

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**

CASE NO: 06/23130

CASE NO: 06/23129

In the matter between:

DAVID FELDMAN NO

Plaintiff

and

EMI MUSIC PUBLISHING SA (PTY) LIMITED
Defendant

AND

In the matter between:

DAVID FELDMAN NO

Plaintiff

and

EMI MUSIC SA (PTY) LIMITED

Defendant

J U D G M E N T

JAJBHAY, J:**INTRODUCTION**

[1] The above matters have been consolidated in the interests of convenience and expediency. The applications come before me as exceptions to the plaintiff's particulars of claim brought in terms of Rule 23(1) of the Uniform Rules of Court. The plaintiff is cited in his capacity as the executor of the Estate Late Brenda Fassie.

[2] The first three exceptions taken in both matters by the excipients are, save for certain minor differences materially the same.

[3] In the action against EMI Music SA (Pty) Limited, under Case No. 06/23130 (*"the EMI Music matter"*), the defendant took a fourth exception. This revolved around the prescription of the plaintiff's claim. This fourth exception was not pursued by the defendant. I was informed that a plea of

prescription may be pursued as a special plea, should the matter proceed.

THE PLAINTIFF'S CLAIMS

[4] The plaintiff claims payment from the defendants for damages resulting from the defendants' alleged infringement of the plaintiff's copyright. The plaintiff further claims a statement and debatement of account from the defendant arising out of certain artist agreements entered into between the plaintiff and the defendant.

COPYRIGHT LAW

[5] The law regulating music in South Africa, as in many other jurisdictions, is largely regulated through copyright law, which in South Africa is a creature of statute: The Copyright Act 98 of 1978 "(the Copyright Act)". Works that are eligible for copyright are set out in section 2(1) of the Copyright Act. These include literary works, musical works, artistic works, cinematography films, sound recordings, broadcasts, programme carrying signals, published editions and computer programmes. These works have an impact on the ultimate musical product. In terms of section 6 of the Copyright Act, copyright in a literary or musical work vests in the exclusive right to do or authorise the doing of any of the following acts in the Republic: Reproducing the work in

any manner or form; publishing the work if it was not published before; performing the work in public; broadcasting the work; causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster, and making an adaptation of the work.

[6] Copyright in literary and musical works lasts for the lifetime of the author and a period of 50 years after the death of the author (section 3(2)(a) of the Copyright Act). Section 21(1) of the Copyright Act provides for several ways through which copyright in a protected work may be disposed of: assignment, licensing, transmission by testamentary disposition and operation of law as movable property. From the viewpoint of exploitation of the rights, assignment and licensing are the most commonly used methods. By assignment, the author completely divests himself/herself of one or more of their rights under the copyright, so that the assignee no longer has any claim to these rights, nor can he/she perform any of the acts covered by the particular rights without the authority of the assignee. Through licensing of these rights on the other hand, the copyright owner retains ownership of the right and merely allows the licensee to exercise the right without fear of being sued for infringement thereof. The licence may be exclusive or non-exclusive, and the licensee has to pay the owner royalties for the use of the rights.

[7] Copyright is in fact a negative right, in that it is a right of prohibition

enforceable against others from performing infringing acts in relation to the work. Therefore, the ability to enforce a copyright through the Court is the foundation of such copyright. In terms of section 24(1) of the Copyright Act, the following remedies are provided for in instances of infringement: an interdict restraining the carrying out of the infringing act; damages, or payment of a reasonable royalty; and delivery-up of the infringing copies and plates used or intended to be used for making infringing copies. Section 24(1) of the copyright Act deals with the action by the owner of the copyright. This subsection, provides that infringements of copyright shall be actionable at the suit of the owner of the copyright.

THE FIRST EXCEPTION

[8] The first exception is identical in both actions. It arises as a result of the fact that the plaintiff sues, in both matters, as “*joint owner of the copyright in the musical works listed on the schedule annexed* [to the particulars of claim] *marked ‘A’*”.

[9] The allegation of joint ownership of copyright is relied upon by the plaintiff on the following. The listing of the Late Brenda Fassie as co-author and/or co-composer of the various works listed in Annexure “A” to the particulars of claim. The definition of “*works of joint authorship*” (a work produced by the collaboration of two or more authors in which the contribution

of each author is not separable from the contribution of the other author or authors) is contained in Section 1 of the Copyright Act. The provisions of Section 21(1)(a) of the Copyright Act, states the following:

“Subject to the provisions of this section, the ownership of any copyright conferred by Sections 3 or 4 on any work shall vest in the author or, in the case of a work of joint authorship, in the co-authors of the work.” [Emphasis added]

[10] In the circumstances, the plaintiff is to be regarded, for the purposes of adjudicating these exceptions, as the joint owner of copyright in the works listed in Annexure “A” to the particulars of claim on the basis of which copyright the claims are brought.

