcohol sales but the turnout on the night was bad. They had expected ten thousand people but only two to three thousand people attended. She sold tickets on the night of the event but didn't see the crowds as she did not venture into the stadium.
- [37] At the end of the night the company had more debts than profits. She knew by the sale of the tickets on the night that they would not have enough money to pay their suppliers. They had received sponsorship from Cable and Wireless of about SR 40,000. Cat Coco offered a discount for people travelling from Praslin or La Digue for the show. Creole Air Travel helped with the purchase of the air tickets for the artist. She was of the view that the First Plaintiff should be paying part of the expenses although of a lesser proportion than the Defendants.
- [38] There were no profits to be shared but both sides ought to share the expenses of the event. SR 91,000 which was the cost of air travel and per diem for the artist was paid from the ticket sales to reimburse Creole Exchange. The Second Defendant paid SR 253,000 over and above what the First Plaintiff had paid towards the event. The First Plaintiff had undertaken to pay for some of the debts by six monthly instalments of SR 9000, which he would obtain from a New Year's event he was organising. Altogether, the First Defendant made payments of SR 461,471 towards the concert but was out of pocket for SR304, 136. She was the one responsible for collecting and accounting for money regarding the concert.
- [39] There were not enough takings to pay for the expenses which came to SR1,307,000. The ticket sales were SR297,100. Sponsorship from Cable and Wireless amounted to SR41,000. Rent of the Stall brought in another SR5000. The total takings therefore were SR343,000. The balance after expenses amounted to SR 974,000 with each party having to bear half the cost of the loss of SR 487,000.
- [40] The sum of SR 687,000 was owed to Creole Exchange and Creole Air Travel. The amount still unpaid by the Plaintiffs was SR 303,000.

[41] She stated that the Defendants were responsible for the ticket sales but not the bracelets. The bracelets remained with the Plaintiffs. She did not have them with her in the ticket van as the bracelets were handed out at the gate. When the First Plaintiff was asked to bring back the rest of the bracelets for the reconciliation with the tickets, he stated that it was difficult for him to do that as he had used some of them for the event at La Digue.

[42] In cross-examination she stated that she did not know anything about the agreement relating to the after party at Tequila Boom but included a receipt relating to it in the Spreadsheet as the receipt was brought to her.

[43] The concert bracelets were a form of double control. As the Defendants were in charge of ticket sales, the Plaintiffs being in charge of the bracelets would be in a position to check how many tickets were issued.

#### *Evidence of Travis Julienne*

[44] Mr. Travis Julienne, the director of Creole Entertainment also gave sworn testimony. He stated that he had been involved in the management of concerts since 2012 and being part of the artistic direction team to ensure that everything was delivered on the night. He would be involved in between three or four shows annually featuring local and international artists.

[45] He was of the view that the Beenie Man concert was well organised within the market available. He had been part of the production team and estimated from what he could see from the stage that about 2000 persons attended the show. At such shows, alcohol sales were the key. He had also attended the planning meetings for the event. The production of the show was the responsibility of the Plaintiffs and the Defendants were responsible for the beverages and getting sponsors for the event. He managed Taj Media, which had partly sponsored the adverts for the show to the value of about SR thirty to forty thousand. Sponsors do not ask for money back.

[46] Events such as the one for Beenie Man start around 9.30 and the show pushed back to about 11 p.m. to ensure more ticket sales and to get more people in. The concert would go on to about 1.30 am. During all that time people would be consuming alcohol. The

Beenie Man event was not a flop but the ticket sales were disappointing. The delay of the show and holding it during the Regatta had affected ticket sales. Tickets are pre-sold as much as possible but the bulk of them are sold on the night. For some events the wrist bands are the tickets, if not, the wrist bands are obtained where the tickets are sold or the logical place would be with the security at the entry gate. Tickets sold should tally with wrist bands handed out.

#### *Evidence of Antoine Rose*

[47] Mr. Antoine Rose, a sergeant at arms at the National Assembly, testified that he specialised in security duties. He had been security officer at various shows, regattas and musical events. He knew the First Plaintiff as Ezy-D. He contacted him and told him he would need twenty-five security officials. He took on the job and on the night of the concert, his duties were to control the crowd and check that those admitted into the stadium had wrist bands.

[48] He was of the view that about 3000 to 3,500 persons went through the gates and that the event was a success. People drank beer and the show closed down at about 2 am. In cross examination he stated that he saw wrist bands being placed on people at the gate and at the ticket bus. The wrist bands were the tickets issued when they paid.

