

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.42 OF 2005

BETWEEN:

[1] DAVID SWEETNAM
[2] COLTON ENTERPRISES LIMITED

Appellants

and

[1] THE GOVERNMENT OF SAINT LUCIA
represented by THE ATTORNEY GENERAL
[2] GREGORY FELIX

Respondents

Before:

The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Denys Barrow, SC
The Hon. Mr. Hugh Rawlins

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Renee St. Rose for the Appellants
Mr. Alvin St. Clair for the Respondents

2005: October 28.

JUDGMENT

[1] **GORDON, J.A.:** At the October 2005 sitting of the Court in St. Lucia two appeals came up for hearing raising the same somewhat narrow, but important, issue, namely, how is prescription of actions generally and specifically in delict under the Civil Code of Saint Lucia, Chapter 242 of the revised Laws of Saint Lucia, 1957, (hereafter "the Civil Code") interrupted.

[2] In the first appeal, **Charles et al v. Windjammer Landing Co Ltd**,¹ an oral decision was rendered by the Court, as was a decision in the instant matter with the promise that written reasons would be provided. In the **Windjammer Landing** case counsel appearing for the parties were Mr. Collin Foster for the appellant and Mrs Brenda Floissac-Fleming for the Respondent.

[3] The facts, so far as they are relevant for the purposes of this judgment, in both cases are the same. In both cases an incident took place which, in the opinion of the claimants, gave rise to an actionable claim in delict (tort). In both cases, for our purposes, a claim form was filed within three years of the incident, but was served on the respective defendants outside of the period of three years. Indeed, a significant issue in the **Windjammer** was whether the respondents had ever been served. For the purposes of this judgment that latter contention of non-service will be ignored.

[4] The relevant parts of the relevant Articles of the Civil Code read as follows:

“2085. A Judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption.

Seizures, set-off, interventions, and oppositions are considered as judicial demands.

No extra-judicial demand, even if made by a notary, and accompanied with the titles, or even signed by the party notified, is an interruption, if there be no acknowledgment of the right demanded.”

“2086. A demand brought before a court of incompetent jurisdiction does not interrupt prescription.

“2087. Prescription is not interrupted:

If the service or the procedure be null from informality;

If the plaintiff abandon his suit

If he allow peremption of the suit to be obtained;

If the suit be dismissed.

¹ Civil Appeal No. SLUHCV 2005/0007

"2122. The following actions are prescribed by three years

1.
2. For damages resulting from delicts or quasi delicts, whenever other provisions do not apply;
3.

"2129. In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124 the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of exchange, where prescription is precluded by a writing signed by the person liable on them."

[5] The narrow issue which this decision seeks to resolve is whether the mere filing of a judicial demand is sufficient to interrupt the running of prescription.

[6] Under the regime of Limitation Acts, such as are applicable in England, and Common Law territories within our jurisdiction, the running of time comes to an end when an action is begun in the High Court, and an action was begun when a writ or originating summons was issued². Under the Civil Procedure Rules 1998 of England proceedings now are commenced when the court issues a claim form at the request of the claimant. A claim form is issued on the date entered on the form by the court. Under our Civil Procedure Rules, 2000 (Part 8) proceedings are started by a claimant filing in the court office a claim form, and a statement of claim.

[7] Article 2085 of our Civil Code is in pari materia with article 2224 of the old Quebec Code which was in existence when our Code came into being. In 1972 the Civil Code of Lower Canada, the old Quebec Code was amended and, very significantly, article 2224 was amended to read:

"The filing of a judicial demand in the office of the court creates a civil interruption provided the demand is served within sixty days of the filing in accordance with the Code of Civil Procedure upon the person whose prescription it is sought to hinder...."

² Halsbury's Laws of England 4th Ed. Reissue Vol 28 Para 830

In other words, in Quebec today the filing of a legitimate judicial demand creates a conditional interruption which condition is fulfilled by service within sixty days on the person whose prescription it is sought to hinder.

[8] In the State of Louisiana, according to their Civil Code, article 3516, there are two ways of interrupting prescription, that is by a natural interruption, or by a legal interruption. Article 3518 of their Code reads as follows:

“A legal interruption takes place, when the possessor has been cited to appear before a court of justice, on account either of the ownership or the possession; and the prescription is interrupted by such demand, whether the suit has been brought before a court of competent jurisdiction or not.”

The language of article 3518 would appear at first blush to refer to prescription based on possession of land or a thing, but article 3551 makes it clear that article 3518 also refers to contract and debts. It reads:

“3551. The prescription releasing debts is interrupted by all such causes as interrupt the prescription by which property is acquired, and which have been explained in the first section of this chapter.”

[9] **West’s Annotated Louisiana Statutes, Civil Code** reproduces the following commentary:

Interruption of prescription by judicial action. 14 Tulane L. Rev. 601 (June 1940). This subject is discussed in part as follows:

“Following the French law [Arts. 2242, 2244-2246, French Civil Code], the early Louisiana codes provided for a legal interruption of prescription through the service of citation to appear before a court of justice [La. Civil Code of 1808, 3. 2. 50, 3. 2. 52; Arts. 3482, 3484, La. Civil Code of 1825]. The provisions have survived and at present appear as Article 3518 of the Louisiana Civil Code of 1870. Although this article has been placed in the section of the Civil Code dealing with prescription acquirendi causa and speaks of citation of the ‘possessor * * * on account either of the ownership or the possession’ of property, it applies also to cases involving prescription liberandi causa. Although the interpretation of Article 3518 has been quite liberal, the courts have insisted that under its provisions the interruption occurs at the moment of the service of citation and not at the time of filing suit or of issuance of citation by the clerk of court to the sheriff.

- [10] It will be noted that in Louisiana, unlike the Civil Code of St. Lucia (article 2086), even a claim brought before a court of incompetent jurisdiction can interrupt prescription. Louisiana amended their Code to provide for the mere filing of a case, provided it was before a court of competent jurisdiction, to interrupt prescription.
- [11] The law in St. Lucia has never been amended to harmonise with either the Quebec or Louisiana laws as amended. It must therefore follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction **and** the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with plain ordinary meaning of the language of article 2085
- [12] In the circumstances we allowed the appeal with costs to the appellants both in this court and in the court below in the total sum of \$1,000.00.
- [13] I express my gratitude for the scholarship, assistance and research of learned counsel in both appeals.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal