**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**CIVIL APPEAL NO. S 083 OF 2021**

**CLAIM NO CV 2020-01022**

**BETWEEN**

**DWAYNE DOOKIE APPELLANT**

**AND**

**RANDY RAGOO FIRST RESPONDENT**

**COLONIAL FIRE AND GENERAL**

**INSURANCE COMPANY LIMITED**

**SECOND RESPONDENT**

**Panel:**

N. Bereaux JA

M. Dean-Armorer JA

**Date delivered: 20th December, 2021**

**Appearances:**

Mr. S. Roopnarine instructed by Mr. Pheerange on behalf of Appellant

No appearance on behalf of the First Respondent

Mr. D. Bissoondatt instructed by Ms. D. Granger on behalf of Second Respondent

I have read the judgment of Dean-Armorer JA and I agree with it.

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N. Nolan Bereaux

Justice of Appeal

**JUDGMENT**

**Delivered by Justice of Appeal M. Dean-Armorer**

***Introduction***

1. In this procedural appeal , the Appellant challenges the decision of the Mme Justice Mohammed to refuse his application "to extend and /or override the limitation period as set out at ss. 5 and 6 of the ***Limitation of Certain Actions Act (the Act)***"[1]
2. The Appellant's application to extend time was made by a notice of application filed on June 17, 2020. He there invoked the Court's jurisdiction under section 9 of the ***Act***[2] to extend the time, during which he could institute a claim for personal injuries arising out of a motor vehicular accident.
3. On April 23 2021, Mme Justice Mohammed (the Judge) dismissed the application. The Appellant having appealed the Judge's decision, two issues arise. The first is whether the Judge correctly exercised her discretion under section 9 of the ***Act***.
4. The second issue is whether by section 10 of ***the Motor Vehicles Insurance (Third-Party Risks ) Act,***[3] the cause of action against the Co-Defendant accrues when judgment is

[1] See the Appellant's Notice of Application filed on June 17 2020.
[2] Chapter 7: 09
[3] Ch. 48:51

entered against the Defendant. This question had not been argued before the Judge. Because it is purely a point of law, we nonetheless gave it our consideration.

5. For reasons that will become apparent below, we are of the view that the Judge considered irrelevant factors and made unfair findings of fact. It was our view that she was plainly wrong, her decision ought to be set aside, and an order be made in favour of the Appellant .
6. In respect of s. 10 of the ***Motor Vehicles Insurance (Third-Party Risks ) Act,*** we hold that the cause of action against a Co-Defendant arises when judgment is obtained against the insured.
7. In our judgment, in the instant appeal, the cause of action against the Co-Defendant, COLFIRE, arose when a default judgment was entered against the Defendant, Randy Ragoo in January, 2021. Accordingly, time has not expired for the commencement of proceedings against the Co-Defendant.
8. Having set aside the Judge's decision, we considered the application of the Appellant afresh and hold the view that it is equitable to allow the action to proceed.

***Factual History***

9. On the 27 February 2016, the Appellant was seated in the front passenger seat of his motor vehicle TCD 8824, which at the time, was being driven by the Defendant, Randy Ragoo.
10. The Appellant's vehicle collided with another vehicle, TBO 8961, which was owned and driven by Sooknarine Jaikaran. The Appellant sustained severe injuries and was unable to work for about 18 months.
11. At that time of the collision, the vehicle was insured by the Colonial Fire and General Insurance Company (COLFIRE), the Co-Defendant and Respondent in this appeal.
12. On March 16, 2020, the Appellant commenced proceedings seeking general and special damages for personal injuries arising out of the collision. It was common ground, that in so doing, the Appellant had exceeded the time prescribed by section 5 of the ***Act,*** by 17 days.
13. The Appellant obtained judgment in default of appearance against the Defendant. There was at first no application to set aside the default judgment. This changed

however, when the Appellant filed his application for an extension of time. The Co-defendant then applied to set aside the default judgment. The application to set aside is yet to be heard.

14. Four months after filing the Claim, the Appellant filed an application seeking an extension of time pursuant to section 5 of ***the Act***.

15. The Judge dismissed the application for an extension. She found that the Appellant had been untruthful and that it was inequitable to extend time as requested.

