

SAINT VINCENT AND THE GRENADINES

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



CLAIM NO 472 OF 2010

BETWEEN:

IRMA OLLIVIERRE

Claimant

AND

[1] THE VESSEL "BEQUIA EXPRESS1"

**[2] BEQUIA EXPRESS LTD
THE OWNERS OF THE VESSEL "BEQUIA EXPRESS 1"**

Defendants

Determined on:

The written submissions of Mr Jaundy Martin for the Claimant
The oral submissions of Mr Grahame Bollers for the Second Defendant
The written submissions of Mr Sten Sargeant for the Second Defendant

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2011: July 25, 26.
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[1] **LANNS, M:** Before the court for determination is the preliminary issue as to whether the Claimant's claim is statute barred under Section 321 of the Shipping Act 2004, Cap 363 of the Revised Edition of the Laws of Saint Vincent and the Grenadines, 2009.

Facts

[2] On 10th December 2010, the Claimant Irma Ollivierre (Ms Ollivierre) issued a combined claim in rem and in personam against the Defendants herein alleging negligence for personal injuries sustained on board the Motor Vessel "Bequia Express 1" (Bequia Express).

- [3] However, on 5th May 2011, following an application by the First Defendant, Ms Ollivierre filed a Notice of Discontinuance, thereby effectively discontinuing the claim in Rem against the First Defendant. She did not change the style of heading of the Claim Form, and she did not amend her Statement of Claim. In the light of the Notice of Discontinuance, this decision only concerns Ms Ollivierre and the Second Defendant.
- [4] In her Statement of Claim, Ms Ollivierre pleads that on or about 12th December 2007 she was a passenger on board the Bequia Express travelling from Bequia to the Island of Saint Vincent. While docking at the Kingstown Wharf, the Defendants, by their agents or employees caused the ramp of the Bequia Express to be lowered to the Wharf so that passengers could disembark. At the signal of the First Defendant's servants, agents or employees, the passengers began to disembark the Bequia Express. As the passengers reached on the ramp, the Bequia Express began to buck away violently, causing Ms Ollivierre to fall to the ground on her buttock and back. Ms Ollivierre sustained injuries described as (1) Lumbar Muscle Spasm; (2) Cervical spondylosis; (3) Tenderness over the shoulder blades, neck, lower back and pelvic region; and (4) Mild defects on the left eye.
- [5] Ms Ollivierre alleges that the Defendants were negligent in that they 1) failed to properly lower or align the ramp of the Bequia Express with the Wharf; 2) caused the ramp to be placed on the Wharf in an unsafe or dangerous position; 3) lowered the ramp when it was unsafe to do so; 4) instructed passengers including Ms Ollivierre to disembark from the Bequia Express when it was not safe for them to do so; 5) failed to alert or warn Ms Ollivierre of the dangerous position of the ramp until it was too late; 6) exposed Ms Ollivierre to a foreseeable risk of injury; and 7) failed to see, heed or act upon the presence and position of Ms Ollivierre.
- [6] The Second Defendant filed an Amended Defence on 30th May 2010 admitting that Ms Ollivierre slipped and fell off the ramp on her buttocks, but denying that it was negligent in any way. It also denies the injuries and loss allegedly suffered as a result of the fall.

[7] In paragraph 9 of its Amended Defence, the Second Defendant avers that Ms Ollivierre's claim is time barred by virtue of the provisions of Section 321 of the Shipping Act, Cap 363 (the Act) which deals with limitation period for actions.

[8] At the case management conference, the court took the view that if the limitation issue is dealt with preliminarily, it might dispose of the claim completely and provide the court with an opportunity to further the overriding objective of the Rules by saving time and costs.

The issue

[9] The sole issue for determination is whether the Claim in personam against the Second Defendant is time barred by virtue of Section 321 of the Shipping Act Cap 363 of the Laws of St Vincent and the Grenadines, Edition 2009.

The Law

[10] Section 321 of the Act governs the issue for determination. It is headed "**Time-bar for actions**". It reads in part:-

"(1) Subject to sub-sections (2), (3) and (4), any action for damages arising out of the death of or personal injury to a passenger, or for the loss or damage to luggage shall be time barred after a period of two years.

(2) The limitation period shall be calculated as follows—

(a) in the case of personal injury, from the date of the disembarkation of the passenger;

(b to c) ...

(3) The Court may at its discretion determine the suspension and interruption of limitation periods, but in no case shall an action under this Part be brought after the expiration period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place whichever is later.

(4) Notwithstanding subsections (1), (2) and (3), the period of limitation may be extended by a declaration in writing of the carrier or by agreement in writing of the parties after the cause of action has arisen.”

Submissions

The Claimant

[11] Learned counsel for Ms Ollivierre - Mr Jaundy Martin, (Mr Martin) submits that the limitation period referred to in the Act applies only to the Claim in Rem which has been discontinued. Mr Martin further submits that the limitation period does not apply to the Second Defendant against whom the claim in persona remains. Mr Martin next submitted that the general limitation period of three years that would apply to personal injury action in tort will apply, and that Ms Ollivierre has filed her claim within that time.