[11] The plaintiff sues alone in these proceedings. There is no allegation of any cession of rights from any of the other co-owners of the copyright in question and none of the co-owners have been joined as plaintiffs.

[12] It is the defendant’s contention that the absence of such cession or joinder, founds a proper exception to the particulars of claim on the basis that the plaintiff has failed to join third parties which he was obliged to join, and/or the plaintiff lacks the requisite *locus standi* to pursue the actions instituted.

[13] It has been determined by these Courts that in relevant instances joint owners of property must act jointly – none may act alone. In *Smith v Conelect* 1987 (3) SA 689 (W), at 690H-I, Van Niekerk J said the following:

“See also Herbstein & Van Winsen ‘The Civil Practice of the Superior Courts in South Africa’ 3rd Ed at 167, where the learned authors, referring to the Amalgamated Engineering case (supra), point out that the only cases in which a defendant has been allowed to demand a joinder of a third party as of right are those where the third party has a joint financial or proprietary interest such as joint owners, joint contractors and partners.”

At 691E-F, Van Niekerk J, went on to say the following:

“See Rahim v Mahomed 1955 (3) SA 144 (D) at 147B-E where Henochsberg A.J., in considering the necessity of joining co-owners, joint contractors and joint partners litigating, held that:

‘The rule is that in such cases the other co-owner, joint contractor, partner or interested party is a necessary party and should be joined in the proceedings, unless the Court is satisfied that he has waived his right to be joined.’

The excipient, it was alleged, faces severe prejudice if OEN is not joined since

- a) any judgment granted against the plaintiff is not res judicata against OEN; and*
- (b) the excipient cannot bring any counterclaim that it may have against the plaintiff and OEN. ”*

Similarly, in *Land & Agricultural Bank of South Africa v Parker & Others* 2005 (2) SA 77 (SCA), Cameron JA (on behalf of a unanimous Supreme Court of Appeal) at paragraph 15, said the following:

“For the Parkers to purport to bind the Trust estate after the son’s appointment, without (according to his evidence) consulting him,

constituted a further usurpation and a further breach of their obligations under the trust deed. It is a fundamental rule of trust law, which this court recently restated in Nieuwoudt & Another NNO v Vrystaat Mielies (Edms) Beperk 2004 (3) SA 486 SCA, at para 16, that in the absence of contrary provisions in the trust deed the trustees must act jointly if the trust estate is to be bound by their acts. The rule derives from the nature of the trustees' joint ownership of the trust property. Since co-owners must act jointly, trustees must also act jointly." [Emphasis added]

[14] In the above judgment, Cameron JA cited, with approval, the case of *Coetzee v Peet Smith Trust en Andere* 2003 (5) SA 674 (T) where, at 678I-679A, Van Dijkhorst, J said the following:

*"Mede-eienaars het gesamentlike eiendomsreg, gebruiksreg en beheersreg oor die mede-eiendom. Daar geld nie 'n meerderheidstem nie. Beslissinge moet gesamentlik en eenparig geneem word om geldig te wees in soverre meer as die **pro rata** belang van die afsonderlike mede-eienaar betrokke is. Vergelyk Warmelo : 'Die Geskiedkundige Ontwikkeling van die Mede-eiendom in die Romeinse en Romeins-Hollandse Reg' (1951) 14 THRHR op 256-63, 266-8."*

[15] Consequently, on the authority of the Supreme Court of Appeal a joint owner must join his co-owners as co-plaintiffs in any action instituted to enforce the joint property rights; and, concomitantly, such joint owner lacks the *locus standi* to sue independently of his co-owners.

[16] In *Collin v Toffie* 1944 AD 456 (A), it was settled that objections of non-joinder may be raised by exception, cf *Smith v Conelect* above at 692C-G.

[17] In my view, the plaintiff has failed to join his co-owners as co-plaintiffs,

and he therefore lacks the *locus standi* to institute these actions. The actions accordingly fall to be dismissed on the strength of the first exception.

