

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2014/0488

BETWEEN:

VENA BULLEN & SONS (THE INDUSTRIOUS STORES) LIMITED

Claimant

and

FRANCIS JOHN

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Nigel Stewart for the Claimant

Mr. Alban John with him Ms. Vern Ashby for the Defendant

2021: July 8;
2022: January 20.

JUDGMENT

[1] **ACTIE, J.:** This is a claim for breach of an alleged agreement dated 18th March 1996 between the claimant, Vena Bullen & Sons (The Industrious Stores) Limited (the company) and the defendant, Francis John (Mr. John). The company claims against Mr. John the sum of \$70,866.99 together with accrued interest in the sum

of \$129,031.70, court fees and costs. Mr. John's main contention in response is that the claim is statute barred.

Claimant's case

- [2] The claimant, a limited liability company, with its registered office situate at Hillsborough in the Island of Carriacou operates a supermarket, hardware and lumber store, gas station, travel agency and a general store.
- [3] By an agreement dated on or about 18th March 1996 between the company and Mr. John, the company agreed to offer a credit facility to Mr. John by way of a running account. The purpose of the running account was to allow Mr. John to purchase goods on credit from the company's businesses.
- [4] In accordance with the agreement, the company pleads that from on or about 18th March 1996 to on or about 5th June 2003, it sold to Mr. John goods amounting to the total sum of \$70,866.99. Further, the company pleads that it was an expressed term of the agreement that invoices in respect of goods purchased which remain unpaid 45 days after becoming due will attract interest at the rate of 1.33% per month on the outstanding balance.
- [5] The company pleads that Mr. John has breached the agreement, in that he has failed to pay the sum of \$70,866.99 which has accrued interest in the sum of \$129,031.70 and continues at a daily rate of \$30.98. Additionally, the company pleads that Mr. John by letter dated 27th January 2011 acknowledged that he was indebted to the company and promised to pay the debt. However, the company pleads that despite Mr. John's written acknowledgment, he has failed or refused to pay the debt or any part thereof to the company.

Defendant's case

- [6] Mr. John in his defence denies the agreement and places the company to strict proof on how it was executed. Mr. John pleads further that in any event the claim would now be statute barred pursuant to section 40(1) of the Limitation of Actions Act¹.
- [7] Mr. John avers that he had a building contract with one Stephen Alexander to construct a property in Hillsborough, Carriacou. Mr. John pleads that he approached the company, which at the time was managed by Bernard Bullen (Mr. Bullen), for the purpose of purchasing construction materials.
- [8] Mr. John pleads that he was not versed in financial matters and whenever he received monies under the building contract he would hand over those monies to Mr. Bullen. Mr. John avers that he has never received an accounting or reconciliation for the monies he paid to Mr. Bullen. As such, Mr. John counterclaims for an accounting for all payments made by him to Mr. Bullen as manager and agent of the company, among other reliefs.
- [9] With respect to the alleged letter of 27th January 2011 acknowledging the debt, Mr. John denies signing the letter and avers that the document being relied on does not comply with section 46(1) of the Limitation of Actions Act.

Issue

- [10] The main issue for determination is whether the claim is statute barred.

Discussion and Analysis

- [11] In respect of the limitation period for simple contract debts, **section 40 (1) of the Limitation of Actions Act** provides:

“40. Limitation of actions for trespass, etc.

(1) No action for trespass to the person or for malicious prosecution shall be brought but within four years next after the cause of action; no action for slander or libel shall be brought but within four such

¹ Cap. 173 of the 2010 Continuous Revised Edition of the Laws of Grenada.

years; and no action for any other form of trespass, and **no action for debt (not on specialty), or debt for arrears of rent, shall be brought but within six years next after the cause of action**" (My emphasis)

- [12] Similarly, the limitation period to recover arrears of interest is also six years. **Section 33 of the Limitation of Actions Act** states:

