

# The importance of writing



# g things down

By David Willbe

**S**amuel Goldwyn, movie producer and font of many possibly apocryphal soundbites, once said that a verbal contract isn't worth the paper it's written on. The phrase is now a popular cliché – but other than for specific types of contract (e.g. for the sale of a house), it's not true. English law will respect a verbal agreement and permit either party to enforce it – the issue is proving that one exists and the terms that have been agreed between the parties.

Cooperation, collaboration or partnership with other like-minded individuals is part and parcel of running an early-stage business. Whether sharing working space, borrowing equipment or discussing possible applications of a technology, these arrangements are usually informal. Producing contracts, whilst sensible, takes time and money – it's much easier to have a quick meeting and agree the terms. The issue with that approach is that, if things don't proceed smoothly, it is one person's word against another's as to what rights and remedies were agreed between the parties. Written evidence from the time of the agreement, even where it was never exchanged between the parties, will help to give weight to the story being told by the party that can produce it.

Whilst the risks involved in these verbal contracts are generally small, there are certain pitfalls which can come with commercial success. One such pitfall is that the stakes are higher for anyone who, by virtue of these collaborative efforts, can paint themselves as someone who is entitled to a share in the business.

## Reggae Reggae Sauce

Levi Roots arrived in England in the late 1960s and, amongst other jobs, parlayed a stint working on food stalls at Notting Hill Carnival into employment during the 1980s selling Jamaican food from a club called "Papine". Mr. Roots was a colourful character who, after serving a stint in prison, established himself as a reggae singer and struck up a friendship with one Anthony Bailey. The friendship was based on their shared ambition to become successful reggae artists, in which Mr. Roots was by some margin the more successful of the two.

Alongside their musical ambitions, the two had a shared love of Jamaican food. They operated a stall together at the Notting Hill Carnival annually from 1993, from which they sold food – including jerk chicken, cooked using a specially prepared jerk sauce.

At the time, this was simply two friends collaborating to make a small amount of money doing something that they both enjoyed. Whatever the arrangement between them was, it ran smoothly and was kept entirely informal – nothing regarding the details of their collaboration was ever, it seems, written down.

Had things remained on a small scale, that would likely have been the end of the story. Mr. Roots, however, subsequently started a very successful business selling jerk sauce – particularly after he managed to secure both financial backing and some measure of celebrity on the BBC programme "Dragon's Den" in 2007.

In 2010 Mr. Bailey filed a claim against Mr. Roots, stating that the recipe Mr. Roots was using for Reggae Reggae Sauce was in fact directly derived from his own jerk sauce recipe, which he

had invented and won awards for in 1984 in Jamaica. It was this recipe, he said, that had been used to prepare the chicken sold from their stalls at the Carnival. Mr. Bailey had been running a café in Brixton for some years, and Mr. Roots had been using the kitchens to make sauce – Mr. Bailey's claim was that this was the fine-tuning of his recipe.

Mr. Bailey sued Mr. Roots, claiming that the Reggae Reggae Sauce business ought to have been a joint venture. The remedy that Mr. Bailey was seeking was the transfer to himself of part of the equity of the company which held the rights to Reggae Reggae Sauce and licensed both its manufacture and distribution. This, of course, would have had an enormous impact on the return that Mr. Roots would have made from the business. Mr. Roots maintained that Mr. Bailey's case was nothing other than a cynical and dishonest attempt to take advantage of his ingenuity and hard work.

## Breach of a verbal contract

Mr. Bailey's claim was that the Reggae Reggae Sauce business was a joint venture between two equal partners – he had contributed his award-winning recipe and the kitchens of his café to make the sauce, while Mr. Roots had worked in the kitchen as well as capitalising on his charisma and reggae fame as the face of the operation. All of the profits, said Mr. Bailey, should have been shared equally between them. His position was that this was all agreed in a meeting between the two men in 2006.

Mr. Bailey went on to claim that only after the making of this verbal contract did he show Mr. Roots how his award-winning sauce was prepared and what ingredients were needed to make

it – having prepared all of the sauce himself, in secret, during the years in which they used it for their Carnival stall food.

Mr. Roots's position was that the recipe for the sauce used at the Carnival was never a secret, they had always prepared it together, and that although he had used Mr. Bailey's kitchens in 2006 this was only a loan of space and facilities for him to develop a recipe that was entirely his own. There had been no joint venture, and Mr. Bailey was not entitled to any share in the equity or profits of the resulting business.

## Court proceedings

Clearly there had been an agreement here of some kind – Mr. Roots had been given access to Mr. Bailey's café kitchen, so there must have been some agreement between the men as to why. In court, in the absence of

any written agreement, it was up to the court to determine what the terms of their arrangements had been. Was this a joint venture, or simply a free loan of some facilities?

Had there been any written evidence from the time of their collaboration, this would have been very influential – even short of an agreement, any correspondence or a description of the arrangements to another person at the time would likely have tipped the scales in favour of their argument. In the absence of that, the judge could really only weigh one man's recollection of events against the others.

The statements made by both men to the court were lengthy, confused, and at times self-contradictory. The judge was in fact forced to conclude that neither man was a reliable or credible witness, and the only facts he could accept were those where the parties agreed. From what little common ground there

was, and in the absence of anything written, the judge then had to decide on what arrangements had existed between the parties – making liberal use of assumption and commercial common sense.

Fortunately for Mr. Roots, the judge found that it was unlikely that the agreement claimed by Mr. Bailey had ever existed. He felt that it would have

made no sense for Mr. Bailey to enter an agreement whereby he revealed his secret recipe, only to have Mr. Roots acting as both the public face and the chef in the ensuing business. The judge accordingly determined that Mr. Bailey's claim should not succeed, and Mr. Roots kept his shares.

This case demonstrates how vital it is to keep a written record of any dealings you may have with another party in regard to your business. Of course an agreement, signed by both parties, will always be the ideal – but in the absence of a written agreement the courts presiding over a dispute will attempt to reconstruct the terms of the agreement between the parties from whatever evidence is available. Written records from the time at which the arrangement was made will always be very persuasive evidence in that situation.

In this particular case, had Mr. Roots or Mr. Bailey insisted upon a written record of whatever the agreed position was, this case may not even have ended up in court - saving both parties costs, worry and reputational damage. If it had gone to court, such record would likely have been impossible to argue against.

In the event, a claim that could have severely impeded Mr. Roots's return from the business that he built was decided on nothing more than the judge's opinion as to what was probably agreed between two people, assuming they were being commercially sensible. No entrepreneur should be comfortable with the idea that the fate of the business that they have worked to build could be decided on such slim margins. Whilst it may be unrealistic to expect fully-documented agreements in all of a business's early-stage dealings, written evidence of the terms of the verbal contract may be worth a lot more than the paper it's written on.

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