

ST VINCENT AND THE GRENADINES

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

CLAIM NO 76 OF 2012

BETWEEN:

FIRST ST VINCENT BANK LIMITED

Claimant

AND

BRIAN MC DOWALL

Defendant

Appearances

Ms Ranelle Roberts for the Claimant

Mr Parnel Campbell QC, with him Ms Mandella Campbell for the Defendant

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2013: May 13; June 25
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Ruling

- [1] **LANNS, MASTER:** In June 1995, Brian Mc Dowall borrowed the sum of \$6,500.00 from the First St Vincent Bank Limited (the Bank) at an agreed interest rate of 14 per cent per annum. According to the Application Form signed by Mr Mc Dowall, the loan was to be repaid by 24 monthly installments of \$300.00 commencing on the 30th June 1995 and continuing each and every month thereafter. Mr Mc Dowall also signed a Demand Promissory Note which sets out the principal sum owed and the applicable rate of interest.
- [2] The Application Form permitted the Bank to charge Mr McDowall's account with the monthly payments as they mature and he agreed to pay the customary service charge and assessments for any notices of overdue installment.

[3] It is common ground that on 13th June 1995, Mr Mc Dowall paid the sum of \$715.60. He paid no more until 3rd November 2010 - fifteen years later when he made a payment of One Hundred Dollars.

[4] On 4th January 2011, the Bank's previous solicitor (Ms Adrienne Grant) wrote to Mr Mc Dowall requesting that he settle his account in full by 1st February 2011.

[5] On 2nd February 2011, 28th February 2011, and 30th June 2011, Mr Mc Dowall made payments of \$100.00 totalling \$300.00. On 5th May 2011, he made a payment of \$200.00 for a total of \$1215.60 as payments towards the loan.

[6] On 9th March 2012, the Bank commenced proceedings against Mr McDowall claiming the sum of \$25,210.71, made up as follows

(a)	Principal	\$ 5,799.40
(b)	Interest	\$15,441.19
(c)	Collection fees inclusive of interest late fees and legal costs	\$ 4,220.12

[7] By way of Defence, the Defendant denied the debt and went on to plead that the loan is barred by Section 7 of the Limitation Act Chapter 129 of the Laws of the Saint Vincent and the Grenadines, 2009 (the Act) The Defendant asserted that the alleged cause of action did not accrue within 6 years before the commencement of the action and thus, the action is statute barred.

[8] Mr Mc Dowall acknowledges that subsequent to a written request made on 4th January 2011 by the Bank's Solicitors for the repayment of the said loan, inclusive of interest and collection fees, he made a few payments. Nevertheless, he avers that by virtue of section 29 (7) of the Act, the right of action to recover the alleged debt had already been barred, and once barred by the Act, it cannot be revived by any subsequent acknowledgment or part payment.

[9] The Bank did not reply.

[10] At a case management conference held on 29th January 2013, Master Taylor-Alexander ordered the parties to file and exchange submissions in relation to the preliminary issue as to whether the proceedings are statutorily prescribed.

THE SUBMISSIONS

A. Ms Roberts on behalf of the Claimant

[11] Learned Counsel for the Bank prefaced her submissions by stating the factual background. She then set out and examined sections 7, 8, 29 (5) and 29 (7) of the Act. Counsel takes the position that section 29 (7) of the Act does not apply to the contract of loan as that particular section is subject to section 6 of the Act, which pertains to rent. Ms Roberts further submits that the applicable section is Section 29 (5) which reads:

“Subject to subsection (6), where any right of action has accrued to recover

(c) any debt or liquidated or pecuniary claim; or

(d) any claim to the personal estate of a deceased person or to any share or interest in the estate

and the person liable or accountable in respect of it, the right shall be treated as having accrued on and not before the date of the acknowledgement or part payment.

[12] It is Ms Roberts' further submission that subject to section 29(5) the barring power of section 29 (7) is therefore dis-applied as Mr Mc Dowall made payments of \$100.00 in February, May and June of 2011. Those payments, argues learned Counsel for the Bank, confirm that Mr Mc Dowall acknowledges the debt owed to the Bank and those part payments were made towards clearing the debt. On those submissions, Ms Roberts submits that accrual date of the contract of loan begins on 30th June 2011 and the debt is not statute barred.

[13] Ms Roberts acknowledges that there is some merit in the Bank's argument that that the cause of action arose some time in the latter half of 1995, which would in essence deem the matter statute barred under section 7 of the Act. However, counsel asserts that the Bank's cause of action arose on 30th June 2011, the date of the last payment/acknowledgement and the Defendant's subsequent default.