THE PLAINTIFF'S CONTENTIONS

[18] Various contentions were addressed on the plaintiff's behalf, in response to the first exception.

[19] It was contended that the exception taken by the defendant related to *locus standi* only, and not to non-joinder. Consequently, it was argued, the exception could not be upheld on the strength of the authorities relating to a joint owner's obligation to join his co-owners to the litigation. Although non-joinder and *locus standi* are not always inextricably connected, in this instance they are. The plaintiff lacks the *locus standi* to institute these actions because he has failed to join parties which he was obliged to join. In the circumstances, the complaint relating to *locus standi* is the same complaint as that related to non-joinder – they are different sides of the same coin.

[20] The plaintiff's complaint was not (nor could it conceivably be) that the phrase "*non-joinder*" is missing from the exception. It is trite that exceptions, like all pleadings, are made for the courts, and not the courts for the pleadings. The question to be assessed is whether the substance of the first exception properly identifies the real cause of complaint so that this may be

dealt with. In this regard, the exception is explicit. The complaint is plainly made, in as many words, that the joint ownership, in the absence of any allegation of cession of rights, prohibits the plaintiff from suing “*on his own*”. In the circumstances, the plaintiff could have been under no illusion as to the nature of the substantive complaint. That the label of “*locus standi*” was used, rather than the label of “*non-joinder*”, is a matter of no substance. As explained above, in this instance, *locus standi* and non-joinder are different sides of the same coin.

[21] The cases upon which the plaintiff relies for the contention that the exception of non-joinder may only be advanced if it is expressly taken, do not assist the plaintiff. In *Collin v Toffie (supra)*, and in the case of *Molteno Bros v South African Railways* 1936 AD 408, at 417, the courts were concerned with an attempt to argue an exception of non-joinder in the context of a practice then engaged in, where exceptions were taken by documents merely alleging that the particulars were “*vague and embarrassing*”, without further explanation. In this regard, in the *Molteno* case (*supra*) at 417, Wessels CJ said: “*We think that it is high time that the practise of simply excepting to a declaration that it is vague, embarrassing and bad in law be discontinued in the courts of South Africa and that the exact grounds of complaint be briefly stated by the excipient considers that the declaration is vague, embarrassing and bad in law.*” Here the defendant has set out the substance of its complaint with sufficient clarity.

[22] The plaintiff's next submission was to the effect that authors such as Dean, "*Handbook of South African Copyright Law*", LAWSA and others are of the view that a co-owner may sue alone, without joining his other co-owners. This notion flies in the face of the explicit and contrary approach adopted by Cameron JA in the *Land & Agricultural Bank of South Africa v Parker* matter (*supra*). Dean explains in his seminal work that "... *from a procedural point of view, it would be desirable for all co-owners of the copyright to be parties to the proceedings as the co-owners may have an interest in certain of the remedies, for instance, the payment of reasonable royalty*".

[23] Two additional cases were cited on behalf of the plaintiff in support of the contention that co-owners may sue alone. Neither of these cases lends support for that contention: In *Glen v Bickel* 1928 WLD 186, the court was very careful to distinguish joint contractual creditors from joint and several contractual creditors – the latter being permitted to sue alone and the former not. At page 191 of his judgment, Greenberg J said the following:

"It seems to me therefore that the answer to the question under consideration depends on whether the contract set out in the particulars creates one indivisible cause of action in favour of the respondent and Van Niekerk jointly, or whether each of them can sue for his pro rata share. ... In Jacobson v Norton (2M.218, at p 223) the court held that if a promise is made to two persons jointly, each of them is entitled without the concurrence of the other to sue in his own name for the share of the debt due to him. ... These authorities therefore support the view that, in the absence of anything to the contrary in the contract between appellant and respondent and Van

Niekerk, the two last mentioned would each have a right of action, independently of the other for his pro rata share of the monies payable under the contract. [Emphasis added]

Similarly, in *Cohen v Lewis* 1939 TPD 49, at 60, Millin J, set out:

“But Mr. Roper says, and this is his next point, that this is not a bond the intention of which is that one of the mortgagees may sue for his share of the indebtedness. He says that they should both be before the court. I cannot find anything in this bond to take it out of the ordinary rule that if an obligation is contracted to two persons jointly, each of them is entitled without the concurrence of the other to sue in his own name for the share of the debt due to him.” [Emphasis added]

[24] Neither of these authorities deal with questions of co-ownership and undivided shares in property. Instead, they deal only with instances where contractual obligations are owed, *pro rata*, to two different parties and is authority only for the proposition that in those circumstances, the joint contractual creditors may sue independently of one another for their *pro rata* share of the contractual obligation.

