

ROYAL COURT
(Samedi Division) 218.

21st November, 1996

Before: The Deputy Bailiff, Jurat P.J. de Veulle and
 Jurat A.P. Querée

Between	George Cameron Mcallister	Plai
And	Cariboner Hotels Limited	Defe

Advocate R.G. Morris for the Plaintiff
 Advocate R.G. Day for the Defendant

JUDGMENT

THE DEPUTY BAILIFF: Mr. George Cameron McAllister is a pianist of some standing. His great uncle played the classical violin. From him he learned to play the piano. For 14 years in the 1960's and 70's he was a piano player with The Fortunes and the Rocking Berries groups. He has gold and silver discs from those days and with those groups he made world tours. He eventually settled in Jersey and played the piano at the Hotel Revere for seven and a half years. For each session at the Hotel Revere where he was described by the owner Mr. Paul Doran as an "excellent pianist", he was paid £65. In or about April, 1992, Mr. McAllister met Mr. John Rice, a director of the company owning the Hotel Kalamunda. He and Mr. Rice had become good friends. Mr. McAllister had a good flat with a garden at St. Brelade for which he paid £40 per week. He lived there with his fiancée, Beverley.

We have a conflict of evidence which we can dispose of immediately. Mr. McAllister said that the upright piano was out of tune and totally inadequate for a musician of his standing. His pleadings say that "in order to carry out his duties to a proper standard", he supplied his own piano. That is, in our view, a piece of exaggeration. What Mr. McAllister brought to the Hotel Kalamunda was a keyboard. Mr. Peter Rice, who is the son of Mr. John Rice, referred to Mr. McAllister as playing the organ - which he preferred to the piano. This was a Technics XR3 100 keyboard. It was a piece of equipment that Mr. Mike Scott, a singer employed for a time by the defendant company, felt that a member of his band could carry on his own. Mr. Scott said that asking for payment for use of this instrument was "like a taxi driver asking for his fare and then for petrol money"! Both Mr. Scott and Mr. Rice (father and son) had not had complaints from anyone about the

upright piano. It has been used by other artists without problem. We have to say that, on this point, we have not had any argument in law or in fact that lends support to the fact that it had been agreed to pay rental for the use of the piano. £100 per week added to the amount per session that Mr. McAllister was claiming would have put his charge out rate beyond the contemplation of the hotel. Two witnesses put it in two different ways; Mr. David McEwan, a retired hotelier, described the claim for the hire of the keyboard as ludicrous. Mr. John Rice likened the situation to one in which the Hotel Kalamunda was not able to pay its artists what the Carnegie Hall could pay its artists. We understand the simile. Indeed, Mr. Rice freely admitted that the hotel's claim that Mr. McAllister and his fiancée Beverley were provided accommodation at £280 per week was just one silly claim to match another.

Accordingly, we dismiss the claim for the hire of the keyboard. If the hire of the keyboard was "standard practice", then that had to be proved. It was not.

The claim in contract is divided into two parts.

The first contract Mr. Rice described as the "most favoured nation" contract.

It is clear from what Mr. McAllister told us that when his appointment started he and Mr. Rice were very good friends.

Mr. Rice introduced him to the Variety Club where he became president of their Monday Club.

Mr McAllister (or his fiancée - there was some prevarication on this point) wanted to buy a house in France. Apparently, he was given some assistance by Mr. Jacques Baguet of Boutins Travel Agency, who is Mr. Rice's brother-in-law and has many connections in the area. The hotel loaned Mr. McAllister £1,000 interest free. He also had free food and drink. On this latter point, we heard evidence of Mr. McAllister's drinking habits. A fellow entertainer, Mr. Michael Scott, referred to him as "Mr. Martell", but the bar receipts were lost. This is not surprising if, as we were told, the then manager stole much of the contents of the safe. Miss Lorna Frow, the head receptionist, had no idea why the bar chits were missing.

Certainly there were puzzling anomalies. We saw two occasions in early 1993 where Mr. Scott was paid £75 and £60. He was told in January, 1993 that his services were no longer required because he had become too expensive. We have no reason to disbelieve Mr. Scott when he says that on no occasion did he ever receive more than £50 for a session.

It little behoves the plaintiff to produce a set of figures in his pleadings which is different from the working copy that he produced to us at trial.

