

Libel trial McCann v Gonçalo Amaral - Day 8 Witness No 2

The testimony as it happened...

(05.11.2013, 2:45pm) **Luis Froes** is a Partner at *Outsider Films Ltd.* He was General Manager at *Valentim de Carvalho Multimédia* between April 2008 and September 2012, in which period the Amaral documentary was produced. His evidence relates to the background in which the documentary was produced.

Please note the following:

- *VC Filmes S.A.* is the Company which produced the documentary *Maddie: The Truth of the Lie* based on the book by Dr Gonçalo Amaral (GA) and directed by Carlos Coelho da Silva.
- The rights of edition and distribution of this documentary in DVD format were ceded to *VC Multimédia S.A.*, this Company therefore being their representative as regards the exploration or commercialisation of the rights of television broadcast or transmission of this documentary in foreign countries.
- The reproduction and editing were authorised by *Valentim de Carvalho Multimédia* to the company *Presslivre - Imprensa Livre, S.A.*, owner of the newspaper *Correio da Manhã (CdM)* by means of a contract established between both parties, under which terms, the DVDs, their covers and packaging would be produced on account, by order and under the responsibility of *Presslivre*, to be distributed and commercialised jointly with said newspaper.

The Judge Maria Emília de Avelaz Melo e Castro asks the witness if he recalls the details of the distribution contract concerning the DVD.

LF doesn't remember.

The Judge – Who signed the contract?

LF says he did, but he doesn't know about the international contracts.

1) The Defence lawyers.

a) Valentim de Carvalho's (VC) lawyer, Dr. Henrique Costa Pinto, is the first to question the witness.

VC - Did you take part in the *Providência Cautelar* (injunction judgement) hearings?

LF - Yes, but I don't remember when I took the stand.

VC refers to the DVD audiovisual adaptation of GA's book which was commercialised at the end of 2009. Was it edited by *Valentim de Carvalho*?

LF - Yes

VC - Who edited the DVD version which went on sale?

LF - *VC Multimédia* distributed. I don't know who edited.

VC - I'm talking of the copies of the DVD.

LF - VC *Multimédia* edited them.

VC - Wasn't the *Correio da Manhã* in charge of them?

LF – They had to be distributed.

VC - Who commercialised them?

LF - For me, commercialising or distributing is the same thing. The unique contract that existed was through the CdM.

The Court Clerk is asked to show the contract to the witness.

VC - The edition was made by the CdM.

LF - It was the CdM who sold the DVD to the public.

VC - Did VC commercialise the DVD?

LF says that for him "editing" is "editing" (*montar*)

(Note: the Portuguese "editar" that has been translated "edit" means *establish the reproduction, publication and diffusion of a work*. The Portuguese, as other languages, uses "montar" for "editing" a film).

VC - Who created the cover, the packaging?

LF says it was VC *Multimédia* .

VC - Then you've not looked at the contract? Do you have an issue with *Valentim de Carvalho*? In Court?

LF says he has.

The Judge – Are you the executing or the executed one?

LF says the action is against VC.

LF says that there is a problem of definition: VC produced a documentary, and then looked for the best way to distribute it and found CdM.

VC - Who created the cover and the packaging? Who was responsible for this?

LF says he doesn't remember. Normally the producer would do that, but in this case it might have not happened this way.

VC - What about the silver seals with the registration number?

LF doesn't know.

VC - Do you know how many copies were made?

LF says he knows.

VC - Do you know how many copies were destroyed?

LF says that all copies left over were destroyed.

VC - Was there a new edition of the DVD?

LF thinks "no".

VC – The documentary appeared with subtitles on the Internet.
LF says that everything, all sorts of things appear on the Web.

VC – But with subtitles?
LF doesn't remember.

VC makes a request to suspend this witness' testimony without prejudicing the continuity of the trial, because the witness requires to study the documents before being questioned further. Only Dra Duarte objects. The Judge tells the witness that he must return to give further evidence on the 27th November at 9:30 am.

VC requests that the examination of the witness continues but on another subject.

VC - Don't you remember seeing that documentary on the Web?
LF says he already stated in Court in January 2010 that he didn't.

VC - Do you think it could be that documentary?
LF says that there is no control over the release of films on the Internet.

VC - Did VC *Multimédia* already have the film subtitled?
LF answers "no".

VC - Did VC *Multimédia* use a system to prevent pirating on the Internet?
LF thinks they don't. He adds it's not rare to see a subtitled series on the Internet before they're broadcast on TV.

VC's next question relates to the Providência Cautelar or Injunction but the Judge objects on the basis that it is not relevant, the main action being the present hearing.

VC now alludes to the watermark, the documentary having been sold on the international market.
VC - Did the international sales concern TV channels or the DVD market? Was there edition and sale of DVDs in foreign countries?
LF says he doesn't remember.

VC - Who bought the documentary?
LF says that various TV channels bought it.

VC - Was the DVD protected by a watermark?
LF says it was normal that it was.

VC answers a question by the Judge about the watermark and explains that the original documentary is supposed to have a bandwidth (a signal processing).

b) Gonçalo Amaral's lawyer, Dr. Santos de Oliveira.

SO - As General Director, you had to have knowledge concerning the distribution of the DVD.
LF - Yes.

SO - Weren't you supposed also to know how many copies were distributed?
LF says he doesn't remember.

SO - You knew how the DVD was created; shouldn't you also know what kind of protection was applied to the copies?

LF says he didn't have to know that.

SO - Could some alteration be made without your knowing about it?

LF says "no".

SO - Did you know whether there was protection against pirate copying?

LF says that practically there's always a way to bypass any protection.

2) The Plaintiffs' lawyer, Dra Isabel Duarte.

ID - Where was the watermark?

LF says it was in the DVDs sold in foreign countries.

ID - Which countries?

LF says he doesn't know, since he didn't sell them, he doesn't remember. He adds that the only entity that commercialised the DVD was the CdM.

The Judge asks if the unsold DVDs were destroyed.

LF says "yes", all those which weren't sold were destroyed.

The Judge asks the witness how he knows that.

LF - I was told so.

The Judge – Who told you?

LF - The CdM.

The Judge - Is this a normal procedure?

LF - It is.

The Judge - When there's no further expectation of selling additional copies, then, before destroying them, do they let you know that they are about to destroy them?

LF - Yes, the CdM announced it beforehand.

Evidence ends.

Note

This witness previously took the stand in the Providência Cautelar (Temporary Injunction) hearings.

Civil Court decision in the Injunction

<http://www.mccannfiles.com/id339.html>