

ANGUILLA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2009

CLAIM NO. AXA HCV 2006/0068

BETWEEN:

JAMES RUAN

Claimant

AND

PAGETTE CARTER
(Administrator of the Estate of Josephine Harrigan, deceased)

Defendant

Appearances:

Mrs. Josephine Gumbs-Connor of JAG Gumbs and Co. for the Claimant

Mr. Colin Meade of Astaphan's Chambers for the Defendant

2009: April 3, 8.

JUDGMENT

- [1] **MICHEL, J. [AG.]:** On 25th February 2009 a Notice of Application was filed by the Defendant in this matter asking the Court to strike out the Claimant's claim as being statute barred, pursuant to section 3(1)(a) and 5(3) of the **Limitation Act**, Revised Statutes of Anguilla, Chapter L60 and for the Claimant to pay prescribed costs to the Defendant, including the costs of the filing of the application. The Defendant's application was supported by an affidavit filed on the same 25th February 2009, which affidavit had exhibited with it a copy of an agreement dated 13th April 1972 between the Claimant and the mother of the Defendant (who will

hereafter be referred to as the Deceased). The Defendant is sued in his capacity as the Administrator of the estate of the Deceased.

- [2] The Defendant's application rests on the foundation that the claim by the Claimant is made on the basis of the aforesaid agreement between the Claimant and the Deceased, but that the agreement was made on 13th April 1972 and any claim arising from it would be extinguished 6 years from the date of the agreement, if the claim is based on a simple contract, or 12 years from the date of the agreement, if the claim is viewed as an action to recover land. The averments in the Defendant's application that the claim is frivolous and vexatious and an abuse of the process of the Court and that the Claimant has no real prospect of success on his claim are all grounded on the same issue of the claim being statute barred.
- [3] In the affidavit in support of his application, apart from making the same averments as are contained in his Notice of Application, the Defendant also alleges that the Claimant knew at all times that lands from the Estate of Thomas Webster – from which the land was to be derived to implement the agreement of 13th April 1972 – were sold on two occasions (in 1984 and in 1988) from which sales the Deceased received payments for her share, but the Claimant did not make any claims against the estate at that time and instead brought this claim some 20 years since the first sale. In terms of factual correctness, the year of the first sale – according to the pleadings – was 1982 and not 1984 and the number of years between the first sale and the year when the claim was filed in 2006 is 24 years and not 20 years. Even if the year 1982 was correct, the number of years in between would still not have been 20 years but would instead have been 22 years. But whether the year of the first sale was 1982 or 1984, and whether the time between the year of the first sale and the filing of the claim was 20, 22 or 24 years, is immaterial to the determination of the issue - the correction of the year and of the calculation is done only for the sake of tidiness.

- [4] On 2nd April 2009 the Claimant filed an affidavit in response to the Defendant's application. In his affidavit, the Claimant contended in essence that his claim is not statute barred because neither 6 years nor 12 years have elapsed since his cause of action arose against the Defendant as the Administrator of the estate of the Deceased. He alleges that the contract with the Deceased was for the sale to him of 5 acres of land "located at Morne Fortune Estate, Savannah Bay, Anguilla" and that the contract clearly stated that "Until title is cleared, Purchaser will have to wait for the deed." He intimates that the stage had not been reached of title being cleared because, apart from the 1980s' sales, the Estate of Thomas Webster lay largely unadministered until 2006. He also alleges that during the lifetime of the Deceased he had always had discussions with her and her family with regard to the agreement for the sale of the land to him and it was agreed that once the land was subdivided he would receive the share which he had bought. The Claimant further alleges that he brought the claim against the Defendant after Letters of Administration of the Deceased's estate had been obtained by the Defendant.
- [5] From the various averments in the Claimant's affidavit, and as well from the averments in his Statement of Claim filed in this matter on 8th November 2006, one can deduce that the timing of his claim was determined by the apparent repudiation of the 1972 contract by the Administrator of the Deceased's estate in 2006. One can then extrapolate from that, that it is the Claimant's position that it was only then that the cause of action arose.
- [6] At this juncture the Court will assess the positions of the parties as they now stand - the averments and submissions of and on behalf of the Defendant as made, presented and factually corrected and the averments and submissions of and on behalf of the Claimant as made, presented and reconstructed.
- [7] Straight off, it can be stated that the Defendant's application is flawed in so far as it is based on the claim being statute barred 6 years or 12 years from the date of the contract in April 1972. The authorities – both legislative and judicial – referred to

by the Defendant all clearly state that the limitation period runs from the date of accrual of the cause of action and not from the date of the making of the contract. So that certainly, in terms of an action founded in contract, even if the contract was made in April 1972, it is only when it is breached, repudiated or performance of it is made impossible that a cause of action could arise in relation to it, and the starting point of the 6 year limitation period in this case therefore is not from the date of the contract but from the breach of the contract, with breach here and hereafter defined to include repudiation of the contract or the performance of it being rendered impossible.

