

THE HIGH COURT

2008 3200 S

BETWEEN

SUNDOGS ROCK PRODUCTIONS LIMITED

PLAINTIFF

AND

VAL TIMON

DEFENDANT

Judgment of Mr. Justice Hedigan delivered on 21st day of July, 2011

1. The plaintiff claims the sum of €75,551.05 in respect of goods supplied and services rendered to the defendant as per an invoice furnished on 1st August, 2008. The defendant denies any money is due or owing by him to the plaintiff company. He argues that the claim is mischievous and deceptive and is, in reality, a claim by Francesca de Catalda.

2. On the evidence I have heard, the background is as follows: starting in 2004, the defendant and Ms. de Catalda commenced an informal business relationship. She provided her services as decorator designer in respect of the decoration of four apartments that the defendant owned in Killiney, in one of which he lives. He claims he agreed a figure of €20 per hour for this service. He would pay her for goods purchased on his behalf at his request. Sometimes, vouchers or chits were produced, but generally, the defendant trusted Ms. de Catalda as a friend. She claims the hourly payment arrangement only lasted a short while. The agreement, she says, was subsequently varied so that save for work she did directly for him, she would buy goods and charge a mark-up. These informal arrangements seemed to work quite well from 2004 until 2008.

3. Problems arose in 2008 following the defendant's purchase of an apartment in Montpellier in France. The defendant decided he would budget just over €12,000 to furnish this apartment which he intended to rent. Ms. de Catalda told him that she could do the furnishing for €10,000. She denies this, but it seems a realistic sum to furnish a two-bedroom, 900 sq. ft. apartment. This is particularly so as the apartment came with a small fitted kitchen, as was evidenced by the defendant orally and in photographs. It is alleged by the defendant that Ms. de Catalda purchased goods other than those which had been agreed or were required and far in excess of the budget. According to the defendant, following some discussion, a figure of €11,540 for some of these goods was agreed and he discharged this sum.

4. There is some conflict of evidence concerning the delivery to Montpellier. Ms. de Catalda says the furniture which was delivered to Montpellier was that which had been agreed by the defendant. He says it was not. He says much of the furniture was completely unsuitable, and in any event, was not that which had been agreed by him. Upon the arrival of the furniture by van in Montpellier, this discrepancy became apparent. The van had arrived in the morning, and because of traffic restrictions in the historic centre of Montpellier where the apartment was located, the defendant had to have the van unpacked quickly onto the pavement outside the apartment. This was to permit the van to exit the area before the traffic restrictions came into force for the day. It was impossible to leave this furniture on the pavement and so it had to be stored in the apartment, including in its small storage area.

5. The defendant tried to make contact by mobile with the van driver to come and take the unwanted furniture away but he did not respond. The defendant made further efforts throughout the morning to contact Ms. de Catalda. He left a number of messages on her answer phone. When he finally did make contact, she told him that what had been delivered was what he had bought. The defendant says he was very shocked and distressed by this whole incident. Ultimately, he had the unwanted items shipped back to Ireland. They are currently stored in his house. He does not want them and has asked Ms. de Catalda to remove them. She says he has bought them and she does not want them back. She has not removed them from his property.

6. On 1st August, 2008, the defendant was furnished by Ms. de Catalda with the invoice of a company called Sundogs Rock Productions Limited. It claimed the sum of €77,515.02 in respect of some work Ms. de Catalda had done for the defendant and in respect of the furniture delivered to France. This is the only invoice ever furnished by this company. The defendant says he never dealt with any such company. He dealt only with Ms. de Catalda. Neil Bailey, who with Ms. de Catalda, was a co-founder and director of this company, said in evidence that this company was set up solely to act on behalf of his music group, "The Sundogs". It was, he said, never authorised to do design or decoration.

7. It is not unusual for an informal business relationship to exist between friends, such as existed here between Ms. de Catalda and the defendant. When that relationship breaks down, the lack of formality, unfortunately, can lead to grave difficulties such as have arisen here. In such circumstances, in the absence of formal statements of account, the proof of the details in the previous arrangements presents very real problems. The credibility of the parties frequently becomes the central issue in any legal proceedings. Such is the case here. The Court must apply a balance of probability test to determine the issues that arise.