[25] Similarly, I do not believe that Dean, in “*Handbook of South African Copyright Law*”, at p 1-30A, offers the support for which the plaintiff contends.

At the end of footnote 12 the learned author cites the following:

“In a British case Robin Ray v Classic FM PLC [1998] FSR 62 the existence of a veto right on the part of an individual co-owner of copyright, and the concomitant inability on the part of another co-owner of the copyright to exploit the work without the authority of his co-

owner, were reaffirmed. ”

In the circumstances, these authorities offer no support for the plaintiff's resistance to the first exception.

[26] It was also contended on behalf of the plaintiff that the requirements of the definition of “*Works of Joint Authorship*” in Section 1 of the Copyright Act, would not be satisfied, and consequently no joint ownership of copyright would vest, where the contributions of the various parties was capable of being differentiated. In this regard, the example of one person composing the music, and a second person writing the lyrics, was offered. This analogy is not apposite. In both the particulars of claim and in Annexure “A” thereto, the Late Brenda Fassie is identified as the joint author and the joint composer in respect of the works in question. On these particulars, the contribution of the various parties is consequently indistinguishable and inseparable from the contribution of other co-authors and composers. In the case of works made through a collaboration of two or more ‘authors’, where the contribution of each author is not distinct from that of the other authors, then the work is one of “joint authorship”; and all of the authors jointly own the copyright. This means that, where the finished work does not exhibit distinct works from separate authors, but is seen or experienced as a whole piece, then a work of ‘joint authorship’ would have been made. For example the works of Gilbert and George, Boyd and Evans, Lennon and Mc Cartney, or Gilbert and Sullivan.

THE SECOND EXCEPTION

[27] The second exception relates to the fact that the particulars of claim do not disclose sufficient particularity in relation to the alleged infringements of copyright, to enable the defendant to plead properly thereto.

[28] It must be noted in this regard that, in the EMI Music matter, this was listed as the “*second ground*” in the exception, while in the EMI Music Publishing matter, this was listed as the “*third ground*” of exception.

[29] For the sake of convenience, this exception, which is the same in substance in both matters, will be referred to under this head – namely as the “*second exception*”.

[30] Copyright is a technical subject and the claimant is obliged to specify in its pleadings at least in what manner the separate infringements of the copyright are allegedly perpetrated. In matters such as the present, Courts should satisfy themselves that a proper case has been pleaded, more so if the subject is technical. In paragraph 4 of the particulars of claim in both matters, the various instances of alleged infringement of copyright are set out.

[31] In the particulars of claim in the EMI Music Publishing matter, the plaintiff formulates the action as follows:

- “4. *From and subsequent to 1980, the defendant continuously, until the present time, without the licence of the plaintiff or any of the*

persons referred to in paragraph 3.1.1 above, and whilst the exclusive right to do so vested in the plaintiff and the said persons :

- 4.1 reproduced the works;*
- 4.2 published the works;*
- 4.3 made an adaptation of the works;*
- 4.4 purported to grant licences to third parties to reproduce, publish and make adaptations of the works. ”*

[32] No detail is provided to the defendant as to when, in what manner, and in respect of which individual works, each of the separate infringements of copyright are alleged to have been perpetrated. The defendant is simply left to face the allegation that it has breached copyright in every single respect alleged, in respect of every single work on the annexure, continuously (i.e. 24 hours a day), over a 27 year period. To my mind this type of bold allegations in matters such as the present does not allow for the coherent formulation of the cause of action.

[33] In the result, the only response which the defendant could properly furnish to such an allegation, is a bald denial. This in no way advances the isolation of issues in the dispute between the parties, nor in any way enables the defendant (or the Court) to prepare for trial efficiently.

[34] In the circumstances, the defendant is unable to determine the basis and particular actions for which it is alleged to have received the royalties

alleged in paragraph 7 of the particulars. The plaintiff, in his turn, expressly disavows any knowledge of what such royalties are. This is precisely the sort of vagueness which leads to embarrassment, which causes prejudice, to which the various well-known authorities refer. See, for example, *Traub v South African Reserve Bank* 1992 (3) SA 208 (T). It is no answer for the plaintiff to say that the defendant is nevertheless capable of producing an unexcipable plea in response to these allegations. See, *Levitan v Newhaven Holiday Enterprises CC* 1991 (2) SA 297 (C), at 298G-H; and *Traub v South African Reserve Bank & Ano* 1992 (3) SA 208 (T), at 211B-D.

