



[2024] JSMC Civ. 52

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022 CV 00649

BETWEEN	ENID HARROW	APPLICANT/DEFENDANT
AND	ARLENE WINT THORPE	RESPONDENT/CLAIMANT

IN CHAMBERS

Ashley Forsythe and Munroe Wisdom instructed by Nunes Scholefield Deleon and Co. for the Applicant/Defendant

Trevor Cuff and Alexander Shaw instructed by Cuff and Shaw for the Respondent/Claimant

Application to strike out - Action on the Case - The tort of negligence from a motor vehicle accident - Limitation of action - Computation of time - Whether the day of the accident is excluded from the reckoning of time.

A Thomas, J.

Heard: 14th of March and 8th of May 2024

Introduction

[1] This is an Application by the Defendant Ms. Arlene Thrope to strike out the Claim of the Claimant Ms. Enid Harrow on the basis that it is statute-barred. In the Claim, which was filed on the 25th of February 2022, the Claimant Ms. Harrow is seeking

damages for injuries she alleges that she sustained in a motor vehicle collision involving the Defendant. In her Particulars of Claim, she avers that the accident occurred on the 25th of February 2016 at 10:30 am. The Defendant is contending that the limitation period would have expired at midnight February 24th, 2022. However, the Claimant's position is that the Claim is not statute-barred. The claim having been filed on the 25th of February 2022, the Claimant insists that it was filed within the limitation period of 6 years.

The Issue

- [2] The issue to be determined in this Application is whether the claim is in fact statute barred and as such whether it should be struck out as an abuse of the process of the court.

The Law

- [3] **Rule 26 of The Supreme Court Civil Procedure Rules** provides;

3 (1) "In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

- a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;*
- b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;*
- c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or*
- d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10"*

- [4] In the case of ***Silvera Adjudah v The Attorney General*** [2022] JMCA 24, at paragraph 51, the court pointed out that, **Rule 26.3(1)(b)** of the CPR gives the

court the power to strike out a statement of case “... if it appears to the court that the statement of case or the part to be struck out is an abuse of the process of the court” (See also the cases of **Attorney General of Jamaica v Arlene Martin** [2017] JMCA Civ. 24; **Riches v DPP (CA)** 1WLR, 1019 and in particular, the judgment of Stephenson J at page 1026 at paragraph D to G).

- [5] The law governing the limitation period for actions of this nature is the English **Statute of Limitation, Statute 21 James 1, Cap 16 of 1623**. This is by virtue of the fact that this was among the existing laws which were saved and incorporated in the laws of Jamaica. This was occasioned by the **Interpretation Act** of Jamaica. **Section 41** of the said Act reads:

“All such laws and Statutes of England as were, prior to the commencement of 1 George II Cap 1, esteemed, introduced, used, accepted, or received, as laws in the island shall continue to be laws in the Island save in so far as any such laws or statute have been, or may be, repealed or amended by any Act of the Island.”

- [6] In the instant matter, the claim is negligence arising out of a motor vehicle accident. Therefore, the relevant provision of the Act as it relates to tort is section 3 which speaks to “action on the case”. The Section provides:

- (2) *“And be it further enacted, that all actions of trespass quare clausum fregit, all actions of trespass, detinue, action for trover, and replevin for taking away of goods and cattle, all actions of account, and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, 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 (that is to say) the said actions upon the case (other than for slander) and the said action for account, and the said actions for trespass, debt, detinue and replevin for goods or cattle, and the said action of trespass, quare clausum fregit, within three years next after the end of this present session of parliament, **or within six years next after the cause of such actions or suit, and not after;***
- (3) *and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within one year next after the end of*

this present session of parliament, or within four years next after the cause of such actions or suit, and not after,

- (4) *and the said actions upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken, and not after'. (emphasis added)*

[7] In the case of **Muir v Morris** (1979) 16 JLR 398, Rowe JA, stated;

“actions based on tort which falls within the category of ‘actions on the case’ are barred by section III, ... of the 1623 statute after six years”. (See page 399)

SUBMISSIONS

On behalf of the Applicant /Defendant

[8] Ms. Forsythe made the following submissions.

