

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 86 OF 2004

BETWEEN:

FAELLESJE, A PRIVATE DANISH FOUNDATION

Claimant

and

OTHNEIL SYLVESTER

Defendant

Appearances:

Mr. Karl Hudson Phillips Q.C., Mr. Stanley Marcus S.C., Mr. Bertram Commissiong Q.C. and Ms. Mira Commissiong for Claimants

Sir Henry Forde Q.C., Mr. Russel Martineau S.C. and Mr. E. Robertson for the Defendant

2004: 11th November
2005: 10th June

DECISION

[1] The claimant filed a claim form on 13th February 2004 to which the defendant entered an acknowledgement and applied to have the claim struck out. The application to strike out was based on many grounds.

[2] The defendant contended that:

- (1) The claim is barred by the Limitation Act Cap. 90 of the Revised Laws of Saint Vincent and the Grenadines 1990 Edition
- (2) The statement of claim reveals that the claim is based on an illegality
- (3) The statement of claim reveals no reasonable grounds to bring the claim

- (4) The claim is scandalous, frivolous, vexatious or otherwise an abuse of the process of the court.
- [3] On the hearing of the application to strike out the court was greatly assisted by counsel on both sides who presented many authorities for consideration and helpfully distilled the legal learning into written submissions.

THE LIMITATION POINT

- [4] The defendant says that section 7 of the Limitation Act prohibits the bringing of any action founded on simple contract after 6 years from the date on which the cause of action accrued.
- [5] The claimants in response argue that the applicable section of the Act is section 23. They say that the claim is for fraudulent breach of trust. At this stage, without the benefit of pleadings from the defendant or evidence from either side I decline to hold that the claim is statute barred.

ILLEGALITY

- [6] The defendant says that the arrangement which is at the heart of this matter was a scheme to escape the effects of the Aliens (Landholding Regulation) Act Cap. 235 of the Revised Laws of SVG 1990 Edition. The claimant is now seeking the assistance of the court to benefit from the illegal arrangement. The claimants say that the alleged acts of illegality were largely executed by the defendant himself and advised by the defendant to be done as well as advised by the defendant to have been lawful. Further, the claimants say, they have no need to rely on any illegality. They say that they have caused a company to be incorporated. They have paid for the only asset which the company held. The compensation paid for the compulsory acquisition of that property belongs to them in equity. The defendant having been in receipt of those funds must pay the funds to them or

account. The Claimants cite the case of **Bowmakers Ltd v Barnet Instruments Ltd (1944) 3 ALL ER 579** which the defendants say is to be distinguished. I hold that it is open to the claimants to enforce their right to property against the defendant who is alleged to be detaining it. It matters not that the property comes into the hands of the defendant as a consequence of an illegal arrangement. Consequently I decline to strike out the claim on this ground. I am fortified in my view by my reading of **Saunders and another v Edwards and another [1987] 2 ALL ER 651**. In the instant case the claimant says that when one examines the relative moral culpability of the parties the court should, as a matter of public policy, take no notice of the illegality. At this stage I can make no finding as to the relative culpability of the parties. There is also the case of **Murphy V Quigg et al 54 WIR 162** which seems to be on all fours with the instant claim. This is a decision of the Eastern Caribbean Court of Appeal. I am persuaded that I should not depart from it.

NO REASONABLE GROUNDS TO BRING THE CLAIM

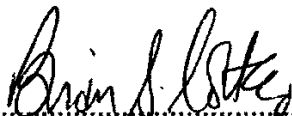
[7] Under the old rules the court used its jurisdiction to strike out sparingly. **Williams and Hubert Ltd v W and H Trade Marks (Jersey) Ltd 1986 AC 368** sets out the position. Lord Templeman said that:

“...if an application to strike out involves a prolonged and serious argument the judge should, as a general rule, decline to proceed with the argument...”

This position was reiterated in the post CPR case of **Three Rivers District Council v Bank of England (No. 3) [2001] 2 ALL ER 513**. I do not consider the case to be sufficiently plain and obvious as to warrant striking out at this stage on this ground.

ABUSE OF PROCESS:

- [8] The defendant relied on the case of **Johnson v Gove Wood and Co [2001] 2 WLR 72**. The House of Lords held that when considering whether a second claim is an abuse of process, a broad, merits-based judgment has to be made taking into account all the public and private interests involved and all the facts.
- [9] When I consider all the facts in the present case I do not feel that I am able to say that this claim is an abuse of process. The concept of abuse of process also includes the contention that the claims are statute barred. As I have said above I reject this argument at this stage.
- [10] It follows from what I have said that I refuse the defendant's application to strike out the claim.


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Brian S. Cottle
MASTER