REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2018-03754**

BETWEEN

NATASHA WARD Claimant

AND

ELROY WEEKS Defendant

Before the **Honourable Madame Justice Mira Dean-Armorer**

Appearances:

Alan Anderson attorney at law for the Claimant

Shontel Hinds attorney at law for the Defendant.

REASONS

1. By her Claim Form, filed herein on October 17, 2018, the Claimant applied for damages for breach of contract for the six (6) lots of land situate at Las Lomas Number 1.

2. After having filed his appearance and defence, the Defendant, filed a Notice of Application seeking an order that the Claim be struck out pursuant to Part 26 (1) (b) and (k), ***CPR*** 1998 on the ground that the proceedings were statute-barred under the ***Limitation of Certain Actions Act*** Chap 7:09 "***the Act***".

3. On October 07, 2019, I refused the Defendant's application to strike. My reasons for so doing are set out below.

Facts

The Pleadings

4. Natasha Ward filed her Claim on October 17, 2018. Her Claim Form was not accompanied by a Statement of Case, but by an affidavit of the Claimant.

5. The Defendant filed his Defence on November 16, 2018 and this Claim was listed for the first Case Management Conference (CMC) on January 19, 2019. At the first CMC, the Claimant was granted permission to file a Statement of Case. The Defendant was granted permission to make consequential amendments to his Defence.

6. The Claimant filed an Amended Claim Form on January 24, 2019, along with a Statement of Case. The Amended Claim Form was almost identical in content to the Statement of Case.

7. The Defendant filed an Amended Defence on February 28, 2019 and on March 12, 2019, the Defendant filed his application to strike. The Notice of Application was not supported by an affidavit but by the Written Submissions of Ms. Hinds, learned attorney-at-law for the Defendant.

8. Consequent upon the application to strike, permission was granted to the Claimant to file Written Submissions and a Re-Amended Statement of Case.

9. The Claimant filed her Re-Amended Statement of Case on June 28, 2019. The Defendant filed a Re-Amended Defence on June 15, 2019.

10. On July 22, 2019, the Claimant filed yet another amendment. This was the Re-re-Amended Claim Form and Statement of Case, bearing the colours: red, green and yellow.

Allegations of the Claimant

11. In order to decide whether the Claim was statute-barred, I considered the Claimant's pleaded case, as stated in her Re-re-Amended Claim Form and Statement of Case

12. The Claimant had intially referred to two verbal agreements with the Defendant for sale of separate parcels of land. It was the Claimant's case that the first verbal agreement was made between herself and the Defendant on May 09, 2010, and that she had been induced by the Defendant to enter the agreement, relying on his representation that he had authority to sell the land.[1]

13. The Claimant alleged that the agreed purchased price was $480,000.00 and that evidence of the payment was to be found in a receipt dated May 09, 2012 for the sum of $200,000.00 and in a Home Mortgage Bank Cheque issued on May 14, 2010 for $250,000.00.

[1] See paragraph 3 of the Re-re-Amended Claim Form

14. The Claimant had initially alluded to a second verbal agreement. However, by her Re-re-Amended Claim Form she stated that the second verbal agreement had been discharged by a separate consent order in a connected matter[2].

15. The Claimant alleged that she made a series of cash payments amounting to $380,000.00. The Claimant included a table showing the date of payments, the respective amounts which were paid, and the receipt or cheque by which each payment was made.

16. The Claimant contended that the Defendant deliberately advised her not to retain an attorney-at-law.

17. In or around 2014, the Claimant visited the Defendant's office in order to enquire about the status of the transaction and was told by the Defendant that he had made an application to Town and Country Planning Division and was awaiting approval from the Town and Country Planning Division.

18. In early August, 2018, the Claimant had her attorney-at-law conduct a search of the title to the property.[3] This led the Claimant to discover that the land in question had been awarded to Eva Narine by Court Order 227 of 1976.[4] The Claimant alleged further that

[2] See paragraph 7 of the Re-Re-Amended Claim Form
[3] See paragraph 15 of Re-re-Amended Claim Form filed on July 22, 2019
[4] Ibid

there was no evidence and contended that the Defendant knew or ought to have known that the he had no legal right to sell or vest marketable title in the Claimant. [5]

19. The Claimant averred that the Defendant had made a false representation and provided particulars of fraud, in particular that the Defendant knew that, by certain High Court proceedings, Eva Narine was entitled to the parcel of land.

