



Music – ‘Busted’ Boy Band Bust Up

Adam Greenup, a Steeles Law solicitor specialising in music law, highlights the importance of partnership agreements, especially if you go on to hit the big time.

In July 2008, two former members of the teeny bopping boy band 'Busted' appeared in the High Court claiming that they were joint authors of the copyright in songs, on which they collaborated, whilst they were members of the band.

The soon to be famous band had four members in December 2000; they were Ki McPhail and Owen Doyle (the claimants) and James Bourne and Matthew Willis (the defendants). In October 2001, McPhail and Doyle left the band and Charlie Simpson became the newest member. Shortly after Simpson's arrival the band emerged onto the UK music scene. The judge later described Mr Simpson as the catalyst to success suggesting that he had added a great deal of 'attractiveness' to the group.

McPhail and Doyle had missed the wave of fame and fortune and received neither credit nor remuneration for what they described as a joint collaboration on the songs that would later appear at the top of the UK charts. They argued that the band had, at the relevant time, been operating as a partnership and that the contractual relationship between the four members was a partnership at will. They claimed that the four members had agreed that any song written by any one of them would be beneficially owned by the four members in equal shares. Goodwill in the name 'Busted' was, therefore, they submitted, an asset owned by the partners.

However, the judge found that there must be a contractual relationship between the four members in order for there to be a partnership. Historically, the courts have taken the view that band members who collaborate together with a view to profit are deemed to be in partnership unless the band is expressly set up otherwise. So, with no express agreement, there was no partnership and consequently, no partnership property. McPhail and Doyle therefore had no claim.

Crucial to the outcome of the case was a settlement agreement that McPhail, Doyle, Bourne and Willis reached in March 2002. The settlement agreement provided that McPhail and Doyle obtained the rights to two songs and Bourne and Willis obtained the rights to four songs. It was these four songs including 'Year 3000' and 'What I Go To School For' that were recorded by the band after the departure of McPhail and Doyle and which subsequently rocketed the band to stardom.

Based on grounds of undue influence and misrepresentation McPhail and Doyle attempted to unravel the settlement agreement arguing that they should be entitled to a share in all of the disputed songs.

The judge refused to set aside the settlement agreement. He made it clear that he preferred the evidence of Bourne and Willis to that of McPhail and Doyle. He found that McPhail had given evidence which he described as '*plainly exaggerated and distorted.....indulging in very extensive self-serving reconstruction*'. In his judgment the judge commented on McPhail's account of facts crucial to the case as inconsistent and unreliable.

A future warning to all collaborating band members came towards the end of the judgment when the judge commented on the amount of detail that would need to be considered if he were to decide the shares of ownership in the songs. In the closing submissions on behalf of the parties, the claimants submitted over 27 pages and the defendants 32 pages. To make conscientious findings of fact on all the points raised in argument would, the judge feared, have been an enormous labour.

The settlement agreement allowed the judge to neatly sidestep the tricky questions; who were the first owners of the copyright? Did the first owners hold the copyright on trust for the other members of the partnership, and, if there was a partnership, was the copyright in the songs partnership property?

The judgment underlines the importance for any band to ensure that the arrangements between members are clearly documented and that appropriate advice, from a lawyer specialising in music law, is taken from the outset. After all that's what we go to (law) school for.

Should you require advice on any aspect of Media Law please contact one of the Steeles Law Media team on 0207 421 1720 or media@steeleslaw.co.uk.

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