

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF  
GUYANA

REGULAR JURISDICTION

**2017-HC-DEM-CIV-SOC-363**

BETWEEN:

VASIL HOMESHWAR PARMANAND trading  
under the name and style of ALL IN ONE SNACKS  
BEVERAGE DEPOT.

Claimant

-and-

1. LASCO MANUFACTURING LIMITED, a company duly incorporated and organised in accordance with the Laws of Jamaica with its registered office situated at lot 27 Red Hills Road, Kingston, Jamaica.
2. LASCO DISTRIBUTORS LIMITED, a company duly incorporated and organised in accordance with the Laws of Jamaica with its registered office situated at lot 27 Red Hills Road, Kingston, Jamaica.
3. ANSA McAL TRADING LIMITED, a company duly organised in accordance with the Laws of Guyana with its registered office situate at lot 60 Beterverwagting, East Coast Demerara, Guyana.

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Sanjeev Datadin for the Claimant

Mr. Nigel Hughes for the First and Second Named Defendants

Mr. Kamal Ramkarran for the Third Named Defendant

**Delivered October 14<sup>th</sup> 2019** [*via electronic mail*]

### DECISION

The Claimant's claim against the First Named Defendant [FND] is for damages for breach of contract.

The FND manufactures a line of products that include flavoured juices and waters under the brand name iCool.

The Claimant relies on a document dated October 30<sup>th</sup> 2015 [Exhibit "B"], which appointed the FND the sole agent and distributor of all of the iCool brand of products in Guyana, as the basis for the claim for damages for breach of contract against the FND.

The Claimant contends in his Statement of Claim that his appointment as sole agent and distributor has never been terminated by the FND, but despite that, the FND commenced supplying the Third Named Defendant [TND] with iCool water and cran-water; [paragraph 15 of the Statement of Claim].

The Claimant pleaded that the Second Named Defendant [SND] terminated this appointment, [his appointment as sole agent and distributor by the FND], by

notice in writing dated October 10<sup>th</sup> 2017; [paragraph 21 of the Statement of Claim]. The Claimant testified that Exhibit “FF” is that notice.

The Claimant contends in his statement of Claim that in October 2017 an agent of the SND, Mr. Paul Shoucair, informed him that the TND is the FND’s agent in Guyana; [paragraph 23 of the Statement of Claim].

The Claimant contends that these events amount to a breach of the contract by the FND appointing him sole agent and distributor of the iCool brand of products [Exhibit “B”].

The Claimant did not lead any evidence to show that the FND that the FND supplied any iCool products to the TND in 2017 or at all and in fact Counsel for the Claimant, Mr. Datadin, seems to have withdrawn from that position in his closing submissions.

Similarly, the Claimant did not lead any evidence to support his pleading that Mr. Paul Shoucair informed him that the TND was the FND’s agent in Guyana or that Mr. Shoucair at any time purported to speak for or represent the FND and again, Counsel for the Claimant, Mr. Datadin, seems to have withdrawn from that contention in his closing submissions.

Counsel for the Claimant, in his closing submissions has hinged his case with respect to this issue/ claim solely on the contention that the “contract” appointing the Claimant sole agent and distributor of iCool brand products between the

Claimant and the FND [Exhibit “B”] could not have been terminated by the SND as the Claimant alleges the SND purported to do by letter dated October 10<sup>th</sup> 2017 [Exhibit “FF”].

The Court finds as matter of uncomplicated and simple fact that Exhibit “FF” in no way addresses or attempts to address any relationship that was created between the Claimant and the FND through Exhibit “B” or otherwise.

Indeed, the Court finds as a matter of fact that, in any event the Claimant had relinquished the appointment bestowed upon him by the FND evidenced in Exhibit “B” since 2016.

By definition, to relinquish is to forsake, abandon, or give up or give over a right.

To state the obvious, for the Claimant to distribute the products in Guyana the products must be in Guyana.

It is clear from the evidence of the Claimant that at the time that he was dealing with the FND, products would only be shipped to Guyana when he placed an order with the FND.

He testified “*I last received containers from Lasco Manufacturers sometime in the first half of 2016.*”

The Claimant further testified that the FND never failed to deliver any product ordered.

This is conclusive evidence that the Claimant did not place any order for products with the FND since the first half of 2016 and having not placed any any orders with the FND for more than a year prior to the commencement of this High Court Action, the only logical inference to be drawn is that the Claimant had evinced a clear intention to cease dealing with the FND.

