



[2018] JMSC Civ 72

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. HCV 05616 OF 2011

BETWEEN	NOEL EATON	CLAIMANT
AND	MICHELLE FENTON	1ST DEFENDANT
AND	WILLIAM FENTON	2ND DEFENDANT

IN OPEN COURT

Mr. Keith Bishop instructed by Bishop & Partners for the Claimant

**Mr. Christopher Townsend and Mesdames Kacian Kennedy and Shanice Nesbeth
instructed by Townsend Whyte & Porter for the 1st Defendant**

Heard May 1, 2018

**Civil Procedure – Striking out statement of case – Whether claim is statute barred
- Rule 26.3 (1) of the Civil Procedure Rules; Limitation of Actions Act**

NEMBARD J (AG.)

BACKGROUND

1. The Claimant, Noel Eaton, has brought an action by way of a Claim Form which was filed on the 9th day of September 2011. He seeks to recover from the Defendants, Michelle and William Fenton, jointly and severally, the sum of Two Million Six Hundred and Seventy Nine Thousand Four Hundred and Forty Four Dollars and Eighty Cents (\$2,679,444.80), for work done pursuant to an oral agreement which he alleges was entered into by the parties on or about the 17th day of March 2005.

2. Sometime in 2006 the 1st Defendant informed the Claimant that at the end of the upcoming fortnight all work pursuant to the oral agreement between the parties should cease and that she (the 1st Defendant) should be provided with a bill for the services of the workmen, as well as, for any outstanding moneys owed to the Claimant.
3. The oral agreement between the parties was terminated on that said fortnight.
4. Learned Counsel Miss Kennedy, on behalf of the 1st Defendant, raised a preliminary objection, on the basis that the Claim is statute barred and that consequently, the Court has no jurisdiction to try this case.
5. It was further submitted that, on the face of the Claim Form and Particulars of Claim, each filed on the 9th day of September 2011, there is no indication of the date (s) of the payment (s) made to the Claimant and no indication of the date of the last payment.
6. Learned Counsel Miss Kennedy sought to ground her submissions in the Limitation of Actions Act, as well as, on the following authorities:-
 - i. **International Asset Services Limited v Edgar Watson** [2014] JMCA Civ 42;
 - ii. **International Asset Services Limited v Arnold Foote** Claim No. 2008 HCV 01326, Judgment delivered on January 28, 2009;
 - iii. **Toussant Tucker v Inez Bogues** [2013] JMCA Civ 90; and
 - iv. **Medical and Immunodiagnostic Laboratory Limited v Dorett O'Meally Johnson** [2010] JMCA Civ 42.
7. Learned Counsel Mr. Keith Bishop, in his response, highlighted paragraph four (4) of the Claimant's Particulars of Claim, which indicates that the work stopped on or about the 6th day of June 2006. He submitted further that the sums due to the Claimant would have become due subsequent to that date and as such the Claimant is quite within the relevant limitation period.

THE LAW

8. The Limitation of Actions Act, (the Act), was first enacted in 1881, with one amendment being made to it in 1979. The Act sets out the time period within which certain actions can properly be brought before the Court.

9. Section 46 of the Act reads as follows:-

“In actions of debt or upon the case grounded upon any simple contract, no acknowledgement or promise by words only shall be deemed sufficient evidence in any of the Courts of this Island, of a new or continuing contract, whereby to take any case out of the operation of the United Kingdom Statute 21 James 1 Cap 16, which was recognized and is now esteemed, used, accepted and received as one of the statutes of this Island or to deprive any party of the benefit thereof unless such acknowledgement or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby...”

10. Section 3 of the Act reads:-

*“And be it further enacted that...all actions of debt grounded upon any lending or contract without specialty;...or any of them which shall be sued or brought at any time after the end of this present session of parliament, shall be commenced and sued within the time and limitation hereafter expressed and not after...the said actions for account and the said actions for trespass, debt, detinue and replevin for goods or cattle...within three years next after the end of this present session of parliament or **within six years next after the cause of such action or suit and not after...**”*
[Emphasis added]

11. Halsbury’s Laws of England Volumes 9 (1) paragraph 618 provides a definition of a simple contract and reads as follows:-

“Simple contracts include all contracts which are not contracts of record or contracts made by deed. Simple contracts may be express or implied or partly express and partly implied.”

