SAINT VINCENT & THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL No. 4 of 1991

BETWEEN:

CARIBBEAN SAILING YACHTS (ST.VINCENT) LTD

Appellant

and

JOSEPH C. I. BROWNE

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice C. M. D. Byron J.A.
The Honourable Mr. Justice A. J. Redhead J.A.

Appearances: Mr. B. Commission and Mr. S. Commission for the Appellant
Mr. O. Sylvester Q.C. and Mr. M. Williams for the Respondent

1992: July 22, 23;
December 7th

JUDGMENT

BYRON J.A.

This appeal is against the judgment of Joseph J. delivered on 3rd February, 1991 in which it was ordered that the appellant do pay the respondent the sum of US$20,272.39 with interest at 10% per annum from 1st March 1980 until payment. The said sum was adjudged to be money due under a profit sharing scheme between the appellant as employer and the respondent as employee.

The appellant makes two broad contentions on its appeal

1. That the award was too high as the trial judge misinterpreted the provisions of the profit sharing scheme.

2. In any event the claim was statute barred as the trial judge ought to have found that the cause of action accrued in 1979 when his employment with the appellant company ended.

The background facts were found by the learned trial judge.

The appellant Company is a St.Vincent Company which conducted Marina operations in St.Vincent. It was one of a group of similar Caribbean Marina operations of which John van Ost was president and majority shareholder. His son Robert Van Ost was president of

Caribbean Sailing Yachts Inc., a company which scheduled the use of yachts in various locations and administered various accounting functions for the group of operations.

In order to attract and keep assistant and head Managers at each of his marinas, John Van Ost created a profit sharing scheme which was included in a document circulated to all Marinas. This document's introductory paragraph reads: -

> "Herewith is the complete proposal which involves compensation for the assistant managers and the head managers of each of our marinas."

It was signed as "President, Caribbean Sailing Yachts Ltd". It was an inescapable conclusion that this scheme was not related to any one company but applied to the entire Caribbean Sailing Yachts operation run by the Van Osts.

In 1972 the respondent was employed by the appellant as an assistant Manager and in 1976 he was promoted to Manager. On 12th August, 1978 John Van Ost wrote the respondent a letter concerning the application of the profit sharing scheme to him. In 1979 the respondent left St.Vincent and went to live in the U.S.A. At that time he ceased being employed by the appellant company and was employed by a sister company of the Van Osts, Caribbean Sailing Yachts (Tortola) Ltd.

The learned trial judge found that when he was moving from the appellant company to CSY (Tortola) Ltd, John Van Ost agreed with the respondent that he would continue in the profit sharing scheme. The evidence disclosed that he was treated as part of the scheme while employed by CSY (Tortola) Ltd and payments were made to him out of the scheme, the last such payment being made on 19th January, 1983.

The respondent received a letter dated the 9th day of March, 1984 confirming his dismissal from CSY (Tortola) Ltd. The learned trial judge found that it was on that date that he became entitled to the balance due him under the scheme. It was on that basis that she ruled that the claim could not have been statute barred because less than six years had elapsed when the writ of summons, which commenced these proceedings, was issued on 12th June, 1989.

In terms of the quantum due the learned trial judge found that the account prepared by Robert Van Ost and sent to the respondent on the 22nd June, 1983 accurately represented the amounts credited to and debited from the respondent's account under the profit sharing scheme, but that there was an error in that the interest was computed at 8.5% per annum instead of 10% per annum in accordance with the terms of the agreement she found. She then accepted the accounting of Nita Taylor an accountant who computed the amount due to him at 10% per annum up to the year 1980.

The judge rejected that part of the respondent's claim which related to contributions made to the scheme while he was employed by CSY (Tortola) Ltd on the ground that the appellant company could only be liable for contributions made to the scheme during the respondent's period of employment with the appellant.

The Profit Sharing Scheme

The first issue of this appeal does not call into question the accuracy of the accounting, it involves the interpretation of two documents which constituted the agreement between the parties on the profit sharing scheme. The appellant has submitted that the trial judge misinterpreted the provisions of the scheme which related to the method by which the equity in the fund was to be shared between the appellant and respondent.