20. It was against the Claim, as set out above, that the Defendant had made the application to strike out on the ground of limitation.

Law

Limitation of Certain Actions Act Chap 7:09

21. Section 3 of the ***Act*** provides:

> *"**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;…"*

22. Section 14 provides:

> *"**14**. (1) Subject to subsection (3), where in the case of any action for which a period of limitation is prescribed by this Act, either—*
>
> *(a) the action is based upon the fraud of the defendant;*

[5] See paragraph 15 of the Re-re-Amended Statement of case

(b) any fact relevant to the plaintiff's right of action was deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of

a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

23. The issue which arose for my consideration was whether this Claim had been filed within the time prescribed by section 3 of the ***Limitation of Certain Actions Act*** as extended by section 14.

Discussion

24. Both parties were in agreement that the question of limitation fell to be considered at the inception of the hearing of the Claim. In support, parties relied on the authority ***Kenneth Julian et al and Evolving Tecknologies v. Enterprise Development Co. Ltd***[6], where Justice of Appeal Bereaux JA expressed the view that questions under section 14(2) of the ***Limitation of Certain Actions Act*** should be addressed first, so that if the Defendant was successful, costs and time can be saved. Thus at paragraph 46 of his judgment, Bereaux had this to say:

"[46] …..*But in my judgment, to proceed to trial and hear the entire evidence is effectively to deprive the appellants of the benefit of the limitation*

[6] C.A.CIV.171/2012.

provisions which are intended to liberate a litigant from the oppression of defending a stale and dated claim.

[47] It is fair that the entire question of limitation under section 14(2) be addressed first. If the appellants succeed it will save costs and even if they do not then it eliminates one major issue…."

25. In ***Kenneth Julian and Others v Enterprise Development Co Ltd*** Bereaux JA considered, in depth, the effect of section 14 (2) of ***the Act*** which addresses the deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered. Although the application before me was not concerned with section 14 (2), I relied on the guidance of Bereaux JA, as to the proper time at which the question of limitation ought to be considered.

26. By her pleaded case, the last payment was made by the Claimant to the Defendant in June, 2012. Her cause of action would have arisen at that time. According to section 3 (1) of ***the Act,*** therefore, the claim would have become statue-barred within 4 years of that date or by June 2016.

27. However, the Claimant, by her Re-re-Amended Claim Form and Statement of Case, raised the issue of fraud by contending that the Defendant had falsely represented that he had the authority to sell. The Claimant contended that she entered into the agreement in consideration of the fraudulent representation.

28. Where there is an allegation of fraud, section 14 (1) of ***the Act*** deprives a defendant of the defence of limitation, until one of the events, identified at section 14 (1) is present, that is to say either that the Claimant has discovered the fraud or such time as the Claimant, could with reasonable diligence, have discovered the fraud.

29. Section 14 of ***the Act*** is formulated in disjunctive terms. So that where fraud is alleged, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it.

30. I considered the formulation of section 14. When the plain ordinary meaning is placed on it, the use of the disjunctive "or", means that where there is an allegation of fraud, time will not begin to run until the occurrence of either event. The use of the word "or" means that the events are mutually exclusive and time will begin to run, when one of the events occur.

31. The express words of the statute do not however indicate which event, having occurred, will cause the limitation period to begin to run. Section 14 (1) gives no guidance whether time would begin to run when, of the two events, the first in time occurs or the last in time occurs.

32. It was my view that employing the golden rule of statutory interpretation, section 14 should be read with the words "whichever is first in time". To place the converse interpretation on section 14 and to say that the limitation period would become operative when the later event has occurred would render the following words of no value:

> *"….or could with reasonable diligence have discovered it"*

The Court will lean against an interpretation which renders any part of a statute meaningless, since every word of a statute must be given meaning.[7]

[7] See Maxwell on the Interpretation of Statutes (12th Langan Edition) page 36.

