

The reality of TV contestant releases in the UAE

June – July 2015

Ms H, a North Carolina singer who appeared in the program as part of its audition process, has lodged a claim in the Los Angeles Superior Court against the producers of the program. Her claim is for intentional infliction of emotional distress, defamation, false light, invasion of privacy and gross negligence.

This article will briefly describe the claim and consider how it might be treated under UAE law.

The Claim

Ms H, according to her claim, sang “The Greatest Love of All” in front of a live audience, four celebrity judges and a team of camera operators for the program. This was then broadcast worldwide and has since, of course, been generally available via YouTube. She is claiming that the producers altered her vocal performance in order to make her sound “screechy”, and that the wildly positive audience reaction was replaced with a calm and underwhelmed audience. She says that the judges original comments and reactions were removed and replaced with other comments that were recorded when she was not present. All of this harm has, according to the court papers, caused the claimant a considerable amount of embarrassment, emotional distress and has harmed her reputation as a professional singer. Ms H has valued her damages at USD 2 million. In addition, because she says that the producers did all of this wilfully, maliciously and fraudulently, she is seeking further (unspecified) sums as punitive damages.

The interesting part of the claim is that Ms H claims that she was taken into a room alone with a staff member and told that, if she did not sign the contestant release immediately, she would not be permitted to continue with the audition process. She states that she was not provided with an opportunity to seek legal advice, nor to take a copy of the agreement, and that her consent was therefore obtained by duress and undue influence. She is also claiming mistake as to her understanding of what was to be done with the performance (that is, she did not understand that they could alter the performance and, impliedly, alter it to make her appear less talented than she was) and goes on to claim that the resulting mistake revokes and rescinds the release under Californian law.

Of course, ‘The X Factor’ is not the only program on television to require its contestants to sign release forms that are, as a rule, not able to be negotiated. Having seen numerous contestant release forms for both broadcast and on-line competitions, it is clear that the terms are always firmly in favour of the producer of the content. No producer wishes to risk a large investment in producing content unless it can control every aspect and every contributor. A short version of a standard term might read: “my appearance in the Program can be edited at the Producers discretion”. Undoubtedly, the heavyweight industry producers involved in ‘The X Factor’ would have had such a clause in the release form.

So, how might such a claim fare under UAE law?

Duress Under UAE Law

Looking first at duress, this is set out in Section 2 (4) (a) of the UAE Civil Code. In Article 182 it states that: A person who exercises ... duress to conclude a contract may not enforce his contract, but the contract will be valid if the victim or his heirs so permit after the threat has ceased, either expressly or by their acts.

If this law had applied to Ms H's situation, what might the result be? How would the courts view the fact that she returned 4 times to audition? What would it think of the fact that the program was in its 3rd season and so its content would have been well known to her? Did she, by continuing to audition, presumably entering the makeup room, rehearsing out the back, getting her costume on, willingly walking onto the stage lose her right (under UAE law) to claim the duress as she then acted in accordance with the terms of the release? Is this behaviour enough to validate the release, or must that validation be explicit? In addition, was the mere statement that she could not continue to audition strong enough to be considered duress under UAE law? Our view is that it is not likely to succeed here – we await the view from California.

What of the fact that it was a staff member and not the producers that 'forced' her to sign the release? Article 184 of the UAE Civil Code states that: "If the duress is exercised otherwise than by one of the contracting parties, the person coerced into contracting may not claim that the contract is ineffective unless he proves that the other contracting party knew or is presumed to have known of the duress". So, to succeed in her claim in the UAE, the claimant would have to not only show that a staff member had forced her to sign the release in the dressing room, using threats, but that the producer were aware that this was being done by its staff members. This might be difficult to prove.

Mistake Under UAE Law

In most jurisdictions, mistake is a complex area of contract law and always a difficult argument to raise and win. The UAE Civil Code covers mistake in Section 2 (4)(c). Article 194 states that: "If there is a mistake as to the identity of the contract or as to one of the conditions upon which it is made or as to the subject matter of the contract, the contract shall be void". Ms H says that, had she known that the release meant that the producers could alter the performance to make her "screechy", then she would not have signed it. She is, from a UAE law perspective, trying to claim that this is "one of the conditions" upon which the release is made; this was unknown to her and had she known it, she would not have signed the release. Indeed, it is true that some releases can contain a clause that may say that materials cannot be edited in "a manner that will be in any way derogatory to [the contestant]". But more common in releases for reality, quiz shows or game shows is a clause that acknowledges that the program may contain "statements ... surprising, humiliating, embarrassing, derogatory, defamatory or offensive or injurious to [the contestant] or to third parties".

If this statement was indeed contained within the release, it is hard to then argue that there was mistake as to the basis on which the contract was formed. Article 193 states that: "No regard shall be had for any mistake save in so far as it is contained in the form of the contract or demonstrated by the surrounding circumstances and conditions, or the nature of things, or custom". Obviously, her misunderstanding of the release terms will not, of itself, allow the release to be declared void. She has to be mistaken about the circumstances of the contract. The producers will likely claim that the right to edit is clear in the release, possible humiliation is mentioned in the release and she must logically have seen past acts portrayed badly on the same program. If these arguments are available to the producers, it is difficult to understand the surrounding circumstances that might further her claim. How was it possible that she was unaware that, despite being allowed a right to edit as they see fit, the producers may use that right to edit the footage to make her 'screechy' (if indeed they did)?

Other Possible Claims Under UAE Law

Interestingly, Ms H has not claimed for misrepresentation nor for cheating (or deceit) in California. In the UAE, this claim would fall under the same section of the UAE Civil Code as the above two claims, and would give rise to a defect in consent. Although the facts are not clear in Ms H's claim, if it could be shown that Ms H has signed the release because the producers had deceived her into believing that the filmed performance would not, for example, be edited in any way then she would have a claim for cancellation of the release. Article 187 is clear: "If one of the contracting parties makes a misrepresentation to the other and it transpires that the contract was concluded by a gross cheat, the person so misled may cancel the

contract". As with the claims above, if it can only be shown that the employees of the producers made the misrepresentations, then Article 190 allows the release to be cancelled if "the other contracting party knew of the misrepresentation at the time of the contract".

In California, Ms H may struggle to win her case against the producers. In the UAE, she would have to jump over several more hurdles to prove duress, find a mistake of fact or show misrepresentation in order to have the release held as void.

Whether she is successful or not, the claim is a timely reminder to content producers to ensure that all talent is given proper time to review the release and ask any questions. Staff should be trained to present the release responsibly. And only edit people to make them sound "screechy" if your release clearly allows you to do it.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on content financing, production and distribution.