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12 October 2016

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To: Maserumule Corporate Employment Law

Attention: Andrea de Jongh

e.mail: info@masconsulting.co.za

Dear Sir

Copyright: David Robert Lewis / Naspers Ltd, Media24, Die Burger

1. We act on behalf of David Lewis (“our client”).
2. We are aware that our client’s erstwhile attorneys, De Beer Attorneys, wrote to you/your client on 28 July 2016 regarding our client’s copyright. At the time, your client’s position was that due to the contractual relationship between our clients, any copyright in the works, defined below, vested solely in your client.
3. It is our instruction to write to you and request that your client recant this position for the reasons set out more fully below.
4. On or about 1 April 2006, our client signed a contract of employment with your client strictly in terms of the position of a “layout sub”. In terms of the agreement, our client was to render services such as laying-out of pages, typography, page design, correcting/editing submitted stories and photography and/or work of similar nature, which included rewriting story briefs and fillers. Our client was not employed by your client to produce content or provide artwork for your client’s publication.

CONFIDENTIAL

This fax/e.mail and any accompanying documents are for the use of the addressee only. If this fax/e.mail has been received by any other person in error, please contact us immediately by telephone. Unauthorised copying, dissemination, distribution or use of this communication is prohibited.

5. It is our client's position that any works, created during this time, by our client, under his own by-line was external to the scope of his employment relationship and did not form part of the aforementioned contract. During this period of employment, our client provided, to your client, the services required by a layout sub only.
6. On or about 17 April 2006, our client conducted interviews with the Ingrid Jonker Prize Winner, Rustum Kozain, and Hip Hop artist, Jitzfinger and the family of the late Josh and Robert Sithole. On or about 20 April 2006 our client then compiled and prepared written articles following the interviews. Our client also took a photograph of some young African street musicians in Cape Town. On or about 21 May 2006 our client also compiled two interviews with Robbie Jansen and Record producer Chris Syren (collectively referred to as "the works").
7. The works were created on our client's own accord and for his own personal enjoyment. The works were created under our client's own by-line for his personal use and furtherance of his career as a professional journalist. Our client was not commissioned to create the works for your client, nor were the works created in the scope of his employment with your client. Our client did not create the works with view or intention to have them published by your client.
8. It is for the reasons set out above, that our client contends that the works cannot have been created as part of his employment as a layout/page sub with you client. The copyright in such works therefore remains strictly that of our client and does not vest with your client.
9. During 2006, our client, whilst employed by your client, offered one or more of the works to your client for publication in one of its newspapers, with the intention of retaining the copyright. Your client declined to publish the interviews. It is our client's contention that the copyright, despite that offer, remained vested in him. Your client has indicated the copyright is vested in it. However, it is now some ten years later, and to date it does not appear that your client has any wish to use the works previously offered now or in the future.
10. In terms of section 21(1)(b) of the Copyright Act, while your client, for example, enjoys copyright as the proprietor over any works as it relates to their publication in your client's newspaper/online publication, the author, is the owner of the copyright in all other respects. In the circumstances, it is therefore evident that our client maintains the copyright over the works as they stand.
11. In light of the above, your client's previous contention that it owns the copyright in the works cannot be correct.
12. We therefore write to establish the following:
 - 12.1. whether your client is prepared to affirm that our client retains the copyright in the works and may proceed to use the works without any claim of copyright infringement from your client; or
 - 12.2. without conceding that the copyright vests with your client and if your client is adamant that it is the lawful and rightful owner of the copyright, is your client prepared to enter into negotiations for the assignment of the works to our client in order that he may utilise the works as he deems fit.
13. As your client does not appear to be interested in using the works previously offered or otherwise stored with your client; there would be no prejudice to your client in making such an agreement. Should your client be amenable to the above requests, we could then arrange to collect the works that are in your client's possession.

14. Our client's primary concern is the enjoyment and protection of the works under his by-line. In the interests of this, we look forward to hearing from you in a timeous manner and entering reasonable engagement.
15. Please do not hesitate to contact the writer to discuss if necessary.

Yours faithfully

A handwritten signature in black ink, appearing to be 'RW' or similar initials, written in a cursive style.

Rosin Wright Rosengarten