“The jurisdiction of the Supreme Court to strike out a statement of case or part of a statement of case is enshrined in Rule 26.3. The Claimant instituted proceedings by Claim Form and Particulars of Claim filed on February 25, 2022, and served on the Defendant on May 25, 2022.”

Relying on the Statute of Limitations, the Defendant asserts that at the time of filing this action, 6 years has passed since the cause of action arose and so the claim is statute-barred from proceeding. It will save expense and time, if the matter is disposed of, at an early stage. On the face of the Claimant’s statement of case, the cause of action against the Defendant would have arisen on February 25, 2016. The claim herein would have expired or lapsed on February 24, 2022. It would therefore be an abuse of the process of this Court, to permit the matter to proceed further. (She relies on the cases of **Construction Developers Association Limited v Urban Development Corporation** (unreported judgment in Suit No. HCV 02213/02214 of 2008 delivered March 23, 2010; **Donovan v. Gwentoy Ltd** [1990] 11 AER 1018; **Ronex Properties Limited v John Laing Construction Ltd and others** [1982] 3 AER 9).

[9] She further submits that:

“It is well established that a claim that is issued after the expiry of the limitation period may be struck out as an abuse of process. It would clearly be an abuse of the Court’s process to permit the claim to proceed once the issue of limitations has been pleaded.”

[10] She posits that time would start to run from the day that the cause of action arose. She relies on the cases of **Gelmini v Moriggia** [1913] 2 KB 549; **Shamar Green v Orville Collins** [2020] JMSC Civ. 17; **Vanetta Neil v Janica Halstead** [2019] JMSC Civ. 68; and **Silvera Adjudah v The Attorney General (Supra)**.

On Behalf of the Claimant /Respondent

[11] Mr. Cuff, on behalf of the Respondent/Claimant, acknowledges that it is trite law that in this jurisdiction, actions that are grounded in tort and in contract are time barred after the expiry of six years. However, his position is that this claim has been brought within the Limitation Period. He further submits that the day of the accident is to be excluded from the computation of the period within which the action should be brought. Therefore, if the date of the accident in the instant case is February 25, 2016, time begins to run for the purposes of the six (6) year limitation period as of February 25, 2016. Accordingly, the Claimant, having filed her case on February 25, 2022, would have been within the six-year limitation period.

[12] He relies on the case of **Marren v Dawson Bentley & Co. Ltd** [1961] 2 KB to say that:

“The general rule in cases in which a period is fixed within which a person acts or take action, the consequences is that the day of the act or event from which the period runs should not be counted against him. This rule is especially reasonable in the case in which the person is not necessarily cognisant of the act or event; and further in support of it there is consideration that, in case the period was one day only, the consequence of including that day would be to reduce to a few hours or minutes the time within which the person affected should take action. In view of these considerations the general rule is that, as well as in cases where the

limitation of time is imposed by parliament as in those where it is imposed by statute, the day from which the time begins to run is excluded; thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation.”

Discussion

- [13] Despite the fact that the limitation defence is normally raised at a trial, several authorities have established that, this can be the basis of a successful application to strike out the claim as an abuse of the process of the Court. In the case of **Ronex Properties Ltd v John Laing Construction Ltd and Ors**, [1982] 3 ALL ER 961. The court made the point that:

“There are many cases in which the expiry of the limitation period makes it a waste of time and money to let the plaintiff go on with the action. But in those cases it may be impossible to say that he has no reasonable cause of action. The right course is therefore for the Defendant to apply to strike out the Claim as frivolous and vexatious and abuse of the and abuse of the process of the court on the basis that it is statute barred “. (See the Judgment of Lord Stephenson at page 968)

- [14] In the case of **Sherrie Grant v Charles McLaughlin** [2019] JMCA Civ 4, Brooks JA at paragraph 42 said;

“Usually, the reliance on the provisions of the Limitation of Actions Act as a defence to a claim, is to be demonstrated at a trial. In certain circumstances, however, a defendant may rely on a limitation of actions defence prior to the trial.