#### **Evidence of the Defendants**

##### *Evidence of Gregory Albert, the Second Defendant*

[49] The Second Defendant gave sworn testimony. He was a director of the First Defendant which was a proprietary and limited company. The agreement as contained in the written contract between High Production and Dynamics was to the effect that they would both put money together and from the sale of tickets cover their respective expenses and if there were any profits to share them 50/50.

[50] The show was initially scheduled for 6 August 2016 but because of the illness of Beenie Man was rescheduled for the 1 October 2016 which was a Saturday. He was concerned about the clash with the regatta but was reassured that Beenie Man was more popular than the Regatta.

[51] The spreadsheet of revenues and expenses by his accountant showed that he had overpaid by SR 254,136.49, as the costs were to be shared 50/50. The Plaintiffs had put in SR 53,268 whilst the Defendants had put in SR 687,904.98 which explained the overpayment he was claiming.

[52] The order for the bracelets was placed by the Plaintiffs and it was cleared by a clearing agent and the First Defendant took possession of them. At the show, tickets were sold in the ticket bus. The tickets were numbered and the numbers sold would be known and would tally with the left over tickets. The Plaintiffs' team controlled the entrance gates and the paper ticket was exchanged for a bracelet to gain access to the show. This had a dual purpose. He would know whether the bracelets matched the amount of tickets sold and it would also ensure that people going in and out could be identified. In order to reconfirm the number of tickets sold it made perfect sense to ask the Plaintiffs to bring back the remaining bracelets so that these could be tallied against the number of tickets sold. The First Plaintiff stated that he could not bring back the bracelets because he had used a thousand bracelets for the 15 August event in La Digue.

[53] The alcohol sales did not form part of the agreement between them. It was a perk for him in taking a risk to go into the show. In the end, he expected a lot of patrons, built a 30 metre bar, employed more staff than was necessary and made quite a loss.

[54] A crowd of ten thousand was expected for the event- that is why ten thousand tickets and 10,600 bracelets (including the ones for VIPS) were bought. The lack of people attending was because they underestimated the success of the Regatta which impacted negatively on the success of their show. The alcohol sales also did not go well as members of the public were allowed to bring in Takamaka rum bottles. There was no agreement that the Plaintiffs would share the benefits of the Tequila Boom after party.

[55] It was not correct that regardless of the expenses paid by each side that the ticket sales would be shared 50/50. It was also not the case that the fee and air tickets for Beenie Man was his contribution for the event. The logos of Creole Air Travel and Creole Exchange on the posters indicated the sponsorship they would give such as transportation and greeting at the airport.

- [56] He had suffered a lot more than the Plaintiffs. He had people pestering him including Bureau de Change because they were not permitted to give credit and this impacted on their cash flow. Omega which had imported the alcohol went bankrupt. All he wanted was for the Plaintiffs to pay their share of the losses, that is SR 254,136.49.
- [57] In cross-examination he agreed that there were three types of tickets being sold for the show: a normal ticket, a VIP ticket and a platinum ticket. He didn't know how many were sold and these were tallied after the event and shown on the spreadsheet produced.
- [58] The indication on the concert poster (Exhibit P2) that the three hundred Platinum tickets at the price SR 1000 were sold out was only a marketing strategy to get people to hurry to buy tickets. It did not mean the tickets were actually sold out. The expenses for Beenie Man was supposed to be realised from the pre-event sale of tickets but when this did not materialise, he had to negotiate with Air Travel and Bureau de Change for a credit facility. The Tequila Boom event was also not a success because of the Regatta across the road. The sale of alcohol at the concert was not part of the agreement for sharing profits and losses.

### **The Documentary Evidence produced**

- [59] The documentary evidence admitted in this case consist inter alia of the written contract referred to by the parties (Exhibit P1). It states:

*Letter Agreement between Hype Production and Dynamics, that both parties will share equal liability both on profit and lost event Beenie Man on 6<sup>th</sup> August 2016 (sic).*

- [60] It is signed by Daniel Vadivello, Hype Production, Mahe, Seychelles and Gregory Albert, Dynamics and is dated 13 July 2016.
- [61] A poster of the event is also in evidence. It shows that general tickets were sold for SR200, gold VIP tickets for SR350 and that Platinum tickets were sold out. Dynamics is indicated as being the "Proud Sponsor". The bottom of the poster shows a number of logos including, TMD, Taj Media, Creole Travel, Cat Cocos, Cable and Wireless Air Seychelles and Pure FM.

[62] Exhibit P3 is the Spreadsheet referred by the parties in their evidence and is dated 1 October 2016. It indicates that the revenue consisted of SR 297,100 from ticket sales, SR5, 000 from rent for a food stall and SR 41,000 sponsorship from Cable and Wireless. The outgoings are laid out in an unclear fashion. What can be gleaned from the document is that in total, Hype Production spent SR 183,400 for various items summarily described for the concert and Dynamics spent SR 94, 260.00. The rest of the items on the list is not clearly explained but appears to be amounts paid out by third parties in relation to food, drinks, travel t-shirts, tickets, banners and the like.