- [8] Some reconstruction then of the Defendant's submission would therefore have to be undertaken to arrive at the position that the Claimant's case became statute barred not 6 years or 12 years from the making of the contract in 1972 but 6 years or 12 years from the breach of the contract, which breach the Defendant would contend had to have occurred in 1973 when – according to the Claimant - he had completed his obligations under the contract so that it was then for the Deceased to complete hers, or in 1982 when lands at Morne Fortune forming part of the Estate of Thomas Webster were sold and the Deceased received payment for her share, or in 1988 when the same thing as happened in 1982 was repeated. More than 6 years and more than 12 years having elapsed between 1973, 1982 and 1988 and November 2006 when the claim was filed, the Defendant's submission would be that the claim was by then statute barred.

Post reconstruction, therefore, the two competing positions to be determined by the Court are as follows –

- (1) Whether the 1972 contract was breached by the Deceased upon her failure to give effect to it when – according to the Statement of Claim – the Claimant had completed his obligations under the contract in January 1973 so that it was then for the Deceased to complete hers, or when lands from the Estate of Thomas Webster were sold in 1982 and 1988 from which

sales the Deceased received payments for her share of the lands, with the result that the Claimant's cause of action would have accrued by 1973, 1982 or 1988 and would have become statute barred at the latest by 2000 – the longest possible limitation period for the latest possible time of accrual of the cause of action, in accordance with the Defendant's submission.

- (2) Whether the Claimant's cause of action on the 1972 contract only accrued when in 2006 the Defendant obtained Letters of Administration for the estate of the Deceased and, in that same year, a sale of lands was undertaken from the section of the Estate of Thomas Webster in which the Deceased "was entitled."

[9] Although the Claimant was not able to satisfy the Court that there was a material difference between the 1980s' land sales and the land sale of 2006, with the effect that the sale of 2006 would have given rise to the cause of action while the 1980s' sales did not do so, it is difficult not to come to the conclusion that there is a genuine issue to be determined as to when in fact a breach of the 1972 contract occurred so as to give rise to a cause of action on the contract. And if there is a factual issue for determination that goes to the heart of the matter, the Court regards the trial of the matter as the appropriate forum to determine that issue. Although I remain unsure as to when the cause of action accrued on the facts of this case, I regard it as not my role, but the role of the trial judge, to assess the competing assertions of the parties, have them tested under cross examination and to determine, after a full consideration of all the evidence in the case, whether the cause of action accrued in 1973, in 1982, in 1988 or in 2006, either when the sale was effected in that year or when the Defendant, as Administrator of the estate of the Deceased, denied the Claimant's interest in the estate of the Deceased.

[10] I am comforted in coming to this conclusion by the judgment of the English High Court in the case of ¹**Midland Bank Trust Co. Ltd. v Hett, Stubbs and Kemp** which, although not included in the Defendant's List of Authorities, was referred to in authorities included in his list. In that case the Court opined that where a party to a contract – such as the Deceased or the Administrator of her estate in this case – continued to be in a position to carry out his or her obligations under the contract and that there had been no repudiation of the contract which had been accepted by the claimant, a cause of action may not have accrued so as to render the action on the contract statute barred even if several years (way beyond the period of limitation) had elapsed since the contract could have been performed by the defendant.

[11] In the matter before this Court, the Defendant's application to strike out the claim and for summary judgment against the Claimant is denied and the factual issues in dispute between the parties are left for determination by the trial judge after a full consideration of all the evidence, unless of course the trial judge determines after a full consideration of the evidence presented by the Claimant only, that the action is statute barred or otherwise incapable of succeeding.

[12] Costs of this application will be costs in the cause.

MARIO MICHEL
High Court Judge (Ag.)

¹ [1979] Ch. 384, [1978] 3ALL ER 571