*A defendant may apply to strike out a claim if it appears on the face of the claim, that it is time barred ... The basis of the application is that the claim amounts to an abuse of the process of the court (see **Rule 26.3(1)(b) of the CPR**)”.*

- [15] In the case of **The International Asset Services Limited v Edgar Watson**, Dukharan JA, at paragraph 15, made the point that: “... *Under the Limitation of Actions Act, a matter that is statute barred will have no prospect of success at trial*

and is therefore an abuse of the process.” (See also the judgment of Lord Griffiths, page 472 in the case of **Donovan v. Gwentys Ltd** [1990] 11 AER 1018)

- [16] In the instant case no challenge has being mounted to the limitation period that is applicable to this case. That is, six years. However, Counsel for the Claimant argues that in the computation of the time, the day on which the accident occurred should be excluded. He relies on the case **Marren v Dawson Bentley and Co Ltd (Supra)**. Nonetheless, Counsel for the Defendant/ Applicant in further oral submissions points out that the provisions of the **1939 UK Act** on which the case was decided is somewhat dissimilar to the provisions of the **1623 statute** which was saved in our laws. Whereas the **1939 statute** reads; “*the action shall not be brought after the expiration of “[6 years]*” the relevant provision of the **1623 statute** that is applicable to this Jurisdiction provides that the action should be brought “*within six years next after the cause of such actions*”. She raises the point that a significant distinction is created by the various provisions as is relates to the terms “within” as opposed to the term “after the expiration of”.
- [17] In addition, the parties were invited by the Court to make submissions on **Section 8** of the **Interpretation Act** and in particular **section 8 (1) (a)** and its applicability to this issue. Counsel for the Applicant/ Defendant takes the view that **Section 8 (1) (a)** is not applicable. She contends that since the time period within which the action should have occurred, is in excess of 6 days then the relevant section is **Section 8 (1) (d)**. Her view on the construction of this section is that once the time period is in excess of 6 days, the day on which the action occurred should not be excluded in the computation of time. Counsel for the Claimant still holds the view that the day on which the accident occurred should not be counted in view of the authority of **Marren v Dawson Bentley and Co Ltd**. He did not express a view on the provisions of the **Interpretation Act**.
- [18] The court in the case of **Reeves v Batcher** [1891] 2 QB 809 did pronounce that “*time runs from the point when the facts exist establishing all essential elements of the cause of action*” (See the Judgment of Lindley. L.J). However, the question

is, how is this to be viewed in light of the **Interpretation Act** of Jamaica. **Section 8** of the **Interpretation Act** reads as follows;

8.-(1) *In computing time for the purpose of any Act, unless the contrary intention appears*

- a) *a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;*
- b) ***if the last day of the period is Sunday or a public holiday (which days are in this section referred to as excluded days)** the period shall include the next following day, not being an excluded day; when any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being an excluded day;*
- c) *when any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being an excluded day;*
- d) ***when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.***
(emphasis mines)

[19] Counsel for the Defendant is of the view that unless an action is to be completed within 6 days or less by virtue of **section 8 (1) (D)** the date on which the action occurred is to be included in the computation of the time. However, having carefully examined the provisions of **Section 8 (1)**, I cannot subscribe to that view. The paramount consideration at this juncture is what is meant by "excluded days" as described in **section 8 (1)(d)**. A careful scrutiny of Subsection **(8) (1)(b)** provides a clear indication of the meaning of "excluded days" in the Section. These are, **where the last days to complete the action are Sundays or public holidays "which days are in this section referred to as excluded days".** Therefore, section **8 (1) (d)** addresses the circumstances where the time within which an action is to be completed ends on a Sunday or a public holiday. In circumstances

where such time is 6 days or less the Sunday or the public holiday should be excluded from the computation of the time.