[14] In support of the position taken by the Bank, Ms Roberts relies on the case of **Channer v Waite (1966)** WIR 290, (a copy of which was made available to the Court and to Counsel for the Defendant during the course of arguments) wherein the Court of Appeal of Jamaica held that a payment made on account of a statute-barred debt did not revive the creditor's remedies in respect of the balance unless a promise on behalf of the debtor to pay could be inferred from the circumstances. Based on **Channer's** case, Ms Roberts submits that Mr Mc Dowall made payments towards the debt some 15 years later, so his actions are sufficient to infer that he entered into a fresh agreement with the Bank.

B. Ms Campbell on behalf of the Defendant

[15] Ms Campbell, like Ms Roberts prefaced her submissions by setting out and analyzing the provisions of sections 7, 8 and 29 of the Act and offering an analysis of those sections. Counsel also set out brief relevant background facts.

[16] In counsel's view, the issue to be decided is whether the proceedings filed by the Bank are statutorily described. Counsel submits that the determination of that issue will turn on three sub-issues, namely

- (i) which section of the Limitation Act is applicable to the loan;
- (ii) whether the action was brought within the prescribed statutory period; and
- (iii) whether the payments made by the Defendant operated as acknowledgement and /or part payment of the debt owed to the Bank pursuant to section 29 of the Act so that the prescribed statutory period was extended.

[17] Counsel went on to examine in detail and very comprehensively, each and every sub-issue. And if I were permitted to say so at this stage, I would say that I prefer and accept the submissions of counsel for the Defendant in preference to the submissions of counsel for the Claimant Bank.

[18] In summary, in relation to the second sub-issue, counsel submits:

- (a) Generally, periods of limitation begins to run when the cause of action accrues¹
- (b) In the case of actions founded on contract, time runs from the date of the breach²
- (c) The prescribed statutory period being six years, if the action was not brought within six years of the accrual of the cause of action, the action will be statutorily barred.
- (d) If a time is stipulated for repayment, the limitation period will run from that time.³
- (e) The Defendant was required to pay the loan in 24 monthly instalments of \$300. 00. He became delinquent when he missed the first payment on 31st July 1995. Time began to run from that date. That was the earliest time at which the Claimant could have brought its action against the Defendant.
- (f) The cause of action accrued on 31st July 1995. Therefore the proceedings to enforce repayment of the said loan ought to have been prosecuted within six years from that date, that is to say, on or before 31st July 2001.
- (g) The action for the repayment of the loan having been brought by the Claimant on 9th March 2012, almost eleven years after the accrual of the cause of action, the Claimant's action is statutorily barred.

[19] In summary, in relation to the third sub-issue, Ms Campbell submits among other things

¹ (Halsbury's Laws of England, Fourth Edition Reissue, Volume 28, paragraph 820 relied on)

² Gibbs v Guild (111) 8 QBD 296 at 302

³ Reeves v Butcher (1891) 2 QBD 509 CA

- (a) The Defendant's payment of money towards the loan in 2011 does not operate to extend the prescribed statutory limitation period of six years from the date of the last payment on 1st July 2011.
- (b) When the Defendant paid those sums, the Claimant's claim was statute barred and the subsequent payments cannot operate to revive the action. Once the cause of action became statutorily barred on 31st July 2001, it remained statutorily barred. The payments made by the Defendant were merely gratuitous.

Is the action statute barred?

- [20] Section 7 of the Limitation Act establishes a six year limitation from the time the cause of action arises, with respect to a claim for the recovery of money under a contract debt.
- [21] The Defendant's position is that the limitation period began to run at the time Mr McDowall defaulted in the first installment, that is to say on 31st July 1995. The Claimant's position is that time began to run on 30th June 2011.
- [22] It is well established that there must be a right to bring an action to start the running of a limitation. In **Reeves v Butcher** [1891] 2 QB 509, Lord Justice Lindley held that the right to bring an action may arise on various events, but it has always been held that the statute runs from the earliest time which an action could be brought. In **Reeves**, the plaintiff lent money to the Defendant for five years, subject to the power to call in same at an earlier period. The Defendant agreed to pay interest quarterly, and the plaintiff agreed not to call in the loan for five years if the Defendant should make default for twenty-one days in any quarterly payments of interest to the Plaintiff. It was held, no interest having paid, that time began to run from the earliest date at which the Plaintiff could have sued that is twenty one days after the first installment of interest became due, and that an action to recover principal and interest commenced within six years from the end of the five years.
- [23] The authorities clearly demonstrate, and I am satisfied that the cause of action in this case accrued as at 31st July 1995.