[63] Exhibit P5 is a bundle of seven receipts paid by Hype Production with regard to the concert namely, one in respect of photography coverage for the show for SR2,500, another for SR10, 000 as the rental fee for the mini stadium, another for SR35,000 for the sound system, SR55,000 for the stage and truss, SR 12,500 for chairs, tables, chafing dishes and marquees, another SR 35,000 for the stage and truss and a receipt from Creole Exchange for the purchase of US \$ in the sum of SR 49,988. Exhibit P8 is another receipt from Seychelles Broadcasting Corporation for SR 10,100 in respect of broadcasts.

### **Submissions**

[64] No written submissions were received from the Plaintiffs. The Defendants in their written submissions have relied on Articles 1101, 1109 and 1134 of the Civil Code of Seychelles for the proposition that a contract was lawfully concluded between the Plaintiffs' and the First Defendant and ought to be enforced between those parties only. They further submit that since a loss was incurred under the agreement the Plaintiffs are liable for half of it (as per Article 1149 (1) of the Civil Code).

### **Discussion**

[65] The issues identified by the parties as set out in Paragraph 4 above are three-fold: the terms of the agreement, whether they were breached and what damages should ensue. They are all addressed together below.

[66] It must be stated from the outset that having reviewed the oral and documentary evidence, it is generally unclear to the Court what the terms of the agreement between the parties in this case were. The contract is drafted in infelicitous terms and only indicates that

Plaintiffs and the First Defendant agree to share losses and profits arising from the staging of the Beenie Man concert.

[67] It is not clear from the evidence adduced whether these profits and losses were to be calculated from a joint venture consisting of each party putting in equal resources or whether each party was to contribute its own personal monetary resources, knowhow, good will and experience in unspecified and or unequal amounts but in any case share the profits or losses from the takings at the concert.

[68] In their pleadings and evidence, the parties appear uncertain about the agreed terms. The Plaintiffs in their Plaint, at Paragraph 3, aver that the parties agreed that the First Plaintiff would take care of production costs, stage, sound, lighting, supporting artist, marketing and promotions; that the Defendants would take care of Beenie Man's fees, flights and accommodation under the sponsorship fee; and that the parties would split the income of ticket sales equally while all revenue for sales of alcohol would be for the benefit of Defendants alone. The parties also agreed to share equally the ticket sales of the after party event at Tequila Boom after the concert.

[69] In their statement of Defence and Counterclaim, the Defendants deny that this was the agreement. They aver that the only agreement was the parties would "share the cost of the event in equal parts be it profit or loss" (Paragraph 18) and that the Plaintiffs failed to contribute half of the upfront costs. They accept that they received sponsorship from Cable and Wireless for SR41, 000 and one air ticket from Air Seychelles. There was no agreement to share the proceeds for the after sale party.

[70] The evidence as laid out above does not support either of the parties' pleadings. The First Plaintiff stated that the agreement was that he would produce the show, namely the marketing, sourcing the artist, support acts, stage, lighting, the A-Z of producing a concert and the Defendants would pay the artist's fee and the tickets and the profits from the ticket sales was to be shared on a 50/50 basis. He explained that there were two ways one could charge for the production of shows: either by charging the client for the production or by just sharing the door sales. The Beenie Man show was one which involved the sharing of door sales. In his personal answers, the Second Defendant stated

that he understood the agreement to mean that he would assist financially with some of the costs of the event and should there be any profit from the event, the same would be split between them. In his sworn testimony however, he stated that each side would put money together for the show and from the sale of tickets cover their respective expenses and if there were any profits to share them equally.

[71] Travis Julienne, who attended the meeting prior to the concert was of the view that the production of the show was the responsibility of the Plaintiffs and the Defendants were responsible for the beverages and getting sponsors for the event. Nadege Malbrook, the Defendants' accountant was only aware of the written agreement but understood it to mean that profits or losses from the concert would be shared equally between Hype Production (the Plaintiff's business) and Dynamics (the First Defendant). However, she stated that the First Plaintiff should be paying part of the expenses for the show although in a lesser proportion than the Defendants. The parties were therefore either not *ad idem* on the terms and conditions of the contract or are now obfuscating what they had clearly agreed.

