

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2008/0886

BETWEEN:

FREDERICK PROSPERE

Claimant

And

JENNIFER REMY

Defendant

Appearances:

Claimant in person

Ms. Kim St. Rose with Ms. Mary J. Charles for Defendant

2008: October 31;
November 12.

DECISION

[1] **GEORGES, J.:** By a Fixed Date Claim filed on 3rd September 2008 the Claimant Frederick Prospere a litigant in person claims from the Defendant Jennifer Remy a practicing Attorney-at-Law damages in excess of Six million United States Dollars for allegedly defrauding him of eleven and a half acres of land situated in a prime area of the Northern District of St. Lucia.

[2] In a nutshell the gravamen of the Claimant's case as 'pleaded' is that (on an unspecified date) shortly before he departed for Guyana the Defendant who was then acting as his attorney induced him to sign a blank sheet of paper on the pretext that it would be used in preparing an affidavit for the purpose of legal proceedings of which she had conduct.

- [3] In so doing the Claimant avers that he acted to his own detriment and was taken advantage of by the Defendant who thereby deprived him of his property contrary to law.
- [4] In his Particulars of Fraud the Claimant states at paragraph 1.8 that:
"The Defendant by reason of:
- (a) her persistence;
 - (b) pressure exerted upon the Claimant to sign before leaving for Guyana;
 - (c) Unduly influenced the Claimant;
 - (d) The Claimant was made to sign under duress;
 - (e) Being the Claimant's Attorney at the material time;
 - (f) Unduly influenced the Claimant."
- [5] At paragraph 1.9 the Claimant asserts that the Defendant fraudulently or deceitfully misrepresented the true position to him thereby causing him to suffer loss.
- [6] And he further avers at paragraph 1.10 that he was not present when (if at all) a Deed of Sale was purportedly attested to by way of a purported signature of a notary royal and another party and imputes fraud on the part of the Defendant.
- [7] By Notice of Application filed 8th October 2008 Ms. Kim St. Rose lead Counsel for the Defendant applied to the Court for an Order that the action be struck out pursuant to Article 2122 of the Civil Code of St. Lucia and Part 26.3 (1) (b) and (c) of the Civil Procedure Rules on the following grounds:
- (1) Article 2122 of the Civil Code of Saint Lucia prescribes any action based on damages resulting from delicts by three years;
 - (2) The matters set forth in the Claim Form have been litigated as between the parties to this suit in Claim No. 367 of 1989 and the attempt to re-litigate them is an abuse of the process of the Court.

(3) The Claim Form does not comply with Part 8.1 of CPR 200.

[8] The application came on for hearing on 31st October 2008 and at the outset of her submissions Counsel for the Defendant informed the Court that the Claimant as a litigant in person having drafted his own Claim Form no issue would be taken as to its form.

[9] On the issue of prescription learned Counsel contended that the Claimant's case was prescribed by Article 2122 of the Civil Code by reason of the fact that the allegations made by the Claimant are in the nature of a delict (or tort) which is prescribed as three years and thereafter is absolutely extinguished.

[10] Article 2122 of the Civil Code declares in part:

"2122. The following actions are prescribed by three years:

- (1) For seduction or lying-in expenses;
- (2) For damages resulting from delicts or quasi-delicts whenever other provisions do not apply."

[11] Prescription is described in Article 2047 of the Civil Code thus:

"2047. Prescription is a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law."

In positive prescription title is presumed or confirmed, and ownership is transferred to a possessor by the continuance of his possession.

Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfillment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law."

The prescriptive ground Counsel urged sought to have the Court strike out the claim on the grounds of negative or extinctive prescription.

[12] Referring to Article 2129 of the Civil Code Counsel further pointed out that in all cases mentioned in Article 2122 the debt was absolutely extinguished and no action could be maintained after the delay for prescription had expired except in the case of promissory notes and bills of exchange where prescription was precluded by a writing signed by a person liable upon them.

[13] In the result Counsel submitted that where an action based upon a delict (tort) is sought to be brought it must be brought within three years of the cause of action having arisen. Failure to do so that is by filing in a court of competent jurisdiction and serving the claim within three years of the occurrence of the facts giving rise to the alleged claim in delict is fatal to the cause of action of the claimant. In the words of the Code the debt is absolutely extinguished Counsel stressed.

[14] In response the Claimant/Respondent stated that his case had no time limit because he had challenged (sic) on the ground of fraud and fraud had no time limit. A previous case brought against him by the Defendant (Remy) he contended had centred on the issues of domicile and community of goods not fraud.

[15] In reply Counsel for the Claimant pointed out that in the previous case the Claimant had in actual fact filed a Defence and Counterclaim alleging fraud (at paragraphs 2 and 3 thereof) in that he was made to sign a blank sheet of paper.

The Defence and Counterclaim is exhibited to the Defendant's affidavit in support of her application to strike out.