12. Volume 28 of the Halsbury's Laws of England, at paragraph 662, sets out the considerations when determining the accrual of a cause of action in cases of simple contract.

13. Paragraph 662 reads:-

"In an action for breach of contract the cause of action is the breach. Accordingly, such an action must be brought within six years of the breach. After the expiration of that period the action will be barred, although damage may have accrued to the plaintiff within six years of action brought..."

14. Dukharan JA, in the authority of **International Asset Services Limited v Edgar Watson** (supra), in his analysis of the circumstances of the case is quoted as saying:-

"The limitation period is six years. The Appellant's claim was in 2009 and the last transaction on the accounts was in 1997. The claim would therefore have become statute barred in 2003 and so is clearly out of time."

15. The background to that case was that on March 10 2003, the Appellant became the successor in title to three debts relative to the Respondent which were as follows:-

- i. A credit card facility by National Commercial Bank Jamaica Limited on or about 17 April 1993;
- ii. A credit card facility by Mutual Security Bank Limited on or about 13 June 1993;
- iii. A further credit card facility by Workers Savings and Loan Bank on or about 8 April 1993.

16. The Appellant's records reflected that the Respondent was indebted to its predecessor in title as at the date of acquisition. A first demand was sent to the Respondent on 22 January 2004. There was no response from the Respondent.

A final demand was sent on 15 February 2008. Having got no response, the Appellant instituted proceedings against the Respondent by way of a Claim Form on 18 June 2009.

17. The Appellant sought to recover the sum of One Million Seven Hundred and Ten Thousand Three Hundred and Twenty One Dollars and Twenty Seven Cents (\$1,710,321.27), being the amount due and payable as at 30 December 2008, by virtue of the credit card facility received from the National Commercial Bank Jamaica Limited (NCB) by the Respondent, on which the said Respondent failed to effect payment on or before the due dates.
18. The main issue for the determination of Brooks J (as he then was) was whether the Claim fell within the purview of section 52 of the Act. That section stipulates a twenty (20) year limitation period rather than the usual six (6) years allowed for simple debts and contracts.

ANALYSIS

19. It is clear from an examination of the pleadings in the instant case that the Claimant has not specified the date of the alleged breach of the oral agreement between the parties.
20. Paragraph four (4) of the Particulars of Claim which was filed on the 9th day of September 2011 reads as follows:-

“That on or about the 6th day of June 2006 the work stopped and at that time the total sum spent was Twenty Million Dollars. Pursuant to the oral agreement the Defendants owed the Claimant Three Million Dollars, of which they paid One Million Six Hundred Thousand Dollars leaving a balance of One Million Four Hundred Thousand Dollars...”

21. Two Hundred and Fourteen Thousand Dollars (\$214,000.00), was also owed for the payment of the workmen who were employed by the Claimant.

22. From a reading of paragraph four (4) of the Particulars of Claim the Claimant's contention seems to be that at the cessation of the oral agreement between the parties a sum of Three Million Dollars (\$3,000,000.00) was owed to him. He contends further that, of the sum that was owed to him, he was paid a total of One Million Six Hundred Thousand Dollars (\$1,600,000.00).
23. It therefore seems to be the Claimant's position that the alleged breach of the oral agreement took place on or about or subsequent to the 6th day of June 2006. Certainly, no claim has been made of any alleged breach of the said agreement prior to the cessation of the oral agreement by the 1st Defendant.
24. The cause of action would therefore have arisen upon the alleged non-payment of moneys owed to the Claimant pursuant to the oral agreement. This, the Claimant says, in his Particulars of Claim, occurred when the oral agreement was brought to an end. The oral agreement having been brought to an end on or about 6 June 2006, the relevant limitation period would expire on or about 5 June 2012.
25. The Claim Form having been filed in the Court's registry on 9 September 2011 would have been filed within the relevant limitation period and as such the Claimant's Statement of Case would not therefore be statute barred.

CONCLUSION

26. The Court therefore finds that, in all the circumstances of this case, it has the requisite jurisdiction to deal with the Claim Form that was filed on 9 September 2011 and that the trial should therefore proceed.