"33. No arrears of rent or interest to be recovered for more than six years

No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or **any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action, but within six years next after the same became due, or next after an acknowledgment of the same, in writing**, has been given to the person entitled thereto, or his or her agent, signed by the person by whom the same was payable, or his or her agent:" (My emphasis)

- [13] Counsel for the company, Mr. Nigel Stewart, submits that time runs from the date of the breach of contract. Mr. Stewart relies on **Halsbury's Laws of England**² and the decision of **Treetops Garden Centre Ltd. v John's Development Corporation**³, where Remy J stated that:

"As a general rule, a limitation period of six years from the date on which the cause of action accrued applies to all actions found on simple contract."⁴

- [14] Mr. Stewart submits that the company acknowledges and agrees with the learning from the authorities and contends that there was an obligation on Mr. John to satisfy each invoice tendered within 45 days of the date of the invoice. Further, Mr. Stewart contends that there was a continuing existing cause of action up to January 2011 when Mr. John both expressly and impliedly acknowledged the debt and promised to pay it.

² 4th Edn. (Re-issue) page 446 at para 864.

³ ANUHCv2011/0176.

⁴ Ibid at para. 22.

- [15] Counsel Mr. Alban John for the defendant, submits that the authorities on simple contract debts state that time runs from the date of the breach of the contract. The company has not pleaded a date of the breach of the contract. Further, counsel submits that if there was a breach date, it should be deemed to be 15th November 2002. Therefore, the company should have brought the claim within six years of 15th November 2002.
- [16] The court notes the company's pleading at paragraph 3 of the statement of claim states that the last date Mr. John allegedly took goods from the company was on or about 5th June 2003. Therefore, according to the provisions of the alleged contract, the invoice for the purchased goods would become due on or about 20th July 2003. In the premises, having regard to the company's pleadings, the date of the alleged breach or cause of action would have been 20th July 2003 which is 45 days from 5th June 2003.
- [17] By virtue of section 40(1) of the Limitation of Actions Act the company's right to bring a claim or action for the debt expired six years from the date when the last invoice became due (20th July 2003). Therefore, the company's right to take action on the contract debt extinguished on or about 20th July 2009. Accordingly, the claim filed on 29th October 2014 was in excess of six years after the accrual of the cause of action. As such, the claim is statute barred since there was no interruption or acknowledgment of the debt within the six-year limitation period.

Can an acknowledgment of debt revive an extinguished claim?

- [18] Counsel for the defendant, Mr. Alban John, submits that the company relies on what appears to be a piece of email, but called a letter in the claim, to revive what is otherwise a statute barred and a dead contract. In essence, counsel asserts that the email of 27th January 2011 which the company relies on cannot revive a statute barred claim.

[19] The court agrees with Mr. John's submissions. In the Court of Appeal decision of **Network Construction Maintenance and Rehabilitation Limited et al v Cable & Wireless (St. Lucia) Limited**⁵, Thom JA, explained this very point concerning an appeal on an action for a contract debt brought outside of the limitation period. Her Ladyship stated "***where the period has elapsed without any interruption the right is extinguished***"⁶.

[20] The company relies on an email dated 27th January 2011 as an acknowledgment of the debt. However, that alleged acknowledgment of the debt came after the company's right to bring an action for the debt had long expired in July 2009. Accordingly, in light of the Court of Appeal's pronouncement in **Network Construction**, the alleged email of 27th January 2011 could not have revived the company's claim for the alleged debt, since it had already been extinguished.

Validity of email dated 27th January 2011

[21] Having found earlier that the email could not have revived the alleged debt, the arguments on the validity of the email are moot. However, for completeness I will consider them. The main dispute between the parties was the validity of the email of 27th January 2011 (the email) as an acknowledgment of the debt pursuant to section 46 (1) of the Limitation of Actions Act. **Section 46(1) of the Limitation of Actions Act** provides:

46. Acknowledgments

"(1) In all actions grounded upon any simple contract, **no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract** whereby to take any case out of the operation of this Act or to deprive any party of the benefit thereof, **unless the acknowledgment or promise is made or contained by or in some writing signed by the party chargeable...**" (My emphasis)

⁵ SLUHCVP2018/0024.

