

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA & BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv 2013/0401

BETWEEN:

RANDY JOSIAH

Claimant

and

AMW WELDING & INDUSTRIAL SUPPLIES LIMITED

Defendant

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Mr. Ralph A. Francis of counsel for the Claimant

Mr. Loy West, Mr Lisa John West with Mr Kelvin John of Counsel for the Defendant

2014: January 16, 31.

JUDGMENT

- [1] **ACTIE, M. [AG.]:** This is an application to strike out a statement of claim.
- [2] On 8th July 2013, the defendant filed an application for an order pursuant to CPR 26.3 that the claim form and statement of claim filed by the claimant be struck out in its entirety as an abuse of process of the court as it was statute barred with costs of the action to be borne by the claimant.

Background

- [3] The claimant by claim form and statement of claim filed on 18th June 2013 claims against the defendant for special and general damages arising out of the sale by

the defendant to the claimant of a defective welding hose which allegedly exploded on 15th June 2010, causing burns to the claimant's body.

- [4] The defendant in the defence filed on the 8th July 2013 pleaded that the claimant's claim is statute barred as the period between the alleged incident and the date of filing the claim exceeds three years.
- [5] The defendant by application with accompanying affidavit filed on 8th July 2013 applied to strike out the claim form. The defendant contends that the accident as stated by the claimant occurred on 15th June 2010 and the claim was filed on 18th June 2013, 3 days after the limitation period had expired.
- [6] The claimant in response contends that the limitation period in respect of personal injuries is not to be calculated by references only to the date of the injury as the beginning of the period and the date of the institution of the action as the end of the period which cannot extend beyond three years. The claimant relies on section 16 of the **Limitation Act** which allows an enlargement of time based upon necessity of the claimant to be possessed with "Knowledge" whether expert advice, medical, legal or other.
- [7] The claimant avers that at the time of the incident he had no way of knowing whether to pursue the person from whom he purchased the defective hose or the manufacturer for the damages and loss suffered as a result of the burns. Counsel for the claimant argues that notwithstanding the time limited to bring the claim had expired the limitation period did not begin on the date of the injury but from the date the claimant became seized of knowledge of the proper person liable for the damages suffered.
- [8] The claimant contends that whether the limitation period for filing a claim is three years or an extension be granted pursuant to Section 16 is an issue to be determined from the circumstances of the case and can only be done by evidence given at trial and not at this interlocutory stage.

The Law

- [9] The **Limitation Act** of the Laws of Antigua And Barbuda¹ makes provision for the limitation of actions and gives the ordinary time limits for bringing actions. Section 13 of the Act provides as follows:

“13. (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the **period** applicable in accordance with subsection (4) or (5).

(4) Except where subsection (5) applies, the period is **three** years from -

(a) the date on which the cause of action **accrued**; or

(b) the date of knowledge (if later) of the person injured.

- [10] It is the claimant's contention that notwithstanding that the time limited to bring the claim has expired, that time can be extended pursuant to the provisions of section 16 of the **Limitation Act** by reference to the date that the claimant became seized with knowledge of the appropriate defendant.

- [11] Section 16 of the **Limitation Act** defines the date of knowledge for the purpose of sections 13 and 14 of the Act and provides as follows.

“16. (1) In sections 13 **and** 14 references **to** a person's **date of** knowledge are references to the date on which he first: had knowledge of the following facts -

(a) that the injury in question was significant;

¹ No. 8 of 1977.

- (b) that the injury was attributable in whole **or** in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
 - (c) the identity of the defendant; and
 - (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts 13 supporting the bringing of an action against the defendant; and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.
- (2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.
- (3) For the purposes of this section a persons knowledge includes knowledge which he might reasonably have expected to acquire –
- (a) from facts observable or ascertainable by him; or
 - (b) from facts ascertainable by him with the help of medical **or** other appropriate expert advice which it is reasonable for him to **seek**;

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, act on) that advice.”

[13] Section 16 turns on whether an injury is significant which justifies the claimant instituting proceedings for damages against the defendant. The section also turns on the time the claimant became aware of the injury and that the defendant attributed to the injury. Counsel alleges that the claimant was aware that he suffered first degree burns but had to go back to the place of purchase to try to obtain information so as to identify the appropriate person to pursue his claim for the injuries suffered as a result of the defective hose.

[14] I do not accept these arguments. The claimant filed the claim for personal injuries 3 years and three days after the alleged injuries. The claimant has not provided any evidence in support of his inquiries which eventually identified the defendant as the proper person to pursue for damages suffered.

[15] The claimant has not provided any medical evidence to satisfy the extent of his injuries. CPR Part 8.9 provides for special requirements applying to claims for personal injuries and states as follows:

“CPR 8.9 (1) This rule sets out additional requirements with which a claimant making a claim for personal injuries must comply;-

(2) ...

(3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from the medical practitioner intend on the personal injuries alleged in the claim.”

[16] Medical evidence is the starting point for the reckoning of the limitation period and to establish knowledge under section 16 of the **Limitation Act**. In order to benefit from section 16 of the **Limitation Act** it must first be established that the injury was significant. This requirement can only be proven by medical evidence which the claimant has failed to produce in breach of CPR 8.9 (3).

[17] It is my humble opinion that the claimant has not fulfilled the criteria required under section 16 of the **Limitation Act** so as to avail himself of an extension of the limitation period. The claimant has failed to substantiate his claim with medical evidence and has not provided any evidence of the date he became seized with knowledge of the defendant as the proper person to pursue for his injuries.

[18] Margot Warner JA in **Rattansingh**² states that;

“Harsh though it may appear to be, the purpose of enacting limitation periods is to ensure that genuine claims are prosecuted with dispatch and

²Rattansingh Trinidad & Tobago Civ. App. 105 of 2000, 11th April 2002, at page 13.

to relieve potential defendants from defending stale claims, which, they were entitled to assume, had been put to rest."

- 19] For the above reasons and as draconian as it may be, the claim form and statement of claim is statute barred having been filed 3 days after the limitation period is to be struck out as an abuse of process of the court with costs to the defendant.

Order

- [20] In summary, the claim form and statement of claim filed on 18th June 2013, being statute barred is struck out with costs to the defendant in the sum of \$1,500.00.



Agnes Actie
Master [Ag.]