This conclusion is buttressed by the Claimant's evidence, that he, the Claimant, thereafter, placed orders for iCool products exclusively with the SND and was involved in continuous negotiations with the SND to secure distributorship of iCool products in Guyana.

In fact it is clear from his evidence that he voluntarily began dealing with the SND.

It is the Claimant's evidence that he expended large sums of monies to satisfy the requirements communicated to him by the SND to secure distributorship of iCool products in Guyana.

Surely, logically, the Claimant could not be negotiating for what he already has. believed that he was the sole agent and distributor of iCool products in Guyana, he would not be negotiating with the SND or any other entity to secure such status.

The Claimant testified that he was well aware that the SND was supplying the TND with iCool products as early as January 2017 and though he testified that he

wrote to the FND complaining of what he labelled a breach of the contract with him, he failed to produce such a correspondence.

The numerous written correspondence between the Claimant and the SND tendered by the Claimant leads to the inescapable conclusion that the Claimant elected to transact business with the SND with respect to obtaining iCool products for distribution in Guyana.

The fact that the Claimant was able to produce dozens of correspondence exchanged with the FND and the SND over the entire periods that he conducted business with them but could not produce the correspondence he testified he sent to the FND complaining of an alleged breach of contract, the Court finds that such a correspondence does not exist.

The Court also does not accept the Claimant's testimony that Mr. Paul Shoucair told him that he [Mr. Shoucair] represented both the FND and the SND and in fact this cannot even be implied by any of the numerous correspondence tendered into the evidence.

Based on the foregoing, the Court finds that by his actions, the Claimant, relinquished his appointment by the FND as the sole agent and distributor of the iCool brand in Guyana.

In the circumstances the claim against the FND for damages for breach of contract is dismissed.

The Claimant's claim against the Second Named Defendant [SND] is for damages for breach of contract.

The Claimant, neither through his evidence nor submissions by his Attorney have pointed to the contract that it is alleged that the SND has breached and in fact Counsel for the Claimant, Mr. Datadin, seems to have withdrawn from that position in his closing submissions.

In the circumstances the claim against the SND for damages for breach of contract is dismissed.

The Claimant also claims damages for interference of contract against the Second Named Defendant [SND].

The Claimant claims damages for interference of contract against the Third Named Defendant [TND].

Tortious interference is a common law tort claim that a Defendant intentionally convinced or caused a third party to breach its contract with the Claimant which resulted in damages to the Claimant.

The elements of the tort generally include the following:

- I. The existence of a valid contract between the Claimant and a third party.
- II. Knowledge of that contract by the Defendant.
- III. Intent of the Defendant to induce the third party to breach the contract with the Claimant.

IV. Lack of any justification for the Defendant to induce such a breach.

V. Damage to the Claimant caused by the breach.

The Claimant's claims against both the SND and the TND for tortious interference is based on the contention that at the time that the SND started supplying the TND with iCool products the Claimant had an existing "Agency Agreement" with the FND.

In those circumstances the Claimant alleges that the SND and TND interfered with the Claimant's contractual rights.

Based on the foregoing findings of facts and conclusions of law by the Court there was no valid contract in existence between the Claimant and the FND at any time that the FND supplied the TND with iCool products.

Notwithstanding this the Claimant has failed to demonstrate in any way how the SND or the TND induced the FND [the third party] to breach any contract it had with the Claimant.

In fact the Claimant has failed to establish that the FND breached a contract that it had with him.

In the circumstances the claims against the SND and the TND for damages for interference of contract are dismissed.

The Claimant's entire claim is dismissed with costs in the sum of \$1,000,000.00 to the First and Third Named Defendants **each** and in the sum of \$1,500,000.00 to the Second Named Defendant [in consideration of the SND's representative/ witness required journeys from Jamaica] in addition to all other costs heretofore awarded to the Defendants.

Further based on the Claimant's evidence with respect to the usual/ expected monthly earnings, the Court finds that there would be a loss of at least \$500,000.00 profit over the course of two weeks, the time that the injunction order obtained on October 30<sup>th</sup> 2017 was in place.

In the circumstances the Court awards the sum of \$500,000.00 to each Defendant as and for damages suffered as a result of the injunction order obtained on October 30<sup>th</sup> 2017.

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