[72] The poster for the show clearly indicates that there were sponsors for the event although admittedly it is not clear what these sponsorships individually comprised. The Second Defendants state that Creole Travel and Creole Exchange extended credit facilities, which had to be repaid. However, he agrees that a letter for corporate social responsibility had been obtained for the event. In any case, there was no evidence brought from these two respective companies in terms of what their sponsorship or line of credit consisted of. There was simply no proof of the Defendant's assertions in court.

[73] There was also no evidence brought to show how many tickets were sold for the concert. Nadege Malbook who was in charge of selling tickets on the night stated in evidence that two to three thousand people attended and yet the spreadsheet of income and expenses which she admitted preparing only show a sum of SR 297,100 from ticket sales. In general, evidence from all witnesses concerning attendance at the show indicate a crowd of between 2000 and 3000. The evidence of the witnesses relating to the wristbands are equivocal and it is difficult to ascertain what they represented in terms of sale of tickets



or the amount of persons who attended and whether they inflated the crowd attending with non-paying patrons.

[74] It must be noted however, that while the Plaintiffs were able to account for their expenses for the concert namely the receipted sum of SR 183,400, which sum was never disputed by the Defendants, neither the Defendants nor their accountant, produced any receipts for the Defendants expenses which the accountant stated amounted to of SR 461,471. Her explanation that total takings therefore were SR343, 000 and the expenses were SR1, 307,000 is not borne out by any supporting evidence as there are no invoices or receipts to support them.

[75] And what is the Court to make of this, especially as has been already been pointed out, the written contract is absurdly unclear? With regard to the interpretation of agreements, Articles 1156 to 1161 of the Civil Code of Seychelles provide:

*“Article 1156*

*In the interpretation of contracts, the common intention of the contracting parties shall be sought rather than the literal meaning of the words.*

*However, in the absence of clear evidence, the Court shall be entitled to assume that the parties have used the words in the sense in which they are reasonably understood.*

*Article 1157*

*When a term can bear two meanings, the meaning which may render it effective shall be preferred rather than the meaning which would render it without effect.*

*Article 1158*

*Terms capable of two meanings shall be taken in the sense which is more appropriate to the subject-matter of the contract.*

*Article 1159*

*Ambiguous terms shall be interpreted by reference to the practice of the place where the contract is made.*

*Article 1160*

*Usual clauses shall be implied in the contract even if they are not expressly stated.*

*Article 1161*

*All the terms of the contract shall be used to interpret one another by giving to each the meaning which derives from the whole.*

[76] These provisions indicate that where the provisions of a contract are clear, the intention of the parties are given effect by the Court. Where the terms of the agreement are unclear, it is trite that in French law (that is, the French Civil Code until its amendment in 2016 on which the Seychelles Civil Code is based) the court in its interpretations must determine the parties' actual subjective intention rather than interpret the actual words of the contract in an objective manner. As is pointed out by Amos and Walton, to do otherwise would be to refuse to execute the contract as:

*“The court has no power in the name of equity to modify a contract since the contract, as the Civil Code puts it, takes the place of law between the parties”*  
(see in this respect Article 1134 of the Civil Code - Amos and Walton: Introduction to French Law. Oxford: Clarendon Press 1935 p. )

[77] I have already indicated that the written contractual terms are to the effect that both parties would share equal liability for the profit and loss of the event. The additional terms and conditions in terms of responsibilities of each party as adduced is unclear and unreliable. In the circumstances, I can only give effect to the clear terms of the contract as supported by evidence. I find that the Plaintiffs expended SR183, 400 as supported by the receipts they have produced and has been acknowledged by the Defendants. Under the written contract they are due half of this loss, that is SR91, 700.

[78] With regard to the profits under the written contract, I take the evidence of all the parties concerning the concert attendance at its lowest - 2000 patrons at SR200 per ticket equals SR400, 000. Each party is due half of that, that is SR200, 000. The Plaintiff is therefore entitled to SR200, 000 minus SR91, 700, which equals SR108, 300.

[79] I do not find the claim for moral damages proven. The doctor's certificate (Exhibit P7) in support of the First Plaintiff's medical complaint is dated 3 September 2019 and refers to

the First Plaintiff attending the clinic on 9 September 2016 presenting with hypertension and being advised to return the week after but it is noted that he never returned. It is clear that the letter is ex post facto. Similarly, the Second Defendant's claim for moral damages beyond her assertions is not proven.

[80] I therefore order the Defendants to pay the Plaintiffs the sum of SR 108,300 with costs.

[81] I end by issuing a salutary warning – Laypersons should never draft contracts - that exercise should be left to experts in law. The parties in this case have only themselves to blame for coming up with what I can only state is the worst drafted contract I have ever seen.

Signed, dated and delivered at Ile du Port on 18 February 2020

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Twomey CJ