

MOOT PROBLEM

Oral Hearings- 21st and 22nd March 2020

Organized by:

The Moot Society of Sri Lanka Law College

THIRD H V PERERA QC MEMORIAL MOOT COMPETITION 2020

PARTIES

1. **'Jazz Festival Productions (Private) Limited'** ("Jazz Pro") is a pioneer and a leading private limited liability company in managing and organising international music festivals, which is incorporated under the laws of Calvia (identical to the laws of England).

    - Head office: No. 07, Central Avenue, Taine, Calvia.
    - Telephone number: +1110000696
    - Email address: info@jazzpro.com

2. **'Groovy Five'** ("Groovy Five") is a five-member internationally recognised, award winning jazz band from the Republic of Fenwick. Music lovers across the world adore its lead guitarist, Jimmi Hayer and some critics have dubbed him the greatest guitarist of the decade. Mr. Niles Davis is the Manager of Groovy and the CEO of **Ace Music (Private) Limited** ("Ace"), a well-known recording label which has signed on Groovy for ten years from 2016. Ace has been incorporated as a limited liability company under the laws of Fenwick (identical to the laws of England).

    - Head office: No. 12, Grand Boulevard, Rivendell, Fenwick.
    - Telephone number: +14008937637
    - Email address: info@acemusic.com

FACTS

1. Jazz Pro has organised the musical festival **'Summer Episode'** consecutively for the past nine years and the 10th edition is to be held on the 30th of June 2018, in the Republic of Calvia featuring Groovy Five.

2. On behalf of Jazz Pro, Chief Event Organiser, Mrs. Bella Ritzgerald contacted Mr. Davis by email on 5th January 2018 with regard to featuring Groovy Five at the musical festival 'Summer Episode 2018' inviting Groovy Five to perform at the musical festival (Annexure 1)

3. On the 10th of January, Mr. Davis responded to Jazz Pro's email stating that Groovy Five is available to take part in 'Summer Episode 2018' and willing to enter into contract. (Annexure 2)

4. On the 10th of February 2018, Jazz Pro and Groovy Five entered into a contract which included a dispute resolution clause (Annexure 3). The advance payment of 50% was paid on the 10th of March 2018. The balance payment was to be paid after the performance.

5. 12,000 tickets for "Summer Episode 2018' were put on sale on the 15th April 2018 and were in very high demand, resulting in all 12,000 tickets being sold out in 4 hours.

6. On 16th April 2018, Groovy Five was invited to perform at the Grammy Awards to be held on 30th June 2018, which was predicted to have a worldwide audience close to 20 million viewers. Despite knowing this performance would define and solidify Groovy Five's position as the world's leading jazz band, Ace declined the invitation in view of its contractual undertaking to Jazz Pro.

7. On the 7th May 2018, the lead guitarist of the band, Jimmi Hayer met with a brutal accident in Fenwick.

8. “Narcotic use suspected in Jimmi accident” constituted the headlines on ‘News Today’, a daily newspaper circulated in Calvia.

9. Due to psychological trauma after the accident, Jimmi Hayer refused to perform in any of the band’s tours.

10. Mr. Davis contacted Jazz Pro and stated that the band will perform, despite the added expense of hiring a new lead guitarist.

11. Jazz Pro declined, stating that the band was obliged to perform with all of the band members, failing which Jazz Pro would not want Groovy Five to be the feature band at ‘Summer Episode 2018’.

12. After extensive discussions failed, Jazz Pro made a public announcement that the headlining band at ‘Summer Episode 2018’ had been changed from ‘Groovy Five’ toanother band from Calvia. Ticket purchasers were infuriated at the change of the band and demanded refunds. Fearing adverse effects on its corporate image, Jazz Pro offered refunds and a total of 4578 tickets were refunded and some sponsors withdrew their sponsorships.

13. ‘Summer Episode 2018’ was held with a little over 7000 concert-goers in attendance. Jazz Pro had to honour all of its commitments to the suppliers and due to the refunds, made a colossal loss on the event.