⁶ Ibid at para. 22(c).

[22] A fair reading of the alleged email reveals:

- (1) It is from the account of “Francis John” khaliffa@live.ca.
- (2) It was sent to vbs@spiceisle.com.
- (3) It is dated Thursday, 27th January 2011.
- (4) The subject of the email is: “The payment”.
- (5) It is addressed to “Mr. Bullen”.
- (6) It contains a statement which reads “...concerning the account and as I told you am not working write [sic] now but as soon as I get a job I will start payment on the accountI can not [sic] tell you how much I will be able...as I get the job I will contact you and let you know how much I will be able to pay monthly on the account”.
- (7) It contains an email signature of “Francis John”.

[23] Counsel, Mr. John, argues that: (1) the document appears to be tampered with; (2) does not identify the account and the amount owed on the account and (3) is not signed by him, among other allegations.

[24] In respect of Mr. John’s argument that the document appears to be tampered with, it is established that allegations of fraud must be specifically particularised and pleaded⁷. Mr. John has failed to plead fraud in his pleadings and cannot raise new allegations in his submissions.

[25] As it relates to the allegation that the email was not signed, the Court of Appeal in the decision of **B.B Inc v Lewis Hamilton**⁸ stated that the definition of “writing” and “signed” under section 2 of the Interpretation and General Provisions Act⁹ “**is wide enough to include electronic documents**”¹⁰. The email in issue was electronically

⁷ The Castries Constituency Council v Lambert Nelson SLUHCVP2014/0016 at para. 23.

⁸ GDAHCVP2015/0035 (Digest) (Court of Appeal sitting 3rd to 7th April 2017).

⁹ Cap. 153 of the 2010 Continuous Revised Edition of the laws of Grenada.

¹⁰ GDAHCVP2015/0035 at para. 4.

“signed” by “Francis John”. Accordingly, given the Court of Appeal’s explanation in **B.B Inc.** this argument on the validity of Mr. John’s electronic signature must fail.

[26] With regard to the identity of the account and the amount owed, the House of Lords in **Bradford & Bingley plc v Rashid**¹¹ held “*Acknowledgments are not confined to admissions of debts which are indisputable as to quantum as well as liability*¹².” In short, the acknowledgment of the debt would be adequate even if the total sum of the debt was not identified. Further, the House of Lords in **Bradford** stated that “*in order to constitute a relevant acknowledgement there must be an unequivocal written admission clearly acknowledging that the obligation still subsists*¹³”.

[27] In essence, the acknowledgement must be a clear and unequivocal admission of the debt. The court notes that the statement acknowledging the alleged debt in the email is premised on Mr. John obtaining employment. This statement, in the court’s view, is a clear expressed and unequivocal admission of the existence of an obligation to pay the alleged debt. However, the court notes that the promise to pay the alleged debt was conditional on Mr. John first obtaining employment.

[28] In any event, the email of 27th January 2011 was made outside of the relevant six-year limitation period. Therefore, the email could not have interrupted the limitation period as the right to bring the claim had already been extinguished. Accordingly, the company’s claim must fail.

Counterclaim

[29] Having found that the claim is statute barred, Mr. John’s counterclaim for an account of all payments made by him to the company is also statute barred. Equally, an order for the company to account would be pointless in the circumstances.

¹¹ [2006] All ER (D) 145 (Jul).

¹² Ibid at para. 60.

¹³ Ibid at para 29.

Conclusion

[30] For all these reasons, the claimant's claim filed on 29th October 2014 and the defendant's counterclaim are both statute barred and are accordingly dismissed. The claimant shall pay to the defendant prescribed costs on the claim in the sum of \$24,987.34 pursuant to CPR 65.5.

Agnes Actie
High Court Judge

By the Court

Registrar