Counsel for the appellant relied on **BENMAX v AUSTIN MOTOR CAR LTD** (1955) 1 A.E.R. 326 and **MUSTAPHA ALLY v BOOKERS STORES** (1969) 14 W.I.R. 263, in support of the well established proposition that the Court of Appeal may draw inferences of fact from the documents. We also accept the well known rule that the interpretation of the meaning to be attributed to their provisions is a matter of law.

The terms to be interpreted were contained in the original general document circulated and in the letter to the respondent dated 12th August 1978.

The relevant provisions in the original document states: -

> "At the end of your fifth year or at the beginning of your sixth year you will be paid your first instalment under the profit sharing plan and it will continue each year as shown on Tables II - V. For each of the assistants and head managers two tables have been provided projecting for twenty years of the plan....."
>
> "The portion of the monies which are accumulated and invested will be shared with the company and the employee on the following basis in the event he should leave the company for whatever reason during the five years after profit sharing starts.

Employee owns	CSY owns
20%	80%

By the end of the seventh year	40%	60%
By the end of the eight year	60%	40%
By the end of the ninth year	80%	20%
By the end of the tenth year	100%	none"

In the letter dated 12th August, 1978 John Van Ost stated that there would be special variations to this scheme in the case of the respondent. The letter is unambiguous. The relevant portion states: -

> "According to our compensation plan profit sharing should not begin until the end of your fifth year of service. However, in your case we have credited a full third of your salary to the profit sharing plan to each year beginning in 1976 when you took over from Pieter. We hold these monies and add 10% per annum to them. Your equity in those monies is 20% at the end of the first year 40% at the end of the second year and goes to 100% at the end of the fifth year. After the money has been credited to your account interest accrues to those monies thereafter if you leave them with us at 10% per year or until you retire. I have tried in the past to make investments for those funds but this has failed. I don't want to take the responsibility of investing what really should be life savings. If in the future I find a suitable vehicle for investment I should let you know and would get your approval before doing it. However, I feel the way we are doing it is the safest and probably the most lucrative over the long haul. I shall have Bobby compute the amounts allocated and the interest accrued for each of the managers after September 30th of this year when the amount for this year will be credited to you."

Counsel for the appellant gave detailed submissions of his interpretation of the application of these provisions of the scheme. He stated that the scheme meant that each year's allocation formed a separate account so to speak and the respondent had 4 separate accounts being kept simultaneously on his behalf. He demonstrated his proposition with a table which showed that the respondent was entitled to the following amounts: -

<u>For the Year Ending</u> Sept.30, 1976:	60% of $6,613.20 = $3,967.92
<u>For the Year Ending</u> Sept.30, 1977:	40% of $6,814.23 = $2,725.69
<u>For the Year Ending</u> Sept.30, 1978:	20% of $6,949.80 = $1,389.96

For the Year Ending Sept.30, 1979:	20% of $6,747.00 =	$1,349.40
TOTALLING:		$9,432.97
LESS AMOUNTS PAID	$3,500.00 - 1979	
	1,413.31 - 1980	
	3,000.00 - 1983	
	$7,913.31	
		$7,913.31
		$1,519.66

I do not agree with that submission of the appellant. There is no basis in any of the documents for concluding that each year's allocation would form a separate fund. The letter written by John Van Ost on 12 August, 1979 states in clear terms that the money allocated to the profit sharing scheme was being held by the company to the respondent's account at 10% per annum.

I interpret the agreement to mean that there is one profit sharing account for the respondent and credits and debits are made to that account. The ownership or equity in that account is shared between the appellant and respondent in accordance with the schedule, so that after the fifth year of his right to participate in the operation of the scheme, the respondent would own the entire fund.

The interpretation of the appellant would mean that an employee could never own the entirety of the amount allocated, because whenever he ceased to be in the scheme (even after 25 years of employment) he would not own 100% in the last 4 years allocation. This seems to be absurd. It is also in direct opposition to the stated written intentions of Mr John Van Ost, and the general intent of the scheme as a whole.