14. Jazz Pro took steps to enforce the arbitration clause in the contract and on the 24th of August. They filed a notice of arbitration to the Maltovian International Arbitration Center in accordance with its rules (identical to the Arbitration Rules 2016 of the Singapore International Arbitration Centre) with a copy to Ace.

15. Jazz Pro has asked that the arbitration be held in Maltova and that Maltova be considered the place of arbitration (laws of Maltova are identical to the laws of Singapore).

16.Jazz Pro has claimed the following reliefs;

a. An Award directing Ace Music (Private) Limited to pay Jazz Festival Productions (Private) Limited US$ 783,400/-

b. Interest;

c. Costs of arbitration;

d. Such other reliefs as to the Tribunal shall seem meet.

17. Ace has been advised that the place of arbitration is Fenwick and filed its

Response seeking the following reliefs;

a. Make order that the Tribunal lacks jurisdiction to hear the dispute;

b. In the event that the Tribunal exercises jurisdiction, an Award directing Jazz Festival Productions (Private) Limited to pay Ace Music (Private) Limited US$ 1,000,000/- as damages;

c. Interest;

d. Costs of arbitration;

e. Such other reliefs as to the Tribunal shall seem meet.

ANNEXURE 1

From: info@jazzpro.com

To: info@acemusic.com

Date: 05.01.2018 9:44am

Subject: Summer Episode

Dear Mr. Davis,

We, at Jazz Festival Productions (Pvt) Ltd are excited to announce “Summer Episode 2018” - the biggest annual jazz festival in all of Calvia. As we are sure that you are aware, with an attendance of over 10,000 jazz lovers from all over the world, Summer Episode is one of the most internationally renowned jazz festivals in the world.

Groovy Five has garnered international fame over the past few years for their stellar performances. We have the pleasure in inviting Groovy Five as the headlining band this year!

Please let us know whether Groovy Five is available to perform as the headlining band at the “Summer Episode 2018” on the 30th of June 2018.

Cheers,

Bella Ritzgerald

Chief Event Organiser,
Jazz Festival Productions (Pvt) Ltd.

ANNEXURE 2

From: info@acemusic.com

To: info@jazzpro.com

Date: 10.01.2018 9.44am

Subject: RE: Summer Episode

Hi Bella,

Great news! Groovy Five is available to perform on the 30th of June and are delighted to take the stage as the feature band at “Summer Episode 2018”.

We will send you our contract so that we can formalise things.

Looking forward to working with you.

Warm regards,

Niles Davis

Chief Executive Officer,
Ace Music (Private) Limited

ANNEXURE 3

Article 12: DISPUTES

12.1 This Agreement shall be governed by the laws of the Republic of Fenwick.

12.2 With respect to any and all disputes arising out of or relating to this Agreement, the Parties shall initially attempt in good faith to resolve all disputes amicably between themselves. If such negotiations fail, it is agreed by both parties that such

disputes shall be finally submitted to the Maltovian International Arbitration Centre (MIAC) for arbitration in Fenwick, which will be conducted in accordance with its Arbitration Rules.

NOTES

The question of quantum is beyond the scope of this moot problem and participants are advised not to discuss quantum related issues.

ANSWERS TO THE CLARIFICATIONS OF THE MOOT PROBLEM

Jurisdiction

1. At page 6, the problem states that the disputes shall be submitted to the MIAC for arbitration in Fenwick, which will be conducted in accordance with "its Arbitration Rules". Does this refer to Fenwick's rules or MIAC's rules, or is this an ambiguity to be resolved at trial?

   This refers to the MIAC rules of Arbitration which is identical to the Arbitration Rules 2016 of the Singapore International Arbitration Centre.

2. At paragraph 17 (page 3), "Ace has been advised that the place of arbitration ***is*** Fenwick". Does this imply that Ace's position is that the place of Arbitration ***should be*** in Fenwick, or is this advice mistaken?

   It is Ace's legal position that the place of arbitration is Fenwick.

3. Which country's laws will apply to the substantive part of the contract, Fenwick or Calvia?

   The laws of Fenwick will apply to the substantive part of the contract.

4. Are we to consider Fenwick and Calvia to be the same because they both have the exact same laws?

   Fenwick and Calvia are two separate countries and therefore not the same.

