

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2015/CLE/gen/00289

BETWEEN

H.I.S. CO., LTD.

Plaintiff

AND

EDWARD ROBIN DIZER

First Defendant

AND

H.I.S. INTERNATIONAL TOURS (CARIBBEAN) LTD.

Second Defendant

Before Hon. Mr Justice Ian Winder

Appearances: Audley Hanna Jr. for the Plaintiff

No appearance for the Defendants

29 March 2019

RULING

WINDER, J

This is a claim for breach of contract.

1. The action was brought by the plaintiff by Writ of Summons dated 11 March 2015.

The Statement of Claim sought the following relief:

- (i) a Declaration that the First Defendant is and was at all material times a trustee of 50% of all funds generated by and all assets of the Second Defendant, whether under a resulting trust or otherwise, for the benefit of the Plaintiff;
- (ii) the said sum of \$248,900.50;
- (iii) an Order requiring the First Defendant to deposit the sum of \$457,518.00 into an escrow account for a period, on terms agreed between the Plaintiff and the First Defendant, for the purpose of satisfying the contingent liabilities of the Second Defendant;
- (iv) an Order requiring the First Defendant to authorise the release of 50% of all sums standing to the credit of the account referenced at (iii) above to the Plaintiff upon the expiration of the said period of 2 years;
- (v) an Order that the First Defendant immediately take all steps to cease the operations of the Second Defendant;
- (vi) damages for breach of fiduciary duty;
- (vii) damages for breach of contract;
- (viii) damages for breach of trust;
- (ix) interest pursuant to the Civil Procedure (Award of Interest) Act Chapter 80 of the Revised Laws of the Commonwealth of The Bahamas from the date of judgment until payment;
- (x) costs; and
- (xi) such further or other relief as the Court may deem just.

AND THE PLAINTIFF CLAIMS, as against the Second Defendant:-

- (i) an accounting of assets;
- (ii) an injunction restraining the Second Defendant from continuing operations;
- (iii) costs; and
- (iv) such further or other relief as the Court may deem just.

2. The only witness for the plaintiff was Hideo Hatano who provided a witness statement dated 4 February 2019. The witness statement confirmed the particulars pleaded in the Statement of Claim. The Defendants filed a defence but have not participated in

the trial beyond the case management stage and they did not attend to defend the action at trial.

3. The basic facts, which I accept, are as follows:

- a) The First Defendant, ("Dizer"), was the sole director of the Second Defendant ("H.I.S.") and, along with the plaintiff, a beneficial owner of H.I.S.
- b) H.I.S. was, at all material times, a company duly incorporated pursuant to the laws of the Commonwealth of The Bahamas. H.I.S. was, at all material times, an entity formed and utilised by the plaintiff and Dizer with the intended purpose of carrying on travel related business.
- c) It was understood between the plaintiff and Dizer that they would share equally in the profits of the business venture and that they would, at all times, act in good faith and in each other's best interests and in the best interests of the business.
- d) H.I.S. actively operated from 2004 to in or about 2011, when it was agreed between the plaintiff and Dizer that H.I.S. should discontinue operations. In this regard, the plaintiff and Dizer agreed that, subsequent to H.I.S. ceasing business, its remaining assets would be distributed equally between its two beneficial owners; specifically, the plaintiff and Dizer (the "Agreement").
- e) Notwithstanding the Agreement, as at July 2014, the distribution of assets had not taken place. However, the terms of the distribution were finally reached in July, 2014, with the sum of \$955,319.00 being agreed between the Plaintiff and Dizer as the basis of the distribution. 50% of this sum was to be distributed immediately and the remaining 50% was to be held in an escrow account for 2 years to satisfy any contingent liabilities.
- f) The terms of the Agreement were set out within an unsigned memorandum of understanding.
- g) Dizer later claimed that the H.I.S.'s contingent liabilities may have been greater than that originally contemplated but, despite the express requests, Dizer failed to provide any information or financials to support the claim.

4. I should indicate here that I accept the evidence of Hideo Hatano, the only witness to testify, as truthful. On the evidence, which I accept, it is clear that while the parties may not have reached a determination as to the precise methodology of distribution, it was common ground that the Dizer was required to:
- i.) pay the debts of H.I.S.;
 - ii.) discontinue the use of the trade name; and
 - iii.) pay the plaintiff with a sum reflective of its interest in the venture.
5. I find that Dizer has failed entirely to honour any of these contractual obligations. There is no evidence to contradict the amount claimed by the plaintiff which is supported by the evidence. I am satisfied, on a balance of probabilities that the sum claimed is due and owing. Dizer cannot ignore the plaintiff and make use of the assets which he clearly holds on trust, for his own benefit and/or without accounting to the plaintiff. I find therefore that there has been a breach of the contract between the parties and I give judgment for the plaintiff as prayed for in the Statement of Claim with costs to be taxed if not agreed.

Dated this 23rd day of May AD 2019


Ian Winder

Justice