

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

CLAIM NO. GDAHCV2008/0479

BETWEEN:

RITA JOSEPH OLIVETTI

Claimant

and

HUGH DOLLAND
VALERIE PARRIS

(Personal Representative of the Estate of Linda Grant, deceased)

Defendants

Appearances:

Mrs. C. Edwards, Q.C, with her Ms. S. Khan for the Claimant
Ms. D. Forrester and Ms. D. Marquez for the Defendants

2009: October 13, December 8
2010: February 2

JUDGMENT

[1] **PRICE FINDLAY, J.:** By way of Fixed Date Claim Form filed on the 24th September 2008, the Claimant claimed against the Defendants the following relief:

1. For an account of all monies received by the firm Grant Joseph & Co. on behalf of the partners during the period 1st January 1997 to 28th February 2006.
2. For an account of all monies drawn down by M. Linda Grant deceased and/or her estate during the period 1997 to 28th February 2006.
3. For an order for payment to the Claimant of such monies found to be due from the Defendants to the Claimant as a partner on the taking of such accounts.

4. For interest on all sums found to be due and owing at the going commercial rate and for such period as the Court shall think fit pursuant to s.27 of the West Indies Associated States Supreme Court Act Cap. 336.

5. Costs.

[2] This was supported by the Claimant's affidavit of even date.

[3] The Defendants filed an Acknowledgment of Service on the 23rd day of December 2008.

[4] By Notice of Application filed on the 22nd January 2009 the Defendants applied to the Court to strike out the Statement of Claim. The grounds of the application were that:-

(a) The alleged debt did not arise within six (6) years before the start of this action and therefore the alleged debt was and is barred by s.40 of the Limitations of Actions Act Cap. 336 of the 1990 Revised Laws of Grenada.

(b) The partnership existing between the late Marie Linda Grant and the Claimant in the firm of Grant Joseph & Co. terminated upon the appointment of the Claimant as a High Court Judge of the Eastern Caribbean Supreme Court in the year 2001.

(c) The Claimant's right to sue Marie Linda Grant for monies owing to her commenced on the termination of the partnership.

(d) The claim herein was commenced on the 24th September 2008, that is, some seven (7) years after the cause of action arose and after the statutory limitation period and therefore is statute barred on the face of the claim.

[5] The application was heard on the 22nd April 2009 by Michel, J. (Ag), as he then was, and the learned trial judge dismissed the application to strike out the Statement of Claim and ruled as follows:

- (i) That the Eastern Caribbean Supreme Court Judicial Code of Conduct for Judges was not legally binding;
- (ii) That the earliest act of termination of the partnership took place in the year 2003 as deposed to in para 9 of the affidavit in support of the claim; and
- (iii) The partnership was terminated by the death of Linda Grant.

[6] The Defendants filed an Application for leave to appeal the decision of Michel, J. (Ag) dated 6th May 2009, and have filed an affidavit accompanying their application.

[7] The Court received written submissions and authorities from the parties and with the consent of Counsel will render the ruling without oral arguments.

[8] Learned Counsel for the Defendants submitted that:-

1. The Learned Judge erred in law by failing to find that the appointment of the Claimant as a High Court Judge amounted to an express or implied notice of dissolution of the partnership.
2. The Learned Judge erred in failing to find that the appointment of the Claimant as a High Court Judge amounted to an express or implied consent by the parties to dissolve the partnership.
3. That the Learned Judge ought to have directed that the issue as to limitation ought to have been left for determination at trial wherein evidence could have been led as to the intention of the partners and the effect of the duties and obligations of a High Court Judge vis-à-vis continuing in practice.

- [9] The Defendants contend that the Learned Judge in refusing to strike out the claim disposed of the limitation issue in its entirety having concluded the date of the termination of the partnership without allowing for a finding of fact on the issue at trial.
- [10] They further contend that the issue of termination/limitation ought to have been left for trial where there could be an examination of the facts.
- [11] The Claimant submits that the ground of the application was the limitation period, and the Learned Judge found that the partnership was terminated on the death of Linda Grant.
- [12] Their position is that the Defendants should not have brought the application, but having done so, the Learned Judge was entitled to rule on it and he did so. They say there is no reasonable prospect of the appeal succeeding and leave ought not to be granted.
- [13] It is a well established principle of law that the test as to whether leave to appeal ought to be granted is that the proposed appeal should have a real prospect of success. This burden is heavier than showing that there is an arguable appeal.
- [14] In seeking leave to appeal against the exercise of judicial discretion, the applicant is required to show that there is a real prospect of succeeding in the appeal if leave is granted to appeal the decision of the Learned Trial Judge – **Othniel Sylvester v Faelleseje, a Danish Foundation** Civil Appeal No. 5 of 2005 (St. Vincent & The Grenadines) per Barrow, JA.
- [15] Learned Counsel referred to the following cases in their submissions: **Swan v Hillman** [2001] All ER 91; **Smith v Cosworth Casting Processes Ltd.** [1997] 1 WLR 1538.
- [16] Counsel for the Applicants asserts in their submission that it was not for the Learned Trial Judge to determine issues of fact that arise on an application such

as this. They further assert that these matters ought to be left for determination at trial.

[17] Having reviewed the authorities and the arguments of Counsel on both sides, I find that though I may have reached a different conclusion to Michel, J., there does not seem to be a realistic prospect of the Defendants succeeding on an appeal against his decision.

[18] In the circumstances the application for leave to appeal is denied, with no order as to costs.



Margaret Price Findlay
High Court Judge