[35] In any event, as stated in Erasmus : *Superior Court Practice*, at p B1-155:

“The plaintiff cannot, in answering to the exception, rely on the fact that, apart from the allegations in the summons, the defendant of his or her own knowledge knows what case he or she is required to meet. In the majority of cases the defendant does know, yet this does not disentitle him or her to except successfully where the plaintiff’s case is not conveyed to him or her by the summons with reasonable distinctness. It must be borne in mind that the summons is for the information of the Court as well as of the plaintiff.” See *Cillier v Van Biljon* 1925 OPD 4 at 9; *Boys v Piderit* 1925 EDL 23, at 24 and 25.

[36] Lastly, it was contended on behalf of the plaintiff that he does not need to know or allege the details of these infringements, since the plaintiff has relied on the provisions of section 24(1B) of the Copyright Act in praying for an enquiry which, it is suggested, will yield all of the required details. This

assertion is misplaced. Section 24(1B) of the Copyright Act contemplates and permits an enquiry into the quantum of damages only, and not into the existence of an act of infringement. Proof of infringement of copyright, in respect of which the plaintiff bears the *onus*, is a pre-requisite to any entitlement to invoke the enquiry provisions of section 24(1B). It is at the level of proof of infringement that the plaintiff's particulars fail. Consequently, the provisions of section 24(1B) offer no assistance to the plaintiff against this second exception.

[37] In the circumstances, I believe that the second exception ought to be upheld as well.

THE THIRD EXCEPTION

[38] This exception was framed as the "*third ground*" in the EMI Music matter, and as the "*second ground*" in the EMI Music Publishing matter. For the sake of convenience, both of these exceptions will be dealt with as the "*third exception*". However, there are certain differences between the two exceptions which arise in the two actions, and they fall to be addressed separately.

[39] THE EMI MUSIC PUBLISHING MATTER

[40] In this matter, paragraphs 4 to 12 of the particulars of claim seek to establish a claim based on infringement of copyright vesting in, *inter alia*, the plaintiff. Thereafter, in paragraph 13 of the particulars of claim, a second claim is sought to be established in which the deceased and the defendant are said to have entered into a written agreement, the effect of which was to “*assign and make-over to the defendant all of [the deceased’s] copyright in and to the aforesaid works*”. Although the first and second claims are stated to be in the alternative, they are premised upon factual allegations which are mutually contradictory and inconsistent with one another. The first claim is based on copyright vesting in the plaintiff; and the second claim alleges that such copyright vests in the defendant. These are not alternative claims in which different legal conclusions are sought to be advanced on the basis of consistent facts. These are the sort of allegations which are inconsistent with the principle stated in *Levitan v Newhaven Holiday Enterprises CC (supra)* at p 298H ff as follows:

“While it could happen that the only possible response to an embarrassing declaration would be a plea which itself would be embarrassing, I venture to think that a defendant’s problem would sooner be inability to foresee how the plaintiff will play his hand at the trial and what must be done to meet it. Prejudice to a litigant faced with an embarrassing pleading must ultimately lie in an inability properly to prepare to meet his opponent’s case. Embarrassment may, as in this case, also occur where, although the plea itself might be unobjectionable, the admission of allegations in the plaintiff’s particulars of claim or declaration destroy the plaintiff’s cause of action. A plaintiff’s particulars of claim or declaration must be framed in such a way that an admission by the defendant of the crucial allegations in it contributes to the success of the plaintiff’s claim, not to its failure.” See also *Traub v South African Reserve Bank & Another (supra)* at

211C-E.

[4 1] In the circumstances, plaintiff's particulars of claim in this matter are vague and embarrassing in a way which causes prejudice to the defendant, more particularly in that the defendant is unable to know whether to come to Court to meet a case based on ownership of copyright vesting in the plaintiff, or to meet a case based on ownership of copyright vesting in the defendant, and a consequent claim for royalties and a statement and debatement of account. These two claims are mutually destructive of one another and cannot be sensibly gainsaid.

