

SAINT VINCENT AND THE GRENADINES

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CLAIM NO.: 506 OF 2002

BETWEEN:

BRENTLIE CHARLES aka BRENTLEY CHARLES



Claimant

v

MARCUS CORRIDON

Defendant

Appearances:

Ms. N. Sylvester for the Claimant

Mr. S.E. Commissiong for the Defendant

2003: October 31

RULING

- [1] The Claimant received injuries when he was struck by a motor vehicle driven by the defendant on 13th June 1998. He brought a claim against the Defendant in 2002.
- [2] Section 13 of the Limitation Act, Cap. 90 of the Laws of Saint Vincent and the Grenadines 1990 Revised Edition operates to limit the period during which an action can be brought for personal injuries to a period of 3 years from the date on which the cause of action arose. The Claimant thus is out of time. He now asks the court to exercise the discretion conferred by section 33 of the Limitation Act and direct that the provisions of section 13 should not apply to this action.
- [3] The factors which the court has to consider when deciding whether to exercise its discretion in favour of the Claimant are laid out in section 33 (3). These are:
 - “(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to –
 - (a) the length of, and the reasons for, the delay on the part of the plaintiff;

- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action has been brought within the time allowed by section 13 or, as the case may be, section 14;
- (c) the conduct of the defendant after the cause of action arose, including the extent, if any, to which he responded to requests reasonably made by the plaintiff for information or inspection for the purposes of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damage;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received."

[4] The most important of these factors for this case is found in 33.3(a), specifically the reasons advanced by the Claimant for his failure to bring his action in time.

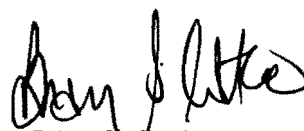
[5] Brentlie Charles filed an affidavit on the 15th April 2003. He says that after the accident on 13th June 1998 he was hospitalized for just over one month. He was then discharged. He says that he was suffering from severe pain and was unable to move about. He was re-admitted to the hospital some 9 months later. It is unclear why he was not able to instruct solicitors to bring this action during that time. He was again discharged from hospital after about one month. Again he made no move to bring an action. He says that he was in severe pain and unable to move around well. He further says that he was impecunious and consequently unable to instruct solicitors.

[6] The defendant argues that the Court ought to exercise its discretion to aid the Claimant. To merely assert that he was impecunious is not sufficient. The legislation exists he says to protect persons from stale claims. The memories of potential witnesses become blurred and evidence unreliable.

[7] The burden is on the Claimant in this instant to demonstrate that it would be equitable to permit this claim to proceed. On the evidence before me I do not consider that the

Claimant has discharged this burden. His explanation that he was in pain and unable to move around well and so unable to instruct solicitors is not borne out by the documents he himself adduces. He was able to instruct solicitors to write to the insurers of the defendant on 5th June 2001 – before the expiration of the three-year limitation period. I am confident that the experienced solicitors he then consulted would have advised him of the impending deadline for bringing an action.

- [8] In the circumstances this court will not direct that section 13 of the Limitation Act does not apply to this action. The result is that the Claimant's claim is statute barred.


Brian S. Cottle
MASTER