

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

S-1741 - 2003

BETWEEN

ARTHUR RAMJIT

Plaintiff

AND

ESAU SAHADEO

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Haresh Ramnath for the Plaintiff

Mr Abdel Ashraph for the Defendant

Date: 11 November 2019

REASONS (Oral Ruling on 16 April 2019)

1. I have read the submissions of the parties. An application was brought by the Plaintiff to issue a Writ of Execution against the Defendant. On 11 August 2004 default judgment was entered against the Defendant and the order of the Court was that there was judgment for the Plaintiff against the Defendant with damages to be assessed and cost to be taxed.

2. On 9 April 2008 there was a consent order on the assessment of damages for the amount of \$26,000.00 which included interest and costs.

3. The question for determination here and for which and a point has been taken is to whether or not the right to enforce the judgment is now barred by the operation of statute.

4. The **Limitation of Certain Actions Act, Chap 7:09** provides that an action shall not be brought upon any judgment after the expiry of twelve years from the final judgment and no arrears of interest in respect of any judgment debt shall be recovered after the period of twelve years has passed from the date of the judgment. Accordingly, the effect of this is that once the final order or final judgment is given the party will not be able to bring an action to enforce it after twelve years. In this case the order made was for the damages to be assessed and for costs as well to be taxed and there was an agreement by consent for that to be done.

5. There were a couple of cases which were cited and in particular there was the judgment delivered by Justice of Appeal Mendonca in **Chadee and Ors. –v- Rampersad and Others, CA No. 145 of 2005**. I found that this was a case which was distinguishable. In the present case there could be no enforcement of the judgment until such time as damages were agreed upon. It was only at that time that there was a “final judgment” on damages. Up to then there was an order for the assessment of damages. There was no “action” to enforce the judgment, which would have been covered by a limitation period. Here there had been an “order of the court” that damages be assessed.
6. Up to the assessment, a Plaintiff would have no way of enforcing any order in respect of a sum of damages. There could not be an enforcement of an order until such time as the money judgment was quantified.
7. There have been instances in the past, which are not likely to happen under the present CPR, but there have been instances where an assessment would have taken place twelve years after judgment had been entered. It could not be the law that a party would be prevented from enforcing the judgment if the assessment were to take place after 12 years. In fact there is nothing which bars an assessment save for matters of abuse of process or unreasonable delay in a Court dealing with an assessment over twelve years after a judgment has been entered.

8. In principle therefore, it could not be that the section means that because judgment was entered in default on a particular date that time would run in respect of that time of judgment from the date of the entry of the judgment. The final judgment had not been made because part of the final judgment necessarily involves the assessment of what damages are payable.

9. Mr Ashraph referred me to the Rules of the Supreme Court, 1975, Order 42, Rule 3, para 3 which states:

“In the case of a judgment by default, the judgment shall be dated as the day on which all requisite documents to enter judgment are filed at the appropriate office, and when settled and signed by the appropriate officer, the judgment shall take effect from the date of such filing.”

10. In my view, while this sets out the date when the judgment takes effect, where there is an assessment, the enforcement of the assessment can only occur from the date of the assessment. Before that, there would be nothing to enforce. A Writ could only issue after the assessment in relation to the sum of money claimed and unpaid. What would the Writ be for before that?

11. There would be other types of judgment which it would be plain that any time would run from the date of the pronouncement of the judgment. For example, where there is no issue as to damages being quantified. It may be in a situation, for example, where possession

is sought or like orders. In my view, the law could not be that the section could be interpreted in the manner which has been suggested by the Defendant.

12. In those circumstances, I am of the view that even though the judgment was entered on 11 August 2004, time in respect of any enforcement could only begin to run from the date when the order in respect of the assessment was done which is from 2008. The Plaintiff is therefore within the 12 year period of time for any action to enforce the judgment.

13. In respect of the summons of 22 January 2018 permission is granted to the Plaintiff to issue a Writ of Execution against the Defendant.

14. The Plaintiff is to have his costs of this Application taxed by a Registrar in default of agreement.

Ronnie Boodoosingh

Judge