<u>Contract</u>

1. What are the contractual terms of the contract between Jazz Pro and Ace Music?

   - **The contract specifically names the band members of Groovy Five by name and undertakes that the said members of Groovy Five will participate at the 'Summer Episode 2018'.**
   - **The contract is silent on the subject of force majeure.**

2. What are the contractual terms of the contract between Groovy Five and Ace Music?

   The contractual terms are the same as above.

3. At paragraph 12 (page 2), were there any communications from Jazz Pro to Ace that Groovy 5 would not be performing/would be prevented from performing at the event? This might potentially affect arguments on repudiatory breach.

   No clarification needed.

4. Was the contract between Jazz Pro and Ace Ltd. terminated when Jazz Pro hired a new band? And if so, when?

   No clarification needed.

5. In Paragraph **12**, Page 2 & 3, the term '**extensive discussions**' has been used, and the failure of the same has been conveyed in the same paragraph. Since clause **12.2 of the Dispute Resolution Clause** (Annexure 3, Page 6) states that "…the Parties shall initially attempt in good faith to resolve all disputes **amicably between themselves**…", does this act of 'extensive discussion' amount to the fulfillment of this requirement, and the subsequent failure of the same?

   No clarification needed.

6. Did the contract between Jazz Pro and Groovy 5 stipulate the composition of the band that was to perform?

   Yes. The contract stipulates the band members by name.

7. Do we have estimates of how much Groovy 5 would have been paid to perform at the Grammy Awards? This might concern issues on damages.

Grammy performers are not paid.

8. Was Jimmi's Psychological Trauma sufficiently severe as to prevent his performance and does he have medical proof of this? This might concern issues on frustration.

   Jimmi Hayer's trauma was as severe as to receive psychological treatment after the accident.

9. Are there any international conventions relevant to cross border private contracts that the states of Fenwick and Calvia have ratified?

   There aren't any international conventions relevant to cross border private contracts that the two countries have ratified.

10. Who was supposed to bear the added expense of replacing the lead guitarist of the band? (Paragraph 10)

    No clarification needed.

Other

1. What happened to the advance payment of 50% paid by the Claimant to the Respondent?

   The advance payment has been included in the amount claim.

2. Was Mr. Hayer's, suspected narcotic use proved in a subsequent investigation?

   The investigation relating to suspected narcotic use is pending.

3. Was Mr. Hayer's injuries limited to psychological trauma? (Alt - What was the nature of Mr. Hayer's injuries?) Does "brutal accident" in Para 7 of the facts mean that Jimmi sustained serious physical injuries in addition to the psychological trauma?

   The physical injuries sustained were not so severe that it would have prevented Jimmi Hayer from performing.

4. Did Mr. Davis attempt to convince Mr. Hayer to play at 'Summer Episode 2018' subsequent to the accident?

   No clarification needed.

5. Can the Notice of Arbitration (referred to in Paragraph **14,** Page 3) sent to Ace Music, by Jazz Pro be **disclosed**? Was there **a reply** to this Notice of Arbitration by Ace Music?

   (The notice of arbitration and its reply, if any, will provide more lucidity on the issue of jurisdiction. 'Ace Music' contests the jurisdiction of the tribunal and thus, its reply to the notice of arbitration will expand on the challenges/issues raised by 'Ace Music.)

   The Notice and Response will not be disclosed as a part of the moot problem.

6. Did the parties agree on the Dispute resolution Clause?

   Yes, the parties did agree on the Dispute resolution Clause.

7. Are there any Pre-contractual negotiations on the drafting of the arbitration clause, specifically in relation to the place of arbitration?

   No, there weren't any Pre-contractual negotiations on the drafting of the arbitration clause.

8. Does the restriction on quantum apply to damages/ interest/ arbitration? (This is regarding whether quantum is not necessary throughout the problem or just for specific part of the relief? Secondly, Rule 20.2 c. of SIAC Rules mandate that relief must be sought with the amount of claims. Therefore, it would mean that we are not complying with this rule.)

   Questions relating to quantum are to be ignored completely in the moot.

9. What are the issues the parties have to address?

   No clarification needed.