[24] Following Lord Justice Lindley in **Reeves v Butcher**, and based on the pleadings, documents exhibited, the submissions, I am in agreement with the Defendant that time under the Act began to run from 31st July 1995, the earliest time which this action could be brought. Additionally, I find and hold that the Claimant failed to comply with section 7 of the Act and did not bring its action against the Defendant six years after the cause of action accrued as required by the Act. The time period indicated in the Act ran from 31st July 1995. The Claimant was required to issue his claim within six years from the date on which the cause of action accrued that is to say by 31st July 2001. It brought its action on 9th March 2012. Hence, the Claim is rendered statute barred by virtue of Section 7 of the Limitation Act Cap 129 of Laws of St Vincent and the Grenadines (2009) Revision.

Is the Action revived by Section 29 (5) of the Act?

[25] Based on the Defendant's pleadings, it would appear that the Defendant made a few payments on the loan, beginning on 13th June 1995, when Mr McDowall paid the sum of \$715.60; continuing on 3rd November 2010 - fifteen years later when he made a payment of One Hundred Dollars and subsequently on 2nd February 2011, 28th February 2011; 30th June 2011 and 5th May 2011.

[26] Under the Act, the six year Limitation period can be extended by written acknowledgement of the debt or part payment. In the instant case, there was no written acknowledgement of the letter of demand dated 4th January 2011. However, it appears from the submissions of the Claimant (as opposed to the Statement of Claim) that the Defendant made the last payment on 30th June 2011 which is less than six years prior to the commencement of these proceedings. If this is the case, then it would appear on the face of it that the Claimant can rely on that payment to revive the cause of action under Section 29 (5) of the Act which would in effect oust Section 29 (7). But is this permissible in this case? I think not.

[27] In her reply submissions, Ms Campbell posited that **Channer's** case goes against the Claimant because there is nothing on which the Court can infer a promise of a fresh

agreement. Counsel further pointed out that this is the first time that the Claimant is alleging a fresh agreement with the Bank adding that this was not even mentioned in the Statement of Claim. Ms Campbell also pointed to the fact that the Claimant's Statement of Case did not even make any reference to part payments.

[28] Rule 8.7 A, of the CPR provides that the Claimant may not rely on any factual allegation or factual argument which is not set out in the Claim. So in order for the Claimant to rely on the factual allegations contained in paragraphs 5 to 8 of its submissions they must be specifically pleaded. As can be seen from the Statement of Claim, the Claimant has not complied with CPR 8.7 A. in that it failed to plead the Promissory Note. There is no plea that that the Defendant made any payment toward the said loan or that he made a payment at all and what that payment might have been. As there are no such averments in the Statement of Claim, the Claimant cannot be permitted to rely on these averments when they when they were not foreshadowed in the Statement of Claim.

[29] In **Eastern Caribbean Flour Mills v Boyer** St Vincent and the Grenadines Civil Appeal No 12 of 2006, the Court of Appeal at paragraphs [42 to 44] emphasized that the pleading must set out the general nature of the party's case. It must set out allegations of fact. It must let the other side know what case he has to meet. Witness statements then serve the requirements of providing further details or particulars of the pleader's case. In the instant case, the Statement of Claim falls woefully short of letting the Defendant know what case it has to meet. It is hollow. It simply alleges that

"4. "On 12th June 1995 the Defendant obtained a loan from the Claimant in the sum of \$6500.00."

"5. The agreed contractual rate of interest applicable is 14 % per annum."

"6. the loan became delinquent and the Claimant through its solicitors requested repayment of the said loan inclusive of interest, and collection fees and legal costs due thereon."

"7. Notwithstanding those demands, the Defendant has failed to repay the said loan. ..."

[30] That having been said, I do not agree that the action is revived by section 29 (5) of the Act, as submitted by Ms Roberts. Rather, I am in agreement with Ms Campbell that section 29 (7) is the applicable section, which provides in part that a right of action, once barred, by the Act, shall not be revived by any subsequent acknowledgement or part payment.

Conclusion

[31] In the result, there will be judgment for the Defendant with costs to be assessed if not agreed within 21 days of today's date.

[32] I am grateful to counsel for their impressive submissions and authorities.

**PEARLETTA E LANNS
MASTER**