

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim Number: SLUHCV2020/0592

BETWEEN

WILLIANA COMPTON

Claimant

-and-

M&C HOME DEPOT LIMITED

Defendant

Appearances:

David R. Francis for the Claimant; and
Maureen John – Xavier for the Defendant.

2021: September 24, 2021;
November 01 - via email without a hearing

DECISION

Defendant's application to strike out filed 15.01.2021
Claimant's application for permission to amend filed 16.04.21.

[1] **PARIAGSINGH, M (Ag.):** - There are two applications before the Court. The first in time is the Defendant's application to strike out this claim or alternatively for summary judgment filed on January 15, 2021. The second application is the Claimant's application for permission to amend her statement of claim filed on April 16, 2021.

DISPOSITION:

[2] For the reasons set out below, the Claimant's statement of case filed on December 28, 2020 is struck out and her claim is dismissed. The Claimant's application filed on April 16, 2021 is also dismissed with no order as to costs. The Claimant must pay

the Defendant's costs of the claim on the prescribed scale at 55% on a value of \$50,000.00 calculated in the sum of \$4,125.00

PRELIMINARY POINT:

- [3] The Defendant contends that the application to strike out ought to be determined first. The Claimant contends that the Court has a discretion to grant an amendment. The Court of Appeal in **Darrel Monthrope v The Attorney General, SLUHCVA201/0021** stated an application to strike out a claim operates as a stay pending its determination.
- [4] In my view any application filed after the application to strike out, including the Claimant's application for permission to amend ought to be heard after the application to strike out is determined. I am bound by this decision.

APPLICATION TO STRIKE OUT:

- [5] **Part 26 Rule 26.3 and 4 of the Civil Proceedings Rules 2000 as amended (CPR)** gives the Court the power to strike out a party's statement of case. The exercise of this power is however, sparingly used unless it is pellucid that the statement of case is doomed to fail or is otherwise abusive.
- [6] Thom JA in **Agnes Danzie et al V Cecil Anthony SLUHCVP2015/0009** at paragraph 13 stated:

13. It is a well-established principle that the court's power to strike out a statement of case should only be used sparingly (*Real Time Systems Limited v Renraw Investments Limited and Others* [2014] UKPC 6). Also, in *Salfray Hussain v Birmingham City Council and Others* [2005] EWCA Civ 1570 the English Court of Appeal, in considering the exercise of discretion to grant relief from sanctions where judgment was entered in default, stated: 'it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective'. In

exercising his discretion, the learned judge was required to consider what was the appropriate response having regard to all of the circumstances, including whether there were other alternatives available that would be just in the circumstances.

[7] As this Court stated in **Alison Wilson v Liz-ann Debeuville – Jones et al SLUHCV2019/0520** at paragraph 16 on a similar application, which position I maintain:

16. Prescription is different from limitation. They are distinct concepts. A complete and thorough analysis of the what stops time for running was conducted the Court of Appeal in David Sweetnam et al v The Attorney General of Saint Lucia et al, Civil Appeal No: 42 of 2005 Gordon JA at paragraph 11 of the judgment succinctly stated the law in this jurisdiction as:

The law in St. Lucia has never been amended to harmonise with either the Quebec or Louisiana laws as amended. It must therefore follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with plain ordinary meaning of the language of article 2085

[8] It is not disputed that the claim although filed before time was prescribed nor is it disputed that it was served on the Defendant after time was prescribed.

[9] The authorities are clear on what constitutes a judicial demand for the purpose of stopping prescription. The claim must be filed and served before the prescription period ends. If this is not done, time has not stopped running for the purpose of prescription.

[10] Once prescribed, the Court has no jurisdiction in the matter both the right and remedy is extinguished. This is important to note. Once the Court has no jurisdiction, as in this case, the Court has no power to make any orders or give directions which can circumvent the operation and effect of prescription.

[11] In the circumstances, the Claimant's statement of case filed on December 28, 2020 is struck out and her claim is dismissed.

[12] This determination is sufficient to dispose of the entire matter. For completeness, I will treat with the Claimant's application to amend.

APPLICATION TO AMEND:

[13] There is no dispute that the Court can grant permission to a party to amend its case, even after the relevant limitation periods. This of course with the caveat that prescription and limitation are different concepts. This is of course the exercise of discretion which must be exercised having regard to the evidence, the overriding objective and all the circumstances of the case.

[14] In my respectful view this application to amend is an afterthought in response to the application to strike out. More so, the proposed amendment seeks to lay the foundation for the submission made in response to the prescription argument.

[15] Assuming that all the factors are satisfied on the relevant test in Part 20CPR, the proposed amended still would not have assisted the Claimant in my respectful view.

[16] The proposed amendments relate to alleging that that the Defendant acknowledged liability and the resulting debt by making payments to the Rodney Bay Medical Center on behalf of the Claimant for her medical examination and reports produced from March 07, 2018 to April 10, 2018.

[17] The Claimant submits that Article 2088 of the Civil Code when considered with the alleged payment of the Claimant's medical expenses operates to interrupt time for prescription. The Claimant refers to the authority of **First Caribbean International**

Bank (Barbados) Limited v Chemical Manufacturing and Investment Limited et al, SLUHCV2010/0121. That case deals with an acknowledgment in the context of a commercial debt. In this instance the concept of a running debt applies, unlike the case at bar.

[18] An acknowledgement of a debt for the purpose of interrupting time is a material fact that ought to have been pleaded in the first instance. The nature of the acknowledgment must be clear, unequivocal and it must be pleaded that the Defendant intended to and understood that it was acknowledging the debt. The proposed amendment in any event, does not assert any of these things as facts.

[19] The application to amend having been filed when the claim was stayed and having ruled that the time is prescribed, to allow the Claimant to amend now would be to allow the Claimant to introduce a whole new claim after time has been prescribed. I have no jurisdiction to do so.

[20] In respect of costs, there is no reason to depart from the general rule that costs follows the event. On the application to strike out the claim was determined. I am not prepared to order costs of the claim and costs of the application separately. In my view the costs of the claim at this stage (up to and including case management conference) adequately compensates the Defendant for all work done to date, including the filing of the application to strike out. I will therefore order the Claimant to pay Defendant's costs of the claim, which includes the costs of the application to strike out, at 55% of the prescribed costs on a claim of value of \$50,000.00.

[21] On the application to amend as it was considered after the claim was determined for the purpose of completeness, I will exercise my discretion and order no order as to costs.

ORDER:

[22] In the circumstances, it is hereby ordered that:

- a. The Claimant's statement of claim filed on December 28, 2020 is struck out;
- b. This claim is dismissed;
- c. The Claimant's application to amend filed on April 16, 2021 is dismissed with no order as to costs;
- d. The Claimant shall pay the Defendant's costs of the claim on the prescribed scale at 55% on a value of \$50,000.00 calculated in the sum of \$4,125.00.


Alvin Shiva Pariagsingh
Master (Ag.)

By the Court,

Registrar