33. In determining which event was first in time, I was mindful that the Claimant, by her pleaded case, contended that she became aware of the alleged fraud in August, 2018 when her attorney-at-law conducted a search of the title to the land.

34. The question which I asked myself was whether the Claimant could, with reasonable diligence, have discovered the alleged fraud before August, 2018. Whereas the date on which the fraud was discovered was susceptible to strict proof, the second factor, when the Claimant could with reasonable diligence discovered the fraud, is a question for the Court to decide by reference to the pleaded case.

35. Guidance as to the meaning of reasonable diligence may be found at paragraph 1223, 68 ***Halsbury's Laws of England*** (2016), where the learned authors has this to say:

> *"The standard of diligence which the claimant needs to prove is high, except where he is entitled to rely on the other person; however, the meaning of 'reasonable diligence' varies according to the particular context. In order to prove that a person might have discovered a fraud, deliberate concealment or mistake with reasonable diligence at a particular time, it is not, it seems, sufficient to show that he might have discovered the fraud by pursuing an inquiry in some collateral matter; it must be shown that there has been something to put him on inquiry in respect of the matter itself and that if inquiry had been made it would have led to the discovery of the real facts. If, however, a considerable interval of time has elapsed between the alleged fraud, concealment or mistake and its discovery, that of itself may be a reason for inferring that it might with reasonable diligence have been discovered much earlier"*

36. Throughout her submissions, Ms. Hinds argued that the Claimant had not acted with due diligence. It is noted that the statue requires reasonable diligence and not "due" diligence.

37. The learned authors continued by asserting that it must be shown that there had been something to put the Claimant on enquiry in respect of the matter itself and that if enquiry had been made it would have led to a discovery of real facts. It was my view, that it was clear that the obligation to show that there was something to put the Claimant on enquiry fell to the Defendant, as the party who asserted that the Claimant could with reasonable diligence have discovered the fraud on an earlier date.

38. The Defendant made no allegation that the Claimant was put on enquiry. However, in this Claim, the event which put the Claimant on enquiry may be found in the Re-re-Amended Claim Form, at paragraph 12, when the Claimant visited the Defendants office in the second half of 2014 in order to enquire as to the progress of the sale and was told by the Defendant that he had sought permission to develop land. That was when she was told that he had made an application to the Town and Country Planning Division (TCPD). [8]

39. Following her reference to her visit to the Defendant, the Claimant alleged that upon review it was determined that the Defendant had fraudulently misrepresented that the subject lands had been submitted to TCPD. This should have been her trigger, for enquiry. The Statement of Case was silent as to the date of the review and the discovery.

40. It was my view that acting with reasonable diligence, the Claimant, put on enquiry since the second half of 2014, could have conducted the exercise of retaining a lawyer and

[8] See paragraph 12 of the Re-re-Amended Claim Form

doing a search and could have discovered the fraud by the end of 2014 or at latest, Mid-2015.

41. According to the learned authors of ***Halsbury's Laws of England***[9] the obligation to exercise reasonable diligence is contextual. It was therefore relevant that the claimant was unsophisticated and had not earlier retained an attorney-at-law, on the advice of the Defendant. Following her visit to the Defendant in 2014, it would have been necessary for the Claimant to retain and instruct an attorney-at-law, since, relying on the advice of the Defendant, she had not retained an attorney-at-law earlier. It was reasonable to expect that this exercise would have taken a few months.

42. It was therefore my view that, with the exercise of reasonable diligence the Claimant could have retained an attorney, obtained advice, commissioned a search, obtained the results of the search by late 2014, or early 2015.

43. If my assessment was correct, time would have begun to run in late 2014. Four years from late 2014, would have taken the Claimant to late 2018.

44. The Claim was filed on October 17, 2018. It was my view that this was within the time, as extended by section 14(1) of ***the Act*** as a result of the allegation of fraud. I therefore dismissed the application to strike out the claim.

Date of Delivery: November 14, 2019

Justice Mira-Dean Armorer

[9] Volume 68, Halsbury's Laws of England (2016) paragraph 1223.