***The Judgment***

16. After having set out the relevant provisions of the ***Act ,*** the Judge considered each factor prescribed by section 9 (3) (a) to (e)of the ***Act***. In respect of the Judge's findings as to sections 9 (3) (b), (c) and (d), there was no challenge on appeal and we too find her decisions on those sections to be correct. We refer briefly to the Judge's findings on those sub-sections below.

17. In respect of sub-section (b), the Judge held that there was no evidence from the Respondent that the evidence, which it was likely to be adduced at trial, would be less cogent if the matter was permitted to proceed.[4]

18. As to section 9(3) (c) , the Judge found that the Co-Defendant was diligent in its conduct after it became aware that the cause of action had arisen and as such the Co-defendant could not be faulted .

19. Turning to section 9(3) (d) , the Judge correctly found that the Appellant was not caught by the definition of a disabled person under the ***Act.***

20. The Judge, however, combined subsections 9 (a), (e) and (f) and considered those factors together. She recognised that the Appellant had exceeded the prescribed limit by only 17 days. In respect of each of the other factors, however, the Judge was adamant in her view that the Appellant was not being candid with the Court. She doubted his veracity as to good reason for the delay.[5] She held that he had failed to disclose material facts and that the delay of which he had complained was caused by his own fault.

[4] See paragraph 34 of the Written Ruling
[5] See paragraph 17 of the Written Ruling

21. Relying on ***Mohan v Prestige Holdings Ltd.***[6] **,** the Judge noted that the court should have regard to all the circumstances of the case. It was her view that the Appellant had failed to disclose actions which he took during the prescribed limitation period and that his lack of disclosure was material to assessing his credibility in respect of his reasons for delay.

22. Ultimately, the Judge held that, according to section 9(1), it would not be equitable to allow the Appellant's action to proceed. She dismissed his application to have time extended and to have the limitation period overridden.

***Submissions***

23. Learned Counsel for the parties presented both written and viva voce submissions. Mr. Roopnarine contended, for the Appellant, that the Judge was wrong in over-emphasising irrelevant considerations and in under-emphasising factors which were relevant. The events which were, in his submission, irrelevant were those which preceded the limitation date. Counsel argued further that relevant factor was the illness of the Appellant's attorney at law.

24. In his submission, the judge also under-emphasised the seriousness of the Appellant's injuries and the fact that the period of delay was only 17 days.

25. Referring to ***Alana Marisa Mohan v Prestige Holdings Ltd.***,[7] Mr. Roopnarine argued that the Court ought to balance the prejudice to the Claimant and to the Defendant , when exercising its discretion under section 9 (1). He submitted that the key to the section was the balancing of prejudice between the Claimant and the Defendant.

26. As to the meaning of the term "equitable" in the context of section 9 (1), Mr. Roopnarine submitted that "equitable" is covered by the test of prejudice and the balance of prejudice. He rejected the suggestion that a lack of candour on the part of the Appellant rendered his continuation of his claim inequitable.

27. Mr. Roopnarine observed that the Judge considered opposing affidavit evidence from both sides, and that the Appellant had not been given any opportunity to answer the allegation.

[6] Alana Marisa Mohan v Prestige Holdings Ltd. and anor Civ Appeal P 364 of 2017
[7] Civ Appeal P 364 of 2017

28. Mr. Roopnarine argued that by section 10 of the ***Motor Vehicles Road Traffic (Third Party Act)***[8]***,*** time began to run against an insurer when judgment was obtained against the insured.

***Submissions on behalf of the Respondent***

29. Mr. Bissoondatt, for the Respondent addressed the implication of section 10 of the ***Motor Vehicle and Road Traffic Act***. He submitted that by section 10 (A), the Co-defendant had been joined as a party and was entitled to object to the action on the ground of limitation.
30. Mr. Bissoondatt argued further that the point had not been taken before the high court and could not be argued on appeal.
31. Mr. Bissoondatt contended that it was important to look at a litigant's conduct during the period within which he was allowed to file his action. He submitted that the Appellant wasted 4 years and has come after the horse has bolted.
32. Significantly Mr. Bissoondatt stated that the Respondent had no issue with the 17 day period. Counsel also recognised that the Appellant had suffered prejudice while, the Respondent had not suffered any.
33. Mr. Bissoondatt submitted that the Claimant had misrepresented the facts and had misled the Court. He argued that the Appellant could not complain that he had not had a right to be heard, since he had not filed an affidavit in reply to the Co-dependant's affidavit.