- [20] Accordingly, it is my considered view, that **Section 8 (1)(d)** does not limit the applicability of **Section 8 (1) (a)** despite the fact that the action under review is to be completed in excess of 6 days. Essentially in my view a proper construction of the provisions of **Section 8** of the **Interpretation Act** is this; generally, in the computation of time, the day on which the action occurred should not be included unless the statute governing the cause or issue indicates otherwise.
- [21] In my examination of **the Limitation of Actions Act of 1623** I have found no expressed or implied provision in this Act as to how time is to be computed. I will however examine the decided authorities for guidance on the issue.
- [22] The case of **Gelmini v Moriggia**, which is relied on by counsel for the Defendant concerned the interpretation of **Section 3** of the **1623 Limitation of Action Act**. In that case the cause of action arose September 23, 1906. The Writ was issued on September 23, 1912. Cahhell. J, in finding that the action was brought too late, ruled that the date of September 23 must be included in the calculation of the 6 years within which the action ought to be brought. (See page 552 of the Judgment)
- [23] He also held that the Supreme Court Rules that allowed for the exclusion of the Sundays where the required time for the completion of an act ends on a Sunday did not apply to the Limitation of Actions Act. However, he did make the point that there was no expressed decision on the point after many years. (See page 551)
- [24] Nonetheless in the latter case of **Marren V Dawson Bentley and Co**, the court took a contrary view to that of Cahhell J in resolving the very same issue. The latter case involved an accident where the Plaintiff was injured during the course of his employment. He brought an action against his employers claiming damages for injuries which he alleged was as a result of their negligence. The Plaintiff was injured on November 8th, 1954. He filed his claim November 8th, 1957. The **UK**

1939 Act which was amended by the **1954 Act** barred such actions after the expiration of 3 years.

[25] In the instant case Counsel for the Defendant is of the view that the case of **Marren** should be distinguished as the decision was based on the **UK 1939 Act**, the provisions of which read differently from the **1623 Act**. The relevant provision of the **1939 Act** read as follows “*the following actions shall not be brought after the expiration of [6 years] (from the date on which the cause of action accrued)*”. The effect of the 1954 amendment was to reduce the 6 years to 3 years where the actions were for claims in damages for negligence, nuisance or breach of duty which included damages for personal injury.

[26] The question that the court had to decide was whether the action was statute-barred. Harrow J, in arriving at his decision reviewed a number of authorities and the construction of the provisions of various legislations. I will highlight some of the precedents relied on in the **Marren case**. In the case of **Radcliffe v Bartholmew** [1892]1 QB AT 161, the relevant provision was **Section 14 of the Prevention of Cruelty to Animal Act** which provided that every complaint was to be made “*within 1 calendar month after the cause of such complaint shall arise*”. The act of cruelty was alleged to have been committed on the 30th of May, the information was laid on the 30th of June. It was held that in the computation of time, the day on which it was alleged that the offence was committed was to be excluded from the computation of the 1 calendar month and that the complaint was therefore made in time. In the case of **William v Burgess** (1840)12 Ad and El 635, the relevant provision of the statute read, “*within 21 days after the execution*” It was held that the day of the execution was to be reckoned exclusively.

[27] In the case of **Hardy v Ryle** (1829) 9 B 7C 608, the applicable provision was that “*no action shall be brought ...unless commenced within 6 calendar months after the act committed*”. The act was committed on the December 14th and the action was filed June 14th the following year. It was held that the day on which the action

arose was excluded from the computation of the six months. As such the court found that the action was filed in time.

- [28] Having reviewed the afore-mentioned authorities, Harrow J reasoned that, despite some of matters being criminal matters, there was no difference in the words to be interpreted. He found that the day on which the accident occurred should be excluded from the computation of time and that this is a principle of general application to statutes whether they deal with civil or criminal matters (See page 143). Consequently, he found that the action having being filed on the 8th of November 1957 was not statute barred.
- [29] Remarkably however, the case of **Gelmini v Moriggia** was one of the cases that was commended to Harrow J for consideration of the issue. In commenting on the decision of Cahell J in **Gelmini v Moriggia** Harrow J made the point that the decision that the action was statute bar was wrong. Moreover, he made the point that none of the cases to which he referred were cited to the Cahell J (See page 142 of the judgment).
- [30] In the instant case, in light of the provisions of Section 8 of the **Interpretation Act**, and the judgment in the **Marren case**. I am convinced that in computing the time for the purpose of the **Limitation of Actions Act, 1623**, the day on which the action occurred is to be excluded.
- [31] Counsel for the Defendant commended the cases of **Shamar Green v Orvelle Collins**; **Vannetta Neil v Janice Halstead**; and **Silvera Adjudah v the Attorney General** for the court's consideration. However, having reviewed these cases I have not been persuaded to vary my stance on the issue.
- [32] The case of **Shamar Green v Orvelle Collins** concerned the extension of the validity of the claim form filed approximately 5 months prior to the end of the limitation period. The action arose on December 24th, 2013. The learned master as she then was, in highlighting the issues that she had to determine, did state at paragraph 13, that she had to consider:

