

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

SUIT NO. GDAHCV2011/0037

BETWEEN:

CLIFFORD ROBERTSON

Claimant

AND

H.M BHOLA & CO. LTD

Defendants

Appearances:

Lisa Taylor of Counsel for the Claimant

Sandina Date of Counsel for the Defendant

2011: NOVEMBER 1st

2012: JULY 30th

MASTER V. GEORGIS TAYLOR-ALEXANDER

DECISION ON A STRIKE OUT APPLICATION

*Application to strike out statement of case; CPR 26.3 (c); Abuse of Process; Limitation of Action;
Proceedings statute barred by the operation of section 40 of the Limitation of Actions Act Cap 173
of Grenada;*

[1] These proceedings are to determine an application by the defendant to strike out the claim form and statement of claim in these proceedings on the basis that the cause of action is barred in time by statute. The relevant statutory provision being **section 40 of the Limitation of Actions Act Cap 173**, which provides as follows:-

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

[2] The cause of action alleged is for breach of a written contract executed between the parties and in particular it is to enforce an obligation by the defendant to pay to the claimant the sum of \$50,000.00. A six year statutory limitation is applicable.

A BRIEF HISTORY

[3] By agreement dated 9th of October 1998 the claimant agreed to sell and the defendant agreed to buy the claimant's 300 shares in the defendant valued at \$300,000.00 for a contract price of \$200,000.00, to be purchased in instalment payments as follows:- \$50,000.00 on execution of the agreement; \$50,000.00 on the 9th October 1999; \$50,000.00 on the 9th October 2000; \$50,000.00 on October 9th 2001. Upon execution of the agreement the claimant agreed to endorse the share certificate for the 300 shares over to the

defendant and agreed to vacate his seat on the board of directors of the defendant.

- [4] Relevant to the action is a term of the agreement that provided for the sale of a portion of land at Hall and the proceeds of the sale to be applied by the defendant to reduce the balance owed to the claimant under the agreement. No time frame was given for the sale of this property.
- [5] The first instalment was paid as agreed on the execution of the agreement.
- [6] The defendant defaulted on the second and third instalments, which resulted in the claimant successfully suing the defendant in claim GDAHCV2001/0283 to recover these instalments.
- [7] In a further claim, **GDAHCV2009/0156** the claimant brought proceedings to recover the final instalment payment. The proceedings were subsequently discontinued by the claimant.
- [8] The current action initiated on the 24th January 2011, was commenced to again recover the final instalment outstanding. It is these current proceedings that the defendant alleges is statute barred.

SUMMARY OF SUBMISSIONS

- [9] The defendant submits that there was an obligation on the defendant to meet each instalment payment as it fell due and a default of any one instalment gave rise to a cause of action for which the claimant was entitled to bring an

action for recovery. This is what had happened when the earlier instalments fell due.

[10] The substance of the defendant's application is that the default in relation to the final instalment occurred on the 10th October 2001 and therefore proceedings to enforce that payment ought to have been prosecuted on or before the 12th October 2007. The proceedings for enforcement commenced in 2011.

[11] The claimant disagrees with the advanced submission of the defendant and in vigorous opposition challenged the application of **section 40 of the Limitations of Action Act Cap 173, of the Revised Laws of Grenada** (the act) on the basis that the cause of action in relation to the last instalment could only arise on the 23rd of July 2008 when the claimant alleges that the land at Hall was sold and its proceeds applied to the outstanding obligation. Consequently the claimant alleges that his claim is not statute barred as a period of six years had not elapsed from the 23rd July 2008 to when the proceedings commenced.

ISSUE

[12] The sole issue I am to determine is when the cause of action in relation to the claim filed accrued.

ANALYSIS OF THE LAW AND EVIDENCE

[13] CPR 26.3 (1) (c) empowers the court to strike out a statement of case where it is an abuse of the process of the court, or is likely to obstruct the just

disposal of the proceedings. I am satisfied that a claim filed where the cause of action is statute barred is an abuse of process.

[14] Pursuant to the act, the statutory time limit for an action in contract is ordinarily calculated from the date next after which the cause of action accrued.

[15] The phrase accrue in the context of a cause of action has been defined in *Black's Law Dictionary* to mean; "to arrive, to commence, to come into existence, or to become a present enforceable demand or right.

[16] In Reeves v Butcher [1891] 2 QB 509, an authority provided by the claimant, it was held that a cause of action accrued from the earliest time at which the plaintiff could have brought her action, and though an action may well arise on various events, it has always been held that the statute runs from the earliest time at which an action could be brought.

[17] The agreement on which the claim is founded is a simple agreement. It is annexed to the claim as "**CR1**". I am satisfied of the provision in the agreement for fixed dates by which payments for the shares were to be made. While the agreement provides for the sale of a property at Hall to be used to decrease the defendant's payments, I am satisfied that that term anticipated the property being sold to accelerate the payments due by the defendant under the agreement, and not to delay the obligation to pay.

- [18] To give the agreement the interpretation advanced by the claimant, would make the express provision that specify the date by which the instalments payments were to be made, a redundant provision. This surely could not have been the intention of the parties to the agreement, nor do I believe that, that was the claimant's appreciation of the requirement for instalment payments on specified dates. Undeniably it was the claimant who had sued and recovered the earlier instalment payments when they fell due.
- [19] The intention of the parties to the agreement is clear. The parties agreed specific dates for instalments payments, giving rise to the obligation of the defendant to pay when they fell due, with the property at Hall having the effect of accelerating the payments due on the entire debt. The cause of action was triggered the moment the defendant failed to pay the last instalment payment.
- [20] Accordingly, I find that the action to recover the final instalment in this action accrued on the 10th October 2001, and consequently, the cause of action is barred by the **section 40 of the Limitation of Action Act Cap 173, of the Revised Laws of Grenada**. I therefore dismiss the claim in proceedings in GDAHCV2011/0037 and award prescribed costs to the defendant in the sum of \$4125.00.

V. Georgis Taylor-Alexander
High Court Master