***Issues***

34. As stated supra, two major issues engaged our attention. The first related to the interpretation of section 10 of the ***MVI Act*** and the second was whether the Judge was plainly wrong in the exercise of her discretion. In the context of this appeal the specific issues ,which fall to be considered are :

    (i) Whether the Judge's discretion was wrongly exercised by her regard for irrelevant considerations

[8] Ch 48:51

(ii) Whether the Judge's discretion was wrongly exercised by her disregard for considerations which were relevant.

35. The relevant sections of the Act are set out below :

> ***5.*** *(1) Subject to subsection (6), this section applies to any action for damages for negligence, nuisance or breach of duty whether the duty exists by virtue of a contract or any enactment or independently of any contract or any such enactment where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.*
>
> *(2) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of four years from—*
>
> *(a) the date on which the cause of action accrued; or*
>
> *(b) the date on which the person injured first acquired knowledge of the accrual of the cause of action.*

***Discussion***

36. By section 5 (1) and (2) of ***the Act***, actions in negligence must be commenced within 4 years of the date on which the cause of action accrued.

37. In claims of personal injury however, ***the Act*** confers a discretion on the Court to allow the action to proceed, though statute barred, if it is equitable so to do.[9]

38. In exercising its discretion, the Court is required to have regard to all the circumstances of the case and, in particular, to the menu of factors which are listed at section 9 (3).

39. The Judge's discretion under section 9 is an unfettered one and the Court of Appeal will only interfere, if satisfied that the decision at first instance is plainly wrong. In ***Alana Marisa Mohan v. Prestige Holdings Ltd[10].*** Mendonça CJ (Ag) explained the meaning of a decision that is plainly wrong in these terms :

> *"This in essence means that the Court took into account irrelevant considerations or failed to take account relevant ones, exercised her discretion*

[9] See section 9 (1) of the Act, which uses the word "inequitable". It was held by the Court of Appeal that the word "inequitable" was a drafting error and section 9 should be read in terms of what is "equitable". See ***Hagley v Babwah Civ App 32 of 2015***.

[10] Alana Marisa Mohan v. Prestige Holdings Ltd. Civ App. 364 0f 2017

*under a mistake of law or the decision is against the weight of the evidence….or the decision is outwith the generous ambit within which reasonable, agreement is possible"*[11]

40. In the present appeal, the Judge at first instance was meticulous in referring to section 9 and to the interpretation of the Court of Appeal of that section. She considered the first factor listed at section 9 (3) (a) that is to say the length and reasons for delay. An examination of the Judge's reasons discloses however, that, in her decision to reject the Appellant's application, the Judge considered reasons for delay, in respect of the time before the expiration of the limitation period on 27th February, 2020. The Judge considered the Appellant's affidavit evidence on the severity of the his illness, his impecuniosity, his unfamiliarity and inexperience with legal claims for compensation and his inability to obtain further information on the particulars of the Defendants.[12] All of these factors preceded the limitation date.

41. In this way, the Judge fell into error, since the delay which is relevant is that which follows the expiration of the four years limitation period. See ***Mohan v Prestige Holdings*** per Mendonça JA.

42. In this appeal, the delay which was relevant was a period of 17 days, which followed the 27th February 2020. The Appellant explained this delay by referring to the illness of his new attorney-at-law Ms. McDowall. The Judge noted that when Ms. McDowall was retained in January, 2020, she, Ms. McDowall, observed that no claim had been filed and set about rectifying this defect. She fell ill however and in February, 2020 informed the Claimant that she had been out of office for more than a month as she was very ill. It was not until March 9, 2020, that Ms. McDowall informed the Claimant that she was very ill and that he should seek new representation. This was of course after February 2020, the date of the expiration of the four years.

43. The Judge dealt with this delay briefly and did not ascribe fault to either the Appellant or to Ms. McDowall. At paragraph 29 of her decision, the Judge said:

*"Further, when Ms. McDowall was retained in mid-January 2020, she recognised that the limitation period was going to expire within a month. However, it appeared that any delay on her part in not filing the claim within*

[11] See Mendonça at paragraph 48

[12] See para 15 of the Judge's decision

*the limitation period was due to her being away from office for 1 month due to illness and that she only advised the Claimant to seek a new legal representative in March 2020 when a limitation period had already expired."*

44. Had the Judge considered the correct period of delay, she would have found that the delay was caused entirely by the illness of Ms. Mc Dowall and that it was supported by good reason.

