

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. SKBHCV2016/0105

BETWEEN:

MVCI ST KITTS COMPANY LIMITED

Claimant

and

**[1] EDWARD GIFT
[2] THE ATTORNEY GENERAL OF SAINT CHRISTOPHER
AND NEVIS**

Defendants

Before:

Ms. Agnes Actie

Master

Appearances:

Mr. Emile Q.C with Mr. Garth Wilkin holding for Mr. Damian Kelsick for the
Claimant

Ms. Simone Bullen Thompson for the Defendants

2016: October 19;
2017: March 29.

JUDGMENT

[1] **ACTIE, M:** The claimant, MVCI St Kitts Company Limited (**MVCI**) was exempt from payment of stamp duties by the Government of St Kitts and Nevis. Between 2007 to 2012, **MVCI** erroneously paid stamp duties to the Inland Revenue Department totaling approximately USD\$225,000.00. **MVCI** now claims against the first defendant, Mr. Edward Gift in his capacity as Comptroller of Inland Revenue, together with the Attorney General for the refund of the stamp duties.

- [2] The Attorney General filed a defence conceding that the **MVCI** was exempt from the payment of stamp duty but pleaded that the action was statute barred in accordance with the provisions of the **Public Authorities Protection Act Cap 5.13** and **The Limitation Act Cap 5.09**.
- [3] **MVCI** applies to strike out paragraphs 1 and 17 of the defendants' defence on the grounds that the paragraphs do not disclose any reasonable ground for defending the claim and are inapplicable to the circumstances of this case.
- [4] The paragraphs read as follows:
- “1. The claim is statute barred by virtue of the Public Authorities Protection Act Cap 5.13 having been brought outside of the 6 months limitation period provided by the Act.
17. The claimant is not entitled to be repaid any sum which was prior to March 2010 as such monies would have been outside the 6 years limitation period by the Limitation Act Cap 5.09 “
- [5] The Attorney General opposes the application contending that the defendants are seeking the protection of the limitation periods as prescribed by the legislation. Counsel for the Attorney General is of the view that such a determination should be dealt with at trial after full disclosure of evidence..

Law and Analysis

- [6] The issue to be determined is whether the matter is statute barred as pleaded by the defendants.
- [7] Section 2(1)(a) of the **Public Authorities Protection Act Cap 5.13** provides as follows:
- “(1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority or of any alleged neglect or default in the execution of any such act , duty or authority, the following provisions shall have effect:

- (a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.:

[8] **MVCI** contends that section 2(1)(a) of the **Public Authorities Protection Act** speaks to acts done in pursuance of any act, public duty, authority or neglect or default in the execution of any such act, duty or authority. **MVCI** avers that the liability of the defendants does not involve any allegation of wrongdoing on their part, but rather simply that justice requires they repay monies mistakenly paid to them. **MVCI** contends that such liability does not fall within section 2(1)(a) of **Public Authorities Protection Act**.

[9] Counsel for **MVCI** referred the court to the of the House of Lords in **Bradford Corporation v Myers**¹ where the Corporation relied on the statutory defence under the **Public Authorities Protection Act**, which is similar to the section 2 of the Act cited by the defendants in the case at bar. The corporation in **Bradford Corporation v Myers** was sued by an occupier who had purchased coke from the municipal gasworks. As a result of the negligence of an employee of the corporation, the coke was tipped through the shop window of the purchaser in the course of its delivery. Lord Buckmaster LC said that the limitation defence under the Public Authorities Protection Act is only available where the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. Lord Buckmaster continued and said:

“... it is not because the act out of which an action arises is within their power that a public authority enjoy the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public. It assumes that there are duties and authorities which are not public, and that in the exercise or discharge of such duties or authorities this protection does not apply.”

¹ [1915] A.C 242.

“Lord Shaw of Dunfermline at page 263 citing the case of **City of Edinburgh v George Heriot’s Hospital**, where in an action for the repayment of large sums of money said to have been received by the hospital in excess of their just claims under contract. The hospital pleaded that if they received over-payments they were acting in execution of the statute. Without deciding whether they were or not a public authority in the sense of the protection of the act Lord Kincairney stated:

“I am not prepared to say that there may not have many acts by the governors of Heriot’s Hospital which were done in execution of their statute and scheme, and in regard to which they may, on that account, enjoy the protection of the statute. But I am of the opinion that the alleged acts, for the remedy of which this action has been brought, were not of that character. The relations between the Heriot’s Hospital and the magistrates, so far as relating to the sums sued for, were simply the relations of superior and vassal and creditor and debtor, and in recovering their feu-duties, **they were merely using the rights of superior and of creditor and not any statutory rights; and if they recovered more than was due, that must have been only through a mistake in regard to their rights as superior and creditor, and not through any miscarriage in the exercise of their statutory powers**”. (Emphasis added)

[10] I wish to adopt the dictum of Lord Shaw of Dunfermline citing Lord Kincairney which is on all fours with the matter before this court. The claim before this court is as a result of the Inland Revenue Department mistakenly collecting stamp duty from the claimant who was exempt from payment of those duties. The Inland Revenue Department action was not done in the performance of any duty as the department was not under a duty to collect stamp duty from the claimant. **MVCI**, as was the claimant in **City of Edinburgh v George Heriot’s Hospital** is simply seeking to recover money mistakenly collected by the Inland Revenue Department.