8. In this regard, I will turn first to the identity of the plaintiff company. The defendant says he never dealt with a company, but only with Ms. de Catalda herself. Mr. Bailey, who was founder and co-director of this company, says it was never authorised to engage in business as decorators/designers. Ms. de Catalda agrees this was the first and only invoice issued by the company on the defendant. Her account of the formation of the company is that it was set up at the suggestion of the defendant for the purposes of generating VAT invoices which he could claim against tax. He strongly disagrees with this. He says, and his accountant, Brendan McLoughlin confirms, that he never claimed VAT other than for his solicitor's practice. There is no VAT on sales recorded ever by the company, although it did reclaim VAT of €75,000 approximately. It may also be significant that Ms. de Catalda has brought Circuit Court proceedings against the defendant in her own name. Finally, the single invoice was only generated after the break-up of the relationship over the Montpellier incident. No documentary evidence exists of any contractual relationship between the defendant and the plaintiff company. The only evidence of such a relationship is that of Ms. de Catalda herself.

9. There were many inconsistencies in Ms. de Catalda's evidence. The evidence was clear that there were no returns of sales for VAT

in respect of the plaintiff company. There were, however, VAT invoices put before the Court. These invoices totalled €15,550. They were in respect of goods for which there had been payments made by cheque by the defendant. These cheques, however, totalled €17,340. Her explanation for this discrepancy was that she allowed him a discount. He, however, had clearly paid more than the amount allegedly invoiced to him by the company. This explanation by Ms de Catalda for this contradiction was not convincing.

10. In her dealing with the shop, Violette, Ms. de Catalda said that on 21st of May, 2008, she paid by credit card for goods she alleges she bought there and which were supplied by her to the defendant. Mr. Bailey's Sundogs Company credit card was used in part payment for these goods. Her signature, however, appears on the credit card slip. Questioned about this, she said Mr. Bailey was standing beside her at the time and was happy for her to sign. Why she would have done this if he had been present is inexplicable and unexplained. In fact, Mr. Bailey denies he was there. Ms Maureen Rennicks, a director of Mr. Bailey's employer, was called to give evidence. She was clear and unequivocal. He was at work at the time the slip was signed. She produced the company's records to show that this was so. Ms. de Catalda had originally maintained that Mr. Bailey had signed this slip. It was only when the slip was produced, which showed she had in fact signed it, that she said he was standing beside her when she actually signed it.

11. On the morning of the delivery in Montpelier, according to her evidence, she said she was trying many times to contact the defendant. She conveyed the impression that she was pursuing him on this morning. She said in evidence that he had left only one message on her answer phone in response to her efforts to contact him. However, in her letter of 1st August, 2008, accompanying the single invoice, she stated she had received four or five phone messages from the defendant on her answer phone complaining about the items delivered. This is in accordance with the defendant's own evidence. Clearly, it was the defendant who was pursuing her and not the other way round.

12. The actions of Ms. de Catalda with respect to Jennifer Murray, proprietor of Violette, are particularly disturbing. Ms. Murray gave evidence which I considered to be completely reliable. Moreover, she has no interest whatever in these proceedings and was giving evidence against a person with whom she had business dealings previously. She gave evidence of Ms. de Catalda coming about five times to the shop. She came first about January 2008. She bought some items and ultimately paid for them, *inter alia*, using two Visa cards as referred to above. In February 2011, she came back to the shop. She told Ms. Murray she was having trouble with her business partner. She wanted a statement from her. Ms. Murray did not agree with what was in the statement proffered to her. Ms. de Catalda left and subsequently returned with an amended statement. The terms of that statement are to be found at page 524 of the Pleadings Brief III of III. Ms. Murray signed this statement. She now says the statement is inaccurate. Firstly, Ms. Murray thought Ms. de Catalda was buying for herself, not for a company. Secondly, the man present in the shop was not known to her and was not Mr. Bailey whom she identified in Court. Thirdly, the credit card payments were not pin activated and so no question of entering PIN numbers on the cash machine arose. Ms. Murray says she signed this statement in order to get Ms. de Catalda out of the shop. She now greatly regrets signing it and readily admits that it is incorrect.