45. It is therefore my view that the Judge erred in her assessment of section 9(3) (a), by taking into account irrelevant factors that is to say the pre-limitation period delay. She also failed to give adequate consideration to the relevant factor of the cause of the post-limitation delay. It is therefore my view that for this reason alone the Judge's decision should be set aside.

46. The Judge also considered the extent to which the Appellant "*acted promptly and reasonably once he knew whether or not the Defendant's act or omission to which the injury was attributable , might be capable at that time of giving rise to an action in damages"* See section 9 (3) (e) and paragraph 13 of the Judge's Ruling .

47. This subsection concerns the conduct of a claimant before the operation of the time-barrier. Such conduct must be prompt and reasonable. The Judge placed no weight on the Appellant's explanations, because she found that the Appellant had misrepresented the facts. She castigated him for misrepresenting the facts, without in any way giving the Appellant an opportunity to be heard. Her assessment was made by reference to the affidavits only. There was no cross-examination, where the accusation of untruth would have been put to the Appellant.

48. I will address each aspect of her finding in detail below. As part of his sworn narrative, the Appellant identified steps which he took to vindicate his rights by instituting proceedings. He identified four (4) difficulties which caused delayed his institution of proceedings.

49. In respect of each of the four difficulties identified by the Appellant, the Judge measured the Appellant's reason against the Statement of Case and the annexed documents. Whereas consideration of the pleaded case is critical in assessing facts, the measure of the pleaded case follows the process of cross-examination, when a witness is given the opportunity to contradict statements which are put to him.

50. The first aspect of the Appellant's case that the Judge completely rejected, concerned the severity of his injuries. She measured his allegations against the Statement of Case where the Appellant had certified that he was unable to return to work for 18 months following the accident. According to the Judge, this would have ended the period of disability in August, 2017. The Judge also held that the annexed medical report did not support the assertion of 18 months of severe illness. The Judge also took into account that the Appellant visited the Respondent's Piarco Office on April 11, 2017 and found that this belied his assertion that he was bed-ridden and could not move around.

51. It must be observed that the Appellant's assertion as to the severity of his injuries is not mutually exclusive with the material facts as pleaded in the Statement of Case and the medical report. One visit to the Co-Defendant's office itself did not mean that the Claimant did not find difficulty in moving around, so as to confine him to his bed. In my view, it was unfair to simply find against that Appellant without giving him an opportunity to explain.

52. The Judge fell into a similar error in respect of the Appellant's assertion of impecuniosity. Referring the Statement of Case, the Judge observed that the Appellant sought loss of earnings for 18 months following the accident, so that based on the Appellant's own pleading; he would have been receiving an income of $11, 900.00 from August 2017. The Judge drew the conclusion that the Claimant ought to have been able to pay his attorney at law.[13]

53. In our view however, it is unfair to make a finding of this kind with no evidence of the Appellant's monthly expenses or of the fee which the lawyer was demanding.

54. At paragraph 21 of her Ruling, the Judge rejected the Appellant's assertion of unfamiliarity with legal matters because he always had an attorney. It seems the presence of an attorney in itself does not contradict an allegation of unfamiliarity with legal matters. The assertion would have required a deeper investigation, before it could be deemed to be untrue.

55. The Judge also fell into error in her appraisal of whether it was equitable to disapply the limitation period. The critical question was whether prejudice to the Co-Defendant outweighed prejudice to the Claimant. See ***Alana Mohan v Prestige Holdings*** per

[13] See paragraph 20 of the Judge's Ruling

Mendonça CJ (Ag). There was no evidence of prejudice to the Respondent. This was recognised by both the Judge and Mr. Bissoondatt for Respondent.

56. However, the Judge made a finding of non-disclosure. This she found to be relevant as part of all the circumstances of the case. She identified two instances of non-disclosure: firstly that the Appellant visited the Respondent's office to ask the Co-defendant to place a hold the process of settlement. She found it was more "*plausible"* that the Appellant visited the Respondent's office to seek a hold on the settlement to avoid proceeds going to his creditor, Brimont.