*“Whether it was appropriate in this case to make an order extending the validity of the claim form after it expired, **having regard to the fact that the limitation period expired on December 24, 2019,** and such an order would deprive the Defendant of a limitation defence. (emphasis mine)*

[33] Therefore, despite the fact that the aforementioned case was not decided on the point before me, it is clear that in stating that the limitation period expired on the 24th of December 2019 and not the day before, the Learned Master did exclude the day on which the accident occurred in her computation of the six years. Essentially this case does not assist the applicant. In the case of ***Vanetta Neil v Janica Halstead*** the learned Judge did make the observation that the 6-year limitation period for an action that arose on the 3rd of January 2009 would culminate on the 2nd of January 2015.

[34] In the case of ***Silvera Adjudah v Attorney General of Jamaica***, the Court of Appeal, in affirming the decision of the learned master of the Supreme Court, did affirm the Masters’ observation that the cause of action having arisen on the 15th of November 2010, the time to file the Claim would have expired on the 14th of November 2016.

[35] Brown JA at paragraph 44 stated:

“The claim in this matter arose when the applicant’s employment contract was terminated, that is, when he was dismissed. This occurred on 15 November 2010 and so the applicant had until 14 November 2016 to file the claim”.

[36] However, despite the fact that in their computation of the 6 years it was obvious that both judges did not exclude the day on which the action occurred. I take into consideration that this point was never raised in either of these cases. Essentially, neither of these cases were decided on this issue. In the case of ***Adjudah***, the Claimant’s employment contract was terminated on the 15th of November 2010. He filed the Claim on the 31st of March 2017. No issue was raised, neither before Master, nor the Court of Appeal regarding the method employed in the computation of time.

- [37] In fact, in both **Adjudah** and ***Vanetta Neil***, the claims were filed way beyond the 6 years. In the case of ***Adjudah*** the issue was whether the Claimant was entitled to an extension of time for the filing of the claim. The Claimant contended that he should have been granted an extension of time based on ***Section 32 of the 1980 UK Act***. He alleged concealment of fraud as it related to his employment contract. The learned Master found that the 1980 UK Act did not apply to this jurisdiction. She also found that as it relates to concealment of fraud the relevant law was the ***1623 Act*** and that under this Act concealment of fraud is only applicable to matters concerning the recovery of land. On this basis she found that the Claimant was not entitled to an extension of time. This decision was challenged but was upheld by the Court of Appeal.
- [38] The case of Vannetta ***Neil*** concerned a tort arising out of an alleged assault and battery. It was alleged that the attack and assault arose on the 3rd of January 2009. The Claim was filed on the 21st of April 2016. This would have been more than a year beyond the 6 years' limitation period. Counsel for the Claimant did concede that the Claim was filed outside of the 6 years' limitation period. He was however of the view that the ***1980 UK Limitation of Actions Act*** was applicable to the limitation of actions in Jamaica.
- [39] He therefore resisted the application to strike out on the basis that under that Act there was provision for the court not to apply the limitation period under certain specified conditions enunciated in ***Section 33*** of that Act. Therefore, despite the fact that in his judgment the learned Judge commented that the 6 years would have expired on the 2nd of January 2015 (See Paragraph 32) essentially including the day on which the action occurred the issue regarding the correct approach to the computation of time was never raised.

Conclusion

[40] In conclusion therefore, in the instant case, the motor vehicle accident having occurred on the 25th of February 2016 and the Claim having been filed on the 25th of February 2022, I find that the Claim was in fact filed within the 6 years' limitation period. Consequently, I find that the Defendant has not established a basis for striking out the Claim. As such I make the following orders.

[41] Orders

- (i) The application of Defendant to Strike out the Claim is denied.
- (ii) The matter is to proceed to trial.
- (iii) Cost to Claimant to be agreed or taxed.

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A Thomas
Puisne Judge