5 The figures in the pleadings for the first contract amount to
£2,470. The working draft from which they were copied amount to
£2,230. What has happened is that where on the working draft Mr.
10 McAllister in his own handwriting has on certain days (Sundays and
Wednesdays) charged £50 in the agreed bundle each day is now
charged at £65. It little behoves the plaintiff in the
15 circumstances to plead "it was agreed between the parties that the
defendant would pay the plaintiff the sum of £65 for each night
worked by the plaintiff or such other sum as might be agreed
between the parties in respect of any particular performance." In
any event, there are 38 sessions noted between April, 1992 and
September 1992 in the working sheets and yet 44 are claimed in the
Order of Justice.

20 The matter is further complicated when, at the end of the
first contract a further sum of £480 was paid to Mr. McAllister.
That is an unusual figure. On his own admission, Mr. McAllister
was only working on Wednesdays, Saturdays and Sundays. Mr. Rice
25 says that the discussion which resulted in the payment of the £480
was amicable. Mr. Rice said he saw the diary, but nobody had any
better documentation. The diary sheets that Mr. McAllister alleges
that he showed to Mr. Rice in September could not have been the
same as in the bundle for there is an amount of £150 which was a
30 bonus paid not in cash, but by cheque (we heard the head
receptionist on this matter) on 11th January, 1993. That £150 was
given to Mr. McAllister by Mr. Rice as an *ex gratia* payment for
having saved him from employing extra artists over the Christmas
period.

35 If the plaintiff was so dissatisfied, why did he enter
voluntarily into the second contract, which Mr. Rice described as
the "sing for your supper" contract? There is not a shred of
corroborative evidence that he took exception to any part of his
employment contract. There were clearly matters of concern, but
40 the only accounts submitted for the second contract are a set of
figures handwritten by Mr. McAllister's solicitor. We have no idea
of Mr. McAllister's drinking habits, but clearly from the evidence
we heard, he was not averse to alcohol. Because the bar chits have
vanished, we have no idea how much he drank. Certainly, that was
met by the hotel, as was his food and his lodgings.

45 We have much better detail on the first contract than on the
second contract. The calculations on the "most favoured nation"
contract (put to us at trial and not disclosed until then)
concludes in this way (after the sessions have been calculated up
to Sunday 27th September 1992):

50 *"Moved into flat Monday 2nd September. Work Sat and Sun for
Rent until flat is ready (arrange rent with John). TV £75.00.*

*Balance £802.00
Deduct all bills?
New balance?*

Receive balance and pay £600
French mortgage".

5 It seemed sensible for Mr. McAllister to move into the hotel rather than to have to commute, often in the early hours of the morning, from the east to the west of the island.

10 He was to have occupied a flat adjoining Mr. Rice's house, but this eventually fell through because Mr. Rice's daughter and future husband took possession of it.

15 Mr. Rice described the accommodation provided for Mr. McAllister as a treble room en suite overlooking the golf course with a further large double room adjoining en suite. Mr. Peter Rice without hesitation described the rooms as the best in the hotel.

20 Mr. McAllister attempted to derogate the accommodation. He said he had no privacy, people kept coming in with pass keys and chairs were stored there. We believe that his accommodation was good.

25 It is clear to us that Mr. McAllister was not appointed as Entertainments Manager in April, 1992 as pleaded. That title came into being (as is shown in a "Jersey Evening Post" article on 7th December, 1992) as part of the "second contract". That title really implied little because little changed. It is quite wrong for the plaintiff to state that from April, 1992, Mr. McAllister would "in the course of his duties be responsible for organizing
30 all cabaret and other entertainment at the Hotel Kalamunda and that he would, in addition, himself perform as a pianist at the Hotel Kalamunda when required."

35 The Kalamunda Hotel did not have an entertainments licence. It held 2nd and 3rd category licenses and the Bailiff's permit.

40 The particulars in the Order of Justice claim £100 for a session with a party from the JMT. We saw that that sum was paid in the week ending 20th December, 1992. In his working notes on the agreed bundle, Mr. McAllister has shown an outstanding balance of £840. The balance on his working note (from which he says he compiled these figures) is £802. Even that figure can be reduced (as we have shown). The claim of £5,720 is, in our view,
45 unsustainable and, in the absence of accounts, or working schedules that can be relied upon, we find it impossible to substantiate the plaintiff's claim in any way at all. The action is accordingly dismissed.

No Authorities