57. In this way, the Judge made an inference as to the Claimant's intention from his visit to the Respondent's office. She did so without hearing him or without giving him an opportunity to contradict the inference. The Judge also made a finding as to what was "*plausible*" where it is probability and not plausibility that is the evidential standard of proof. From her findings of non-disclosure, the Judge drew an inference as to the credibility of the Appellant. She held:

> *"This lack of disclosure is material in my opinion in assessing the credibility of the Claimant's reasons for his delay…."*[14]

58. The second finding of non-disclosure related to five different accounts of the collision. In respect of the differing versions, it is clear that they were all variations on the core incident of the Claimant's vehicle having collided with the rear of the third party vehicle. In respect of the differing versions, the Judge found it "more plausible" that the Claimant misled and misrepresented his statement on the accident form. A finding of misrepresentation is too serious to be made without first hearing the Appellant.

59. Mr. Bissoondatt for the Respondent argued that the Appellant had not filed an affidavit in reply . An examination of the Judge's findings disclose that they had not been based on uncontradicted statements of fact in the Respondent's affidavit. They were inferences of fact drawn from comparisons with surrounding documents and an estimation as to what was plausible, rather than what was probable. An affidavit in reply would not have assisted the Appellant.

60. In the circumstances, we hold the view that the Judge's findings of facts were unfair and the exercise of her discretion was plainly wrong. Her finding ought to be set aside

[14] See paragraph 30 of the Judge's Ruling

and this Court will exercise its discretion as to whether it will be equitable to allow the action to proceed. See ***Alana Mohan v Prestige Holdings Ltd.***

61. In considering what is equitable the Court must have regard to all the circumstances of the case. See section 9(3). Those circumstances begin with a recognition by the Respondent that the post limitation delay is *de minimis*, being only 17 days. This was strengthened by concession by Counsel, Mr. Bissooondatt that the Respondent will suffer no prejudice.

62. The second circumstance is that the Appellant stands to suffer substantial prejudice if the limitation period is not disapplied. He has suffered severe injuries, has made unsuccessful attempts at retaining legal representation over the four years and will be denied any compensation from his own insurer, with whom he held a full comprehensive policy.

63. Considering the question of prejudice alone, the balance as to what is equitable is tilted in favour of the Appellant.

64. Additionally , on the evidence there was no fault on the part of the Appellant . Although inferences of untruth were drawn against him, these were unfair and have not been substantiated.

65. The Respondent also faces the disadvantage of a default judgment against the Driver/defendant. Although there is an application to set aside that judgment, as we write, judgment has not been set aside. This means that the question of liability has been determined and the outstanding issues have been narrowed. The greater part of the action has already been determined in the Appellant's favour.

66. This Court finds therefore finds it equitable to allow the action to proceed.

***The Motor Vehicles Insurance (Third-Party Risks )Act***[15]

67. One issue remains, that is to say whether under section 10 of ***the MVI Act***,[16] time begins to run against an insurer only when judgment has been obtained against the insured. The Appellant argues that such is the effect of section 10.

[15] Chapter 48:51
[16] Ibid.

68. The Respondent, on the other hand argues that by section 10 (A) of the ***MVI Act,*** an insurer may be joined when proceedings are initiated. Since there is no need to await a judgment against the Defendant, time begins to run when the cause of action arises against the insured.

69. The relevant sections are set out here:

> *"10A. (1) Where a plaintiff brings an action under section 10 against any person by whom a policy has been effected and who has had issued to him a certificate of insurance under section 4(8) in respect of such liability as is required to be covered by a policy under section 4(1)(b) then, even though—*
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> *(a) liability as between the plaintiff and the insured*
>
> *has not yet been determined; or*
>
> *(b) the insurer may be entitled to avoid or cancel or*
>
> *may have avoided or cancelled the policy,*
>
> *the plaintiff may, subject to the provisions of this section, join the*
>
> *insurer as a co-defendant in the action.*
>
> *(2) Where an insurer is joined as a co-defendant under subsection (1), the insurer may, raise any defence that he may be entitled to under the policy of insurance or otherwise.*
>
> *(3) Where the insurer is joined as a co-defendant under this section, or is required to pay to any person entitled to the benefit of a judgment under section 10, he shall be liable to satisfy the judgment that may be obtained against the insured in addition to all costs and interest payable in respect of such judgment and any other costs for which the insured may be made liable.*

70. The effect of section 10 was considered in ***Ramnarine Singh, Roopnarine and Great Northern Insurance Co Limited v Johnson Ansola***[17]. The Court of Appeal considered the contention of the Appellant that the only relief that could be claimed under section 10 of the ***MVI Act*** was a declaration and that it was not possible to seek damages interest and costs.