[12] For those submissions, Mr Martin relies on **Halsbury’s Laws of England 4th Edition Volume 1** (1) particularly paragraph, 365, which reads as follows:

“365. Actions in rem generally. The general actions limiting the time within which actions founded on contract or tort must be brought, apply to any cause of action within the Admiralty jurisdiction of the High Court as they apply to any other cause of action. ... ”

[13] In concluding and summarizing his submissions, Mr Martin maintained his position that the unusual power of the court to extend the two years limitation period at its discretion applies only to actions in rem. It does not apply to the action against the Second Defendant

because the action against that Defendant is an action in persona and thus, the usual limitation period applies.

The Second Defendant

- [14] Learned counsel for the Second Defendant - Mr Sten Sargeant (Mr Sargeant) expanded on the oral submissions of Mr Bollers. He submits that none of the paragraphs in **Halsbury's** to which Mr Martin referred are of any assistance to the court, as they do not address the issue of limitation. Rather, they speak to actions in rem generally. He was of the view that Volume 1 (1) **Halsbury's Laws of England 4th Edition, 2001, Reissue**, paragraph 367 is more applicable especially since the whole of paragraph 367 is reflected or embodied in Section 321 of **The Shipping Act of 2004**.
- [15] Mr Sargeant further submits that the limitation period extends to both types of actions and not only to an action in rem as Mr Martin has suggested.
- [16] As to the general three year limitation period applicable in contract and in tort, Mr Sargeant points to the provisions of sub-section 2 of Section 321 of the Act and went on to submit that the limitation period of two years applies whether the claim is in rem or in personam for personal injury or death.
- [17] In relation to the discretionary power of the court to extend the limitation period under sub-section (3) of Section 321, Mr Sargeant is of the view that the court cannot extend the limitation period, rather the court has a discretion to disapply it based on certain factors that are satisfactory to the court, presented by the party who is seeking to rely on that sub-section.
- [18] Mr Sargeant concludes his submissions by submitting that Ms Ollivierre has not provided any reason why the court must exercise its discretion under subsection (3) and accordingly her claim should fail for being statute barred.

Discussion and decision

[19] It is clear to me from a reading of Section 321 of **The Shipping Act** that Mr Sargeant is right when he submits that the limitation period of two years as stated in subsection (1) applies whether the action is in rem or in personam. Indeed, the expression "any action for damages" in that subsection could only be given the plain and literal meaning. It is readily apparent to me that the drafter excluded any doubt as to what actions are included by the use of the words "any action for damages" I therefore disagree with Mr Martins's submission that subsection (1) only applies to actions in rem.

[20] With regard to the applicability to this action of the general limitation of three years within which actions founded on tort and contract may be brought, Mr Sargeant is also right when he submits that subsection (2) specifically sets out the limitation period for actions in personam as well as actions in rem for damages for personal injury or death. General provisions cannot override specific provisions. Section 321 subsection 2 is a specific provision dealing with Admiralty matters.

[21] As I understand Mr Sargeant's written submission regarding the court's discretion, the court cannot "extend" the limitation period; rather the court may "disapply" the limitation period. However, before the court, Mr Sargeant changed that stance and conceded that the discretion to extend is entailed or implied in subsection (3) of the Act and that "disapplying" and "extending" produce the same result. It is well settled that the court's discretion is not to be exercised arbitrarily; it must be exercised judicially, that is to say, in accordance with established principles and in relation to the facts of the case. The discretion cannot be well exercised unless there are relevant grounds for its exercise, for its exercise without grounds cannot be a proper exercise of the judge's function.

(See **Jacqueline Fadelle v National Bank of Dominica**, paragraph 17 - Claim No DOMHCV2008/0096).

[22] Inasmuch as Ms Ollivierre has not suggested that there were any extenuating circumstances that prevented her from filing the claim within the time prescribed, and has

put forward no reason as to why the court should exercise its discretion in her favour, the court is unable to extend the limitation period to three years.

[23] Furthermore, Ms Ollivierre could have avoided the situation in which she has found herself, but she failed to invoke subsection (4) which permits parties to agree to an extension of time within which to bring an action for personal injury.

Conclusion

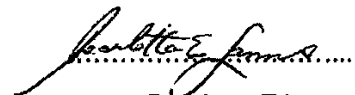
[24] I am deeply sympathetic to Ms Ollivierre, but when all is said and done, it seems reasonable to me to agree with Mr Sargeant that Ms Ollivierre's claim should fail for being statute barred.

[25] Ms Ollivierre failed to comply with Section 321 of the Shipping Act and did not bring her action against the Second Defendant within two years from the date of disembarkation as required by the Act. The time period indicated in the Act ran from 13th December 2007 to 13th December 2009. Ms Ollivierre was required to bring her action within two years - that is to say by 14th December 2009. She brought her action on 10th December 2010. It is time barred.

[26] I therefore dismiss the Claim with costs to the Second Defendant in the sum of \$3,300.00, having valued the claim at \$20,000.00 and having applied the scale of prescribed costs contained in CPR 65. 5 Appendices B and C.

[27] It is so ordered.

[28] I am grateful to all counsel involved for their very helpful written and oral submissions and authorities.



Pearlitta E Lanns

Master