

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-04129

BETWEEN

**CINDY RAMPERSADSINGH
SHERRY ANN RAMPERSADSINGH**

Claimants

AND

ONYX INVESTMENT LIMITED

Defendant

ANCILLARY CLAIM

BETWEEN

ONYX INVESTMENT LIMITED

Ancillary Claimant

AND

FITZWILLIAM STONE FURNESS-SMITH & MORGAN

First Ancillary Defendant

DAVID YUNG

Second Ancillary Defendant

TERRA CARIBBEAN (TRINIDAD) LIMITED

Third Ancillary Defendant

MILTON STEEL

Fourth Ancillary Defendant

BEFORE THE HONOURABLE MR. JUSTICE K. RAMCHARAN

Appearances:

For the Ancillary Claimant: Mr. Jagdeo Singh, Mr. Dinesh Ramberly, Kiel Taklalsingh *instructed* by Ms. Desiree Sankar

For the First and Second Ancillary Defendant: Mr. Russel Martineau, SC and Mr. Kerwin Garcia *instructed* by Ms. Ayanna Fleming

For the Third Ancillary Defendant: Mr. Stephen Singh *instructed* by Ms. Tracey Rojas

REASONS

1. This action surrounds the purported fraudulent transfer of a property to the Defendant/Ancillary Claimant in September 2009. The Ancillary Claimant subsequently brought Ancillary proceedings pursuant to **Part 18** against the Ancillary Defendants. The Claim against the First and Second Ancillary Defendants is that they were in breach of contract and negligent when they executed the Agreement for Sale and Deed of Conveyance between the Defendants and the persons purporting to be owners of the said land. The claim against the Third Ancillary Defendant is one of negligence in representing that the alleged fraudulent persons were the true owners of the property.
2. The First and Second Ancillary Defendants filed their Defence on the 31st of October, 2016 and the Third Ancillary Defendants filed its defence on the 5th of September, 2016 and its amended defence on the 3rd of November, 2016. In both their defences, they pleaded that the claim against them was statute barred

pursuant to section 3 of the **Limitation of Certain Actions Act Chapter 7:09**. In so far as it is relevant, that Act provides that *“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...”*

3. It was directed that the issue as to whether the Ancillary Claimant’s claim against the First, Second and Third Ancillary Defendants was statute barred would be tried as a preliminary issue, as if it were the case that the claims were statute barred, then it would make no sense to proceed to trial on the Ancillary Claim against these Ancillary Defendants. Submissions were filed on behalf of the First and Second Ancillary Defendants, the Third Ancillary Defendants and the Ancillary Claimant.
4. In their submissions, all parties agreed that the issue that had to be determined was the date that the cause of action accrued against the Ancillary Defendants. It was further common between the parties that in negligence, the cause of action would have accrued when the Ancillary Claimant first suffered loss. The Ancillary Defendants claiming that it accrued when the Deed was executed, and the Ancillary Claimants claiming that at earliest, it accrued when the fraud was discovered in 2015.
5. With respect to the breach of contract, the First and Second Ancillary Defendants submitted that this would have accrued when the contract Deed

which they were contracted to procure was executed, that is to say, the 7th September 2009. The issue of when the cause of action in contract would have arisen was not addressed by the Ancillary Claimant in its submissions.

6. The parties have relied on the Privy Council decision of **Maharaj v Johnson** [2015] UKPC 28, which dealt with the question as to when the cause of action accrued in cases of professional negligence. There, the Privy Council referred to what they described as cases where there is a flawed transaction, that is to say where the claimant, had they received proper advice would have entered into a different contract, and no transaction cases, that is to say where the claimant would not have entered into a contract at all had they received proper advice.
7. The Ancillary claimant specifically submitted that their contention was that this was a case of no transaction. That is to say, that if they had received proper advice, that is to say, that the persons purporting to be the Claimants were not actually the Claimants, then they would not have entered into the contract. This position the same adopted by the Ancillary Defendants in both their submissions.
8. The question to be answered therefore, is when did the Ancillary Claimant suffer loss? The Ancillary Claimant's position is that until the Deed is set aside, they have not suffered loss as they are still the legal paper title owners of the

land in question, that they were in control and possession of the said lands until the filing of the claim.

9. With the greatest of respect to the Ancillary Claimants, this cannot be a proper application of the law, especially in this case where the question is one of forgery, meaning that if proved the deed would be void ab initio, in light of that, from the time the Deed was executed, the Ancillary Claimant suffered loss, as monies were paid, and it expected to receive something which it did not.
10. Further, when one looks at the **Maharaj** case the cause of action accrued even though there was no certainty that the Claimants suffered loss. Even though **Maharaj** was a flawed case transaction, it is my view that the same principle would apply in the instant case. In the **Maharaj** case, the Defendants had also alleged that the Power of Attorney was sufficient to empower Mr. Inniss to transfer the land in question to the Claimants. The question of limitation proceeded on the basis that it did not. Likewise, the question of limitation in the instant case, although, a no transaction case, must also proceed on the basis that the Ancillary Claimant's case is proved that is to say that the advice was negligent, and that the deed is fraudulent and therefore passed nothing to the Ancillary Claimant. As a consequence, it is clear that the Ancillary Claimant suffered loss when the Deed was executed at the latest, and therefore the cause of action accrued at that date.

11. The case of **UBAF Ltd v European American Banking Corp** [1984] QB, relied on by the Ancillary Claimant does not assist them in my view. In that case, the court pointed out that it could be the case the value of the chose in action which the acquired was not less than the sum which the plaintiffs lent. In other words, whether the question as to whether loss was suffered was still unknown.
12. This is not the position in the instant case. In the instant case, assuming that there is fraud, the Ancillary Claimant has received nothing, and therefore, has suffered loss from the time that the Deed of Conveyance was executed as it transferred nothing to the Ancillary Claimant.
13. As an alternative argument, the Ancillary Claimant submits that the cause of action falls under section 4(1) of the **Limitation of Certain Injuries Act**, which provides for a limitation of 2 years for one tortfeasor to claim a contribution from another tortfeasor. Again, this does not assist the Ancillary Claimant. This section deals with a situation where two (2) persons who have caused damage to a Claimant, arising out of the same tort, not a situation where a tortfeasor is claiming that a person who has not contributed to the damage suffered by the Claimant, is liable to indemnify the tortfeasor for any loss he has suffered arising out of the claim against him by the Claimant. In the circumstances, section 4(1) does not apply to the instant case.

14. In light of the above, this court held that the Ancillary Claim was filed outside the limitation period prescribed by section 3 of the **Limitation of Certain Actions Act** Chapter 7:09 and the Ancillary Claim was dismissed against the First Second and Third Ancillary Defendants with costs to be paid by the Ancillary Claimant to the First Second and Third Ancillary Defendants to be assessed in default of agreement.

Dated the 20th day of April, 2018

Kevin Ramcharan
JUDGE