71. 71. At paragraph 58 of his judgment, Mendonça JA set out the legislative history of section 10A of the MVI Act Mendonça JA had this to say:

[17] Civ Appeal No. 169 of 2008

*"58. However with the introduction of section 10A it is now possible to proceed against the insurer even though there has not been a determination of the liability of the insured. Proceedings may therefore be commenced against the insurer and the insured at the same time and they usually are. Section 10A is largely procedural and permits the Plaintiff to claim against the insurer the same relief as he would have been entitled to claim under section 10.*

*59. Under section 10 the insurer's liability is to pay the person entitled to the benefit of the judgment any sum payable thereunder in respect of any liability that is required to be covered by a policy under section 4(1) (b), in addition to interest and costs. As the claim, before section 10A was made after judgment had been obtained against the insured, the claim against the insurer was generally for a sum certain being the amount of the judgment, interest and costs and was treated as a liquidated demand.*

*60. Under section 10A the claim against the insurer has not changed. ….*

*61. Where the insurer is joined as a co-defendant and is therefore sued at the same time as the insured the claim cannot be for a sum certain. But there is no doubt that the claim is for payment of the damages, interest and cost for which the insured may be held liable. It is in my judgment therefore entirely permissible to claim against an insurer joined under section 10A payment of the damages, interest and costs award against his insured. On a fair construction of this claim that is what had been done.*

72. In the circumstances, the Judge was correct to find the driver liable for the accident. He was also correct to find the insurer liable under section 4(7) of the Third Party Risks Act. The liability of the driver and the insurer is for the damages for which the driver is liable. That is the issue which I will now address.

73. Mendonça JA then stated that "under section 10 the insurer's liability is to pay the person entitled to the benefit of the Judgment any sum payable thereunder. "

74. The insurer's liability is therefore to indemnify the insured against a judgment obtained against him. The insurer's liability becomes active only upon the entry of judgment against the insured.

75. Many years later, the Privy Council adjudicated upon an appeal by Rampersad and Radesh Maharaj. See ***Maharaj and anor v. Motor One Insurance Co. Ltd. [2018]UKPC***

***8.*** In that appeal , the appellants had been injured in a collision which took place on August 1 1988. The Claim against the insurer was not filed until September 2013. Their Lordships upheld the argument that the claim against the insurer was barred by section 3(1) of the Limitation Act.[18]

76. The appeal before their Lordships was not directly concerned with the question before us. The dispute before their Lordships was whether the cause of action against the insurer accrued when judgment was obtained in the Claimant's favour or whether the cause of action accrued when damages were assessed. Accordingly, it was accepted that time did not begin to run upon filing the claim, but at the time when either judgment was obtained or damages quantified.

77. It is our view, on the basis of the two authorities cited supra, that the Appellant is correct, that the cause of action as against the insurer only arises when judgment is obtained. This is not withstanding the facility afforded to a claimant by section 10A to sue the insurer, as Co-defendant when the insured is being sued. When judgment is obtained, the limitation period which will be relevant is the specified of section 3 of the Act.

78. This point had not been taken at first instance and the Judge had not considered it. There was in fact no need for us to consider it, having regard to our findings above.

***Disposition***

79. We hold that the Judge was plainly wrong in the exercise of her discretion under s. 9 of the Act.

80. The appeal is allowed and the order of the trial Judge is set aside.

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[18] Section 3(1) of the Limitation of Certain Actions Act : The following actions shall not be brought the expiry of four years from the date on which the cause of action accrued that is to say:

a. Actions found on contract (other than a contract mad by deed) on quasi-contract or in tort:

b. Actions to enforce the award of an arbitrator given under an arbitration agreement (other than an agreement made by deed); or

c. Actions to recover any sum recoverable by virtue of any enactment.

81. The limitation period as set out at ss. 5 and 6 of the Limitation of Certain Actions Act (the Act) is disapplied and time is extended for the institution of this claim to March 16, 2020.

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Mira Dean-Armorer
Justice of Appeal