[42] THE EMI MUSIC MATTER

The substance and legal propositions upon which this complaint is based, are the same as those in relation to the EMI Music Publishing matter. The difference which arises, relates to the nature of the conflict between the first and second claims as pleaded in this matter. In the first claim, in paragraphs 4 to 12, the defendant is alleged to have breached the plaintiff's copyright in various respects set out more particularly in paragraph 4 of the particulars of claim. These include allegedly unauthorized: reproduction of the works; publication of the works; adaptation of the works; and grant of a licence to third parties to do the aforesaid things.

[4 3] Claim 2, dealt with in paragraph 13 of the particulars of claim and following, is not stated to be an alternative claim. Despite this, it commences with an allegation that, between 1993 and 2003, the deceased and the defendant entered into various agreements pursuant to which, *inter alia*,

“The defendant would be the sole, exclusive and perpetual owner, from inception, throughout the territory of all recordings embodying the artist’s performances which are recorded during the terms of this agreement.”

[4 4] It is then alleged that such ownership would entitle the defendant to, *inter alia*,

“The exclusive and perpetual right throughout the territories to release, manufacture, advertise, sell, lease, licence, synchronise with any medium or otherwise use or dispose of the masters, video masters and records and videos manufactured from or embodying all or any part of the contents of the masters, video masters, ...”

“The right to release records and videos manufactured from the masters and video masters under the name of EMI [the defendant].”

“The right to sell and exploit records and videos manufactured from the videos and video masters.” and

“The right to authorise others to publicly perform and broadcast records released in terms of this agreement.”

[45] The acts complained of in paragraph 4 of the particulars of claim as infringements of copyright, are substantially indistinguishable from the acts purportedly expressly authorised by agreement, as detailed in paragraph 13.3 of the particulars.

[46] It was submitted on behalf of the plaintiff that the two claims are different, in that the first relates to breach of copyright and the second to

“*performance rights*” which, it is stated, are different in substance to those constituting copyright. This may be so, but the particulars of claim do not make that sufficiently clear and, on their face, do not distinguish adequately between the acts of infringement complained of in paragraph 4 and the rights allegedly afforded to the defendant by agreement, as detailed in paragraph 13.3. In the circumstances, the defendant is once again faced with mutually incompatible and contradictory factual allegations, in response to which it is unable to prepare properly for the trial or anticipate the case which it is called upon to meet. The legal propositions in relation to the EMI Music Publishing matter as detailed above, are equally apposite here.

[47] In these circumstances, I believe that the third exception should be upheld in both actions.

COSTS

[48] The defendant seeks an order that costs are to be paid *de bonis propriis* by the plaintiff. The reason for this assertion is as follows. The plaintiff has fiduciary obligations towards the beneficiaries of the estate he administers. He has at the same time, seen fit to engage the services of his own firm of attorneys to act on behalf of the estate, and at the estate’s expense, in this litigation. This places the plaintiff in an unacceptable position of conflict, which conflict should not be allowed to adhere to the detriment of the estate and its beneficiaries. In the circumstances, the defendants contended that insofar as the litigation results in any adverse costs for the estate, these adverse costs should be borne by the plaintiff personally. A letter to this effect was written by the defendant’s attorneys to the plaintiff, to which no response had been received.

[49] In my view, the act complained of, does not for the purpose of the present actions constitute breach of *bona fides*, negligent or unreasonable action, or improper conduct by the plaintiff acting in a representative capacity. In the exercise of my discretion, I can see no good reason to award costs *de bonis propriis*.

CONCLUSION

[50] In all of the above circumstances, my determination is:

1. The particulars of claim in both matters fail to disclose a cause of action for the relief claimed and accordingly the exceptions are upheld

with costs.

2. The plaintiff is granted leave to amend the particulars of claim within 21 days from date hereof.

**M JAJBHAY
JUDGE OF THE HIGH COURT**

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DATE OF HEARING	22 NOVEMBER 2007
DATE OF JUDGMENT	5 DECEMBER 2007

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COPYRIGHT LAW: EXCEPTION

The plaintiff sues alone in these proceedings. There is no allegation of any
cession of rights from any of the other co-owners of the copyright in question

and none of the co-owners have been joined as plaintiffs--- in the absence of such cession or joinder, a proper exception to the particulars of claim on the basis that the plaintiff has failed to join third parties which he was obliged to join, and/or the plaintiff lacks the requisite *locus standi* to pursue the actions instituted--- the requirements of the definition of “*Works of Joint Authorship*” in Section 1 of the Copyright Act,----- the contribution of the various parties is consequently indistinguishable and inseparable from the contribution of other co-authors and composers.