It is difficult to avoid the conclusion that the appellant's contention on this ground of appeal is not consistent with its position over the years before the dispute with the respondent developed.

Apart from the clear terms of the letter of 12th August, 1978, (Bobby) Mr. Robert Van Ost prepared a statement of the respondent's entitlement under the profit sharing scheme while employed by the appellant and sent it to the respondent in 1983. This account (on which the judge's findings was based) is inconsistent with the table prepared by the appellant for this appeal.

I am quite satisfied that the learned trial judge was right to rely on that statement computed at 10% per annum by Nita Taylor in order to determine the respondent's entitlement under the fund, for by the 1980 anniversary of his entry into the scheme he had completed his 5 years of service which would have earned him 100% equity in the fund, and as I have found the scheme related to his employment with any company within the CSY group, he in fact was employed until 1984 giving him some 9 years participation. During all this time the appellant held the money credited to the account of the respondent at 10% per annum as stated in the letter of John Van Ost dated 12th August, 1978, and continues to so hold that money.

For these reasons I would therefore reject this ground of appeal.

<u>Limitation of Actions</u>

Section 7 of the LIMITATION Act states: -

> "An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued."

The relevant issue on this point is whether the learned trial judge was right to rule the 9th March, 1984 as the date on which the cause of action accrued.

In Halsbury's Laws of England Vol.28 para.662: -

> "In an action for a breach of contract the cause of action is the breach. Accordingly such an action must be brought within six years of the breach; after the expiration of that period the action will be barred, although damage may have accrued to the plaintiff within six years of action brought....."

The appellant's contention is that as an independent company all its liabilities to the respondent accrued on the termination of his employment with it in 1979. Any liability under the profit sharing scheme after that date accrued to his new employment with CSY (Tortola) Ltd.

I have found that the purpose of this scheme was to keep good men in the Caribbean Sailing Yachts operations and that it was intended to operate in relation to all marinas. This purpose would be destroyed if the employee had to start from scratch each time he moved from one company to another. This would mean that if he worked with one of these companies for the appropriate number of years and gained 100% equity in his profit sharing fund, on moving to another within the same group he would have to wait another period of years before he could gain 100% equity in his share of the profits of that new operation. This seems absurd and not in accordance with the meaning of the scheme. In my view the scheme was meant to apply to employment within the entire group of Caribbean Sailing Yacht Companies, and was not determined merely by transfer within the group of companies.

Whereas the appellant would not be liable to make any contributions to the fund for the period that the respondent was employed with a sister company the scheme could not be terminated while the appellant was holding money to the account of the respondent under the scheme for no reason other than that he was employed by another of the companies in the group.

Apart from any rationale, there was very persuasive evidence, which the learned trial judge believed that the scheme was in fact treated as continuing in operation between the appellant and the respondent. This can be seen from the letter of Robert Van Ost to the respondent dated 22nd June, 1983 which states: -

> "In response to your letter of June 9th, enclosed please find a detailed review of your profit-sharing account extended through the end of this year plus the original copy of the life insurance policy which is paid up-to-date. The profit-sharing program as defined in the 1973 compensation plan calls for profits in excess to $50,000.00 to be divided amongst qualifying personnel up to 30% of their annual salary. If the pool is not large enough to pay the equivalent of 30% a pro-rata share is made. The employee owns 20% the first year of each distribution and develops an additional 20% vested interest for each following year he remains employed. These funds earn 8.5% interest annually. Your medical insurance currently runs $3,570.24 annually.
>
> Any questions, holler.
>
> Best regards,
>
> Robert Van Ost
> C.S.Y., INC.
>
> Enc."

I agree with the learned trial judge that the respondent's employment with the CSY (Tortola) Ltd on 9th March, 1984 when he ended his relation with the Caribbean Sailing Yacht operations, and that six years had not elapsed before the commencement of these proceedings. This action is therefore not barred by the Statute of Limitation.

I would dismiss the appeal with costs.

....
DENNIS BYRON
Justice of Appeal

I concur.

....
SIR VINCENT FLOISSAC
Chief Justice

I concur.

sgd. Justice Redhead
....
ALBERT REDHEAD
Justice of Appeal (Ag)