



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION  
CLAIM NO. SU2021CD00270**

**BETWEEN                      SHAUN CHABLAL    CLAIMANT  
A N D                              21<sup>ST</sup> HAPILOS DIGITAL DISTRIBUTION, INC.                      DEFENDANT**

Application for Interlocutory Injunction – Alleged copyright infringement-Whether distribution agreement lawfully terminated-Whether damages an adequate remedy-Whether balance of convenience favours the grant rather than the refusal of an interlocutory injunction.

**Melissa Chin Chablal for Claimant**

**Demetrie Adams instructed by Tavares Finson Adams for the Defendant**

**In Chambers by Zoom**

**Heard 30<sup>th</sup> of June 2021.**

**BATTS J.**

1. This judgment was orally delivered on the 30<sup>th</sup> June 2021. Counsel for the Claimant provided her note of that delivery, without which, it would have been impossible for me to reproduce the judgment in this written form.
2. In this matter the Claimant asserts that it has lawfully terminated the distribution contract which permitted the Defendant to list the Claimant's music in his catalogue. The Claimant says that, notwithstanding the termination, the Defendant has continued to list the Claimant's music in their catalogue. The Claimant has

come to this court at this interlocutory stage seeking an injunction to restrain the Defendant from distributing his music and infringing his copyright.

3. At the commencement counsel for the Defendant alleged that the Court should not entertain the application since the Defendant is an overseas company with no registered office in Jamaica and had not been properly served with the Claim. He stated that the intention to challenge jurisdiction had been stated in the acknowledgement of service filed on the 23<sup>rd</sup> of June 2021. I rejected this preliminary point having regard to Exhibit "SC-12" of the Affidavit of the Claimant. It is a royalty statement issued by the Defendant and has a Jamaican address on it. To my mind this is a representation by the Defendant to the Claimant that they had a place of business here in Jamaica and therefore they could be appropriately served at that location. Mr. Adams is here, the Defendant has notice of the application, has filed an affidavit in answer and, therefore there is no prejudice if the application proceeds.
4. On the substantive matter I remind myself that the Court is not required to make any findings of fact. The the court is required to consider three things firstly, whether the Claimant has a cause of action with a real prospect of success secondly, whether damages would be an adequate remedy if the injunction was refused and thirdly, the balance of convenience/ justice of the case.
5. There is no doubt that there is an arguable case. It is common ground that the arrangement between the parties was never reduced to writing, but that the Defendant has, for some considerable time, listed the Claimant's music. So there is an agreement the question is what are its terms? Particularly, was it an exclusive contract with a fixed period as alleged by the Defendant or, was it nonexclusive for no fixed period and terminable by 30 days' notice as the Claimant alleges. I am not required to make findings of fact but I observe that the only relevant documentary evidence, on this question, is an email dated 15<sup>th</sup> January 2020 from the Defendant to the Claimant, exhibit "SC-9". In it the Defendant represents to the Claimant that

the agreement “*can be cancelled at any time.*” They also sent a draft agreement, that was never executed but, which does support a contention that the contract was terminable by 30 days’ notice. Be that as it may, at this stage, there is an arguable case and therefore a matter to be judicially considered.

6. On the question of the adequacy of damages, the question is if the injunction is refused, and the Claimant ultimately succeeds at trial, will damages be an adequate remedy? In this case the Claimant asserts that he is about to enter into an exclusive agreement with an entity with which he has not contracted before. He says the existence of this agreement with the Defendant will preclude him from taking up that offer. If therefore, at the end of the day, it is decided that the Defendant is wrong and the Claimant was entitled to terminate on 30 days’ notice the Claimant will be entitled to damages. Damages will be calculable based, in part at least, on the amount he would have earned had he been able to enter the new arrangement. That will depend on how well his catalogue would have done with the new entity in what should have been an exclusive arrangement. It is manifest that that calculation would be very very difficult, with no background data, no history of a relationship, nothing on which to rely to determine the Claimant’s lost income.
7. On the other hand, if the injunction is granted and at the trial the Defendant succeeds, the loss to the Defendant will be the amount it would have earned from the Claimant’s catalogue in the period from now until March 2022, being the date the Defendant asserts the fixed term agreement would have expired. The calculation of that loss can easily be done, because there is a 10-year track record of the Defendant’s handling of the Claimant’s catalogue. I would add that the Claimant will give the usual undertaking as to damages. In my view on the evidence there is sufficient to support a finding that the Claimant will be able to honour his undertaking, given the undoubted value of the catalogue of which the Defendant is well aware and, for which it is fighting so strenuously.

8. It seems to me therefore that in these circumstances damages cannot be considered an adequate remedy for the Claimant.
9. I will now consider the balance of convenience or, as the modern cases call it, the justice of the case. Here again, there is no doubt it is the Claimant's word against the Defendant's because the agreement was not reduced to writing, but in considering the balance of convenience, one can have regard to the relative merits of the case and, in that regard, the only correspondence predating the breakdown of the relationship suggests that a 30 day notice was appropriate and that it was not an exclusive arrangement.
10. A court of equity would lean towards allowing the Claimant access to his material to put it where he wants it. The Defendant will have its day in court and the catalogue will still be there after the trial and therefore can be sold by order of the court if necessary to recoup the Defendant any losses it incurs by way of damages if the Defendant succeeds at the end of the day.
11. When considering the balance of convenience, the Defendants are relying on contracts they allege to have with distributors which they assert require more than 30 days' notice and therefore would face the extreme prejudice and potential liability if they were required to terminate. As indicated earlier if ultimately successful at trial the Defendant will be protected by the Claimant's undertaking as to damages. However, it is worth noting that the Defendant entered into these arrangements and ought to have reasonably foreseen the possibility of the Claimant terminating his contract particularly as nothing had been reduced to writing.

12. For these reasons it is ordered

1. Injunction granted to restrain the Defendant whether by itself, its directors, officers, servants and or agents from infringing the Claimant's copyright until the trial of this action.
2. The Defendant is ordered to cease and desist the distribution of the Claimant's music catalogue and serve a takedown notice on all its online digital distribution channels within 14 days of today's date and until the trial of this action.
3. The Defendant shall serve on the Claimant copies of the said takedown notices.
4. Claimant through its Attorneys-at-Law gives the usual undertaking as to damages
5. Costs to the Claimant to be taxed or agreed
6. Permission to appeal granted if necessary
7. Formal order to be prepared, filed and served by the Claimant's Attorney-at-Law.

**David Batts**  
**Puisne Judge.**