

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-04406**

BETWEEN

CHANAN SUDAMA

AND

CHANAN SUDAMA (THE LAWFUL ATTORNEY OF NARINE MOHINDRANATH SUDAMA)

Claimants

AND

THE WATER AND SEWERAGE AUTHORITY OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MME. JUSTICE M. DEAN-ARMORER

APPEARANCES:

Ms. Soraya Nanan, Attorney at law for the Claimant

Mr. Kester Mc Quilkin, Attorney-at-law for the Defendant

REASONS

Introduction

1. By these proceedings the Claimant sought damages for negligence and nuisance, allegedly caused by leaking water mains of the Defendant, WASA. In response, the Defendant contended that the claim was statute-barred and should be struck out.

2. On April 03, 2019, I delivered a ruling on the issue of limitation and dismissed the Defendant's objection that the Claim was statute-barred. My reasons for so doing are set out below.

Procedural History

1. By his statement of case filed on December 6, 2017, the Claimant herein sought the following relief:
 - i. Damages and consequential loss caused by the nuisance and negligence of the Defendant Authority, their servants and/or agents in the management and safety of the water line;
 - ii. Aggravated and/exemplary damages
 - iii. Interest at such rate and for such period as the Court may deem just in the circumstances;
 - iv. Costs; and
 - v. Such further and/or other relief as the Court may seem just.
2. The Defendant Authority, WASA, filed its defence on March 27, 2018. WASA contended that the Statement of Case contravenes the ***Limitation of Certain Actions Act Chap. 7:09*** and should be struck out.
3. Written Submissions on the limitation point were filed on January 11, 2019, on behalf of the Defendant and Submissions in Reply were filed on behalf of the Claimant February 18, 2019. The Defendant later filed Submissions in Reply on March 01, 2019.

Facts

4. In their Statement of Case, the Claimants have set out allegations of events which have led to the filing of these proceedings. In many instances, the allegations have been denied by

the Defendant. However, I examined the allegations, in order assess, at the outset, whether the claim is statute-barred.¹

5. The second Claimant, was, at all material times the owner of the property situate at No. 17 Fonrose Village, Poole, Rio Claro. He lives abroad and has brought these proceedings, through the first Claimant, as his lawful attorney. The first Claimant occupies the residential building which stands on the land.
6. The Claimants allege that in or around the December 18, 2012, the first Claimant noticed the subsidence of the land behind the residential building. The first Claimant also noticed a flow of water seeping through cracks on the subject land. ²
7. The paragraphs which followed told of the efforts of the first Claimant to secure the assistance of the Defendant in addressing the problem.
8. The Claimants allege that the employees of the Defendant were due to visit the property on January 18, 2013, but only did so on January 25, 2013. On the latter date, they were unable to assess the presence of leaks because of the absence of water in the pipes, due to a shutdown at DESALCOTT.³
9. The first Claimant reported their grievance to the Ombudsman on January 11 2013, and continued to make reports to the Defendant to have the apparent leak detected. ⁴

¹ See Civil Appeal No. 171 of 2012 *Evolving Technologies v Kenneth Julian* where Bereaux JA expressed the view that the issue of limitation should be considered at the outset.

² See paragraph 5 of the Statement of Case filed on December, 2017.

³ See paragraph 6 of the Statement of Case

⁴ See paragraphs 7 and 8 of the Statement of Case

10. The Claimants allege that the Defendant's Pipe Laying Contractors visited the subject premises on the May 2, 2013, but made no attempt to source the leak.⁵
11. The first Claimant continued to call the Defendant, whose employees eventually visited the subject premises and installed a new six (6") inch line to replace a previous 40-year old line.
12. The Claimants arrived averred that on the May, 24, 2013, the old leaking line was reopened by the negligence of the employees for the Defendant and that water began to flow once again onto the subject land.⁶
13. Between June and July, 2014, two different Quality Control Inspectors, visited the subject premises on behalf of the Defendant. In June, 2014 the subject premises were visited by Senior Quality Control Inspector, Mr. Frederick Harris. Mr. Harris conducted tests and confirmed the presence of cholrine in the running behind the Claimants' house. Similar tests were conducted on the July 4, 2014 by another Quality Control Inspector, John Lennard. Once again the presence of chlorine was found in the water.
14. As a result of the tests, the Defendant made an ex gratia offer to the first Claimant. This offer was rejected by the Claimant.⁷
15. Meanwhile, in June, 2013, the first Claimant constructed a retaining wall. The Claimants also expended \$391, 418.38 to repair damage to the land.⁸

⁵ See paragraph 9 of the Statement of Case

⁶ See paragraph 12 of the Statement of Case

⁷ See paragraph 15 of the Statement of Case

⁸ Ibid at paragraph 16

16. On June 25, 2015 the Claimants issued their pre-action protocol letter. The Claimants received no response and issued further letters on September 10, 2015 and December 1, 2015.
17. The Claimants filed an application under ***The Freedom of Information Act***⁹. On May 24, 2016 they received information as to the lab report dated the July 4, 2013. The Claimants alleged that the lab report of the July 4, 2013 confirmed that the flow of water onto the subject land came from the waterline of the Defendant Authority and not from the run off from rain or ground water.¹⁰

Law and Discussion

18. The relevant provisions of the ***Limitation of Certain Action Act Chap. 7:09*** are set out below:

“3. (1) The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say:

(a) actions founded on contract (other than a contract made by deed) on quasi-contract or in tort...”

19. Where there is a continuing tort, a fresh cause of action accrues every day. This was the view of the Honourable Justice Rajkumar (as he then was) in ***Point Point Lisas Industrial Port Development Corporation Limited v Arcelor Mittal Point Lisas Limited CV2015-00712***.

⁹ Freedom of Information Act 1999

¹⁰ See paragraph 18 of the Statement of Case

At paragraph 122 of his judgment, the learned Judge quoted from, 29 Halsbury Laws of England:

*“338. Continuing wrongs. A single cause of action, in respect of which a claimant is entitled and required to have damages assessed once and for all, must be distinguished from a continuing cause of action, namely a series of rights to sue which arises from the repetition or continuance of acts or omissions of the same kind. **Thus where a given trespass continues, a fresh cause of action arises every day during which it lasts, and on this basis damages can theoretically be recovered repeatedly and indefinitely ; and similarly for a continuing nuisance .”** (My emphasis)*

20. It was my view that the Claimants, by their Statement of Case, had alleged the incidence of a continuing tort. The first Claimant first noticed the leak on December, 2012. The leaking pipe was replaced on May 24th, 2013, only to be re-opened by the actions of the employees of the Defendant on May 24th, 2013.
21. The Claimants alleged that in June, 2013 they constructed a retaining wall and expended sums of money in repairing the land. However, it was not their case that they also repaired the leak. It was also not pleaded by the Defendants that the leak was ever repaired. The source of the nuisance, which was the leaking main continued.
22. It was therefore my view that according to the pleaded case, there was a continuing tort, a fresh cause of action arose every day and the claim was not statute-barred.

Date of Delivery: June, 3, 2019 Justice
Dean-Armorer