[16] It is further contended that the said paragraphs of the Defence allege the very same or substantially the same facts as are alleged in the instant claim as the basis of the claim for fraud.

- [17] At paragraph 8 of his Counterclaim the Claimant/Respondent sought a Declaration that a Deed of Sale dated 25th June 1982 and purported to be made between the Plaintiff (Remy) and himself was or is not his Deed and is void and should therefore be cancelled.
- [18] It is palpably plain that the Claimant's assertion that his case had no time limit because he has challenged on the ground of fraud and fraud had no limit is wholly misconceived. The law as summarized earlier at paragraphs 9 to 12 of this decision stipulates that where an action is based upon a delict (tort) the claim must be brought within three years of the cause of action having arisen and failure to file suit in a court of competent jurisdiction and to serve the claim within three years of the happening of the facts giving rise to the alleged claim is fatal to the claimant's case for it is in law absolutely extinguished.
- [19] As I see it the crucial question which falls to be determined is at what point in time could it be said with reasonable certitude that the Claimant was fixed with knowledge of the alleged fraud which he claims was perpetrated on him by the Defendant resulting in the deprivation of his property with consequent loss and damage to him.
- [20] At paragraph 6 of her affidavit in support of her Application to strike out the Defendant avers that:
- "Though the Claim Form attempts to be unspecific in regard to the date of commission of the alleged fraud; nevertheless, paragraphs 1.11, 1.12, 1.15, 1.16 and 1.17 each refer to the date 29 April 1991, the only date referred to in the said Claim Form. The clear implication in the Claim Form is that the alleged fraud, which I vehemently deny, occurred in 1991."
- [21] The date 29th April 1991 pertains to a letter which the Claimant states at paragraph 1.17 of his Claim was "intended to deceive to enable (sic) other persons believe

that the Claimant had agreed to have his one half share transferred to Dr. Fahmi and by implication to the Defendant who apparently at the material time was the Claimant's Attorney."

[22] The Defendant exhibited with her affidavit in support a copy of the pleadings in the previous case (i.e. High Court Suit no. 367 of 1989) which was alluded to earlier as well as a copy of the judgment of the High Court and the Court of Appeal.

[23] At the bottom of page 2 and the top of page 3 of the High Court judgment the learned trial Judge stated that:

"Miss Remy gave evidence of a Deed executed between the Defendant and herself before Sir Keith Gordon in June of 1982 for an undivided half share in seven portions of land which the Defendant purported to possess. Miss Remy stated that she did not make any search in the Registry regarding these properties nor could she say whether Sir Keith Gordon made any searches. It is however Trite Law (sic) that when purchasing the doctrine of Caveat Emptor is of paramount importance. **It may be convenient here to pause and state that he Defendant's contention was that he never sold lands to the Plaintiff Miss Remy but rather Miss Remy had instructions to draw up an agreement for sale between the Defendant and one Dr. Nihad Famhi and that Miss Remy had him to sign a blank piece of paper which turned out to be a Deed of Sale the subject matter of this case.**" (Emphasis added)

[24] On that particular aspect of the case the learned Judge d'Auvergne J observed at pages 9 and 10 that:

"I find it pertinent to mention here and now that I find it somewhat difficult to believe the Defendant signed a blank piece of paper which he said the Plaintiff gave him to sign. Having had the better part of two days to observe the Defendant and to note in particular his maneuvering with his selling of lands as shown by the

various deed (sic) of sale exhibited. I cannot accept his evidence that he signed a blank sheet of paper and not the Deed of Sale (as exhibited) to the Plaintiff.”

[25] That trial in actual fact took place on May 2 and May 6 1991 by which dates one can safely conclude that the Claimant was fixed with knowledge of the alleged fraud which he now pleads and which was clearly canvassed in the earlier case. And I so hold.

[26] As a result I have no hesitation in upholding learned Counsel’s submission that the allegations of fraud which form the basis of the Claimant’s claim in the instant case relate to matters which occurred over sixteen years ago of which the Claimant was then fully cognizant and hence this action is prescribed by Articles 2122 2047 and 2129 of the Civil Code and is absolutely extinguished and cannot now be maintained.

[27] I need say no more but suffice it to add that I am equally satisfied from perusal of the judgment of d’Auvergne J and the judgment of Floissac C. J. in Civil Appeal No. 2of 1990 out of St. Lucia that this matter has been litigated and relitigated and the filing of this claim is in my view without question a flagrant abuse of the process of the court and in violation of Part 26.3 (1) (c) of the CPR and ought therefore to be struck off. And I so order with costs at the prescribed rate in the sum of \$14,400.00 in accordance with Part 65.11 (7) of the CPR and I also direct that no further step is to be taken by the Claimant in this action or fresh collateral claim is to be initiated by him until the costs of this action have been paid.

EPHRAIM GEORGES
HIGH COURT JUDGE