[11] The **Public Authorities Protection Act** speaks to acts done in pursuance of a statutory duty. The **Act** is designed to protect public officers where there is a duty arising from statutes. The protection only extends to public officers who are acting within their permitted scope and authority. Public officers cannot seek the protection of the **Act** in actions not done in direct pursuance of the provisions of

the statute or in the direct execution of the duty or legal justification. The act complained of in the case at bar was done through a mistake and not through any miscarriage in excess of the statutory powers. Accordingly, I am of the view that the defendants cannot benefit from the six (6) months limitation period protection of Section 2 of the **Public Authorities Protection Act**.

The second issue is whether the claim is statute barred under the Limitation Act.

[12] The defendants at paragraph 17 pleaded that the claim is also barred as it was brought outside the 6 years limitation period as provided by the **Limitation Act Cap 5.09**

[13] **MVCI** contends that that Section 21(4) of the **Limitation Act** provides that the limitation period begins afresh from the date of the acknowledgement of a debt. **MVCI** referred the court to correspondence by letter between the parties. Counsel for **MVCI**, in a letter to the Comptroller of Inland Revenue dated 10th January 2013 at paragraph 6 stated as follows

“Approximately US\$225,000.00 has been paid to date in respect of stamp duty on the said mortgages to which our client is entitled to be refunded. We will of course provide the precise figure with supporting receipt. However our client is prepared to have that amount repaid by way of the offsetting of future sums due to the government in respect of property taxes incurred in relation to the St Kitts Beach Club Condominiums.”

[14] The Comptroller of Inland Revenue, Mr Gift, in a letter in response dated October 4, 2013, acknowledged that **MVCI** was exempt from stamp duty and stated:

“As noted in paragraph 6 of your letter dated January 10, 2013, we await the submission of the information and supporting receipts to facilitate an arrangement on the precise amount outstanding in order to accommodate the set off process or any other arrangement”

[15] **MVCI** contends that Mr. Gift’s letter is an acknowledgment of the debt. **MVCI** contends that having acknowledged the debt means that the limitation period

began afresh from the date of acknowledgment in the letter dated 4th October 2013 and therefore the six years limitation period will expire on 4th October 2019.

[16] Where, in case of a claim for repayment of a debt, the defendant has acknowledged that he or she owes the claimant; the period is altered from 6 years after the date on which the cause of action took place, to 6 years after the defendant acknowledged or made part payment of the debt. An acknowledgment has to be in writing and signed by the person making it, and has to be an admission of liability in respect of a debt or other liquidated amount or of a sum that is capable of being ascertained.

[17] The House of Lords in **Bradford & Bingley plc v Rashid** held that an acknowledgement for the purpose of the Limitation Act is not confined to admissions of debt that were indisputable as to quantum as well as liability. The House of Lords at paragraph 21 cited **Surrendra Overseas Ltd v Government of Sri Lanka (1977) 1 WLR 565** where Kerr J. said “that the debtor can only be held to acknowledge the claim if he has in effect admitted his legal liability to pay that which the plaintiff seeks to recover. But his acknowledgment need not identify the amount of the debt. His acknowledgment will be sufficient if the amount for which he accepts legal liability can be ascertained by extrinsic evidence²”.

[18] I am of the view that Mr. Gift's letter is a clear admission of the state's indebtedness to **MVCI**. Mr. Gift merely requested additional information in order to ascertain quantum and for possible set-off of other debts. Accordingly, the six year limitation period extends to 4th October 2019 and not 2012 as contended by the defendants.

Whether the paragraphs should be struck out?

[19] The court has an express discretion under CPR 26.3 to strike out a statement of case or any part of a statement of case. The court may strike out a statement of

² *Dungate v Dongate* [1965] 1 WLR 1477.

case or any part of a statement of case if it appears that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim. Striking out should only be used in clear and obvious circumstances when a claim/defence or part of a claim/defence is plainly or evidently unsustainable in law.

[20] I place reliance on all the authorities cited and for all the foregoing reasons, I am of the view that the pleadings at paragraphs 1 and 17 of the defendants' defence are unsustainable and should accordingly be struck out.

ORDER

[21] In summary and for the foregoing reasons, it is hereby ordered and directed as follows:

- (1) The claimant's application to strike paragraphs 1 and 17 of the defendants' defence is granted.
- (2) Paragraphs 1 and 17 of the defence are struck off as disclosing no reasonable grounds for defending the claim.
- (3) Costs to the claimant in the sum of \$1,500.00
- (4) The matter shall be listed for further case management conference during the week of 10th April 2017.

BY THE COURT

REGISTRAR