13. In the course of these proceedings, after the first day of hearing which was a Friday, on Monday, 11th July, Ms. de Catalda visited Ms. Murray's shop. She had a friend with her. She produced a photo of a man she alleges was with her in the shop on 21st of May 2008. She wanted Ms. Murray to identify this person as Mr Bailey. Ms. Murray told her she should not be there because she herself was a witness in the case. Ms. de Catalda said that Ms. Murray knew the person, who was in the shop on 21st May, 2008. Ms. Murray told her she always thought she had been buying for herself and not for a company. Ms. de Catalda, according to Ms. Murray, was intimidating and insistent. She was shouting at her and was crying at times. She threatened to sue her if she gave evidence against her. This incident lasted for about an hour. When this incident was brought to the notice of the court on the day after, Ms. de Catalda admitted she had visited there and apologised for this inappropriate action. Ms. Murray stated that the VAT invoice, which is in the book entitled Book of Costs at page 58, was given to Ms. de Catalda on the last previous visit and at her request was backdated. She said she gave her this receipt to get rid of her. In relation to the items listed in receipt 69 allegedly bought by Ms. de Catalda in Violette, Ms. Murray stated that none of these were ever sold or even stocked by her shop.

14. Ms. de Catalda, in the documentation comprising photos and valuations in respect of goods itemised in invoice No. 1, seems to have charged a grossly excessive amount to the defendant. In the valuation of items booklet which was agreed by the parties, the goods contained in this invoice are valued as to their cost to the plaintiff, the price charged to the defendant and their valuation by Mullens valuers. Ms. de Catalda does not accept the valuation by Mullens but admits it as evidence. She does accept the other two figures. From the list of 98 items invoiced, it is possible to value 96. The missing two are items 49 and 60. These two amount to less than €150. The remainder show that Ms de Catalda paid €43,886.25 for these goods and invoiced the defendant €78,196.72. Mullens value the items at €6,353. The defendant denies any mark up was ever authorised by him. Even on her own evidence, Ms. de Catalda seems to have been ready to take advantage of her client by greatly inflating the prices she charged him. This attitude to her client and friend seems confirmed by the evidence of her former co-director, Neil Bailey. He recounted a bizarre history of involvement with Ms. de Catalda and his music group which left his musical project destroyed and his financial situation in ruins. It left him further with a debt of €10,000 in respect of the plaintiff company which Ms. de Catalda, he said, had run up. He is now left paying off this debt, he said. He has every reason to feel aggrieved and so, is not an unconflicted witness in this case. Yet, I thought he gave evidence that was frank and truthful. I consider his evidence to be reliable. His account of meeting her on a Friday in Parnell Street, when she was loading a mirror into her Jeep and confided to him that she intended to charge her client five times what she paid for it, seems consistent with her attitude to the defendant. He said in evidence, in relation to this incident, that he considered her attitude to her client to be despicable. This incident decided him there and then to terminate his business relationship with her.

15. In documentation entitled 'Companies Registration Office Submissions Re Sundogs Rock Productions', at page 57, is exhibited the declaration of Neil Bailey of cessation as director. This is signed by Neil Bailey. At page 59, his signature appears again. It is further found at pages 60 and 61 on letters to Ms. de Catalda. These, and his signature on a Tenant's Information Sheet and the company's annual return made up to 31st October, 2007, he stated in evidence are his genuine signatures. However, the documents exhibited at pages 65, 69, 75, 81 and 102, contain signatures purporting to be his which he says are crude and obvious forgeries, notably, at page 81, where his Christian name is spelt wrongly. These documents are the company's annual return after his departure as director and prior to the appointment of Barry Hayden as director.

16. In cases like these, which rely greatly on an assessment of credibility, the Court is frequently left in considerable difficulty determining whom to believe. It is frequently obliged to find refuge in the proposition that it is for the plaintiff to prove her case. No such difficulty appears here. I regret that it is all too clear from the evidence that in her dealings with the defendant, Ms. de Catalda was prepared to grossly overcharge him for the goods she had bought. It must be noted that this was at a time when he considered her his friend. This betrayal of friendship and her duty to her client is highly reprehensible. Even more reprehensible is her readiness to forge documents in relation to her dealings with the shop, Violette, for the purposes of this action. In this regard, the evidence of Ms. Murray was compelling. Grave questions arise also over clearly forged signatures on documents exhibited herein which were furnished to the Companies Office. Her efforts to intimidate Ms. Murray into signing a false statement and her attempt to frighten her into not giving evidence in the case are also reprehensible and may well support further action against Ms. de Catalda herself.

17. The plaintiff company's case rests entirely upon the credibility of Ms. de Catalda. I regret to say that on the basis of the clear evidence as set out above, Ms. de Catalda is bereft of all credibility and, consequently, the plaintiff's claim must be dismissed.