

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

Civil Suit No: 871 of 2019

BETWEEN:

**KIM MEDFORD
KADIJA MEDFORD**

**FIRST CLAIMANT
SECOND CLAIMANT**

AND

**LINDA PROSPER
JAMES PROSPER
REBA EULINE
HARCOURT GILL**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT
FOURTH DEFENDANT**

Before: The Hon. Madam Justice Shona O. Griffith, Judge of the High Court

Date of Hearing: 2020: 10th August

Date of Oral Decision: 2020: 17th August

Appearances:

Ms. Kim Medford, 1st Claimant in person.

Mr. Omari Drakes for the 1st and 2nd Defendants.

REASONS FOR DECISION

[1] The Court delivered its oral decision in this matter on the 17th August, 2020.

On the conclusion of the proceedings the Claimant Kim Medford indicated her intention to appeal. As a consequence the Court has reduced its reasons

into writing. The Claimant Kim Medford brought proceedings against the four defendants by filing a notice of application in form 10, supported by an affidavit both filed on July 1st, 2019. The proceedings which also named Kadija Medford as a claimant, were brought against Linda Prosper and James Prosper (1st and 2nd Defendants) as agents for Reba Eulin (3rd Defendant). Harcourt Gill was named as the 4th Defendant on the basis of legal advice allegedly provided to the 1st and 2nd Defendants.

[2] Further to the notice of application, on the 24th day of July, 2019 the Claimant filed a claim form and statement of claim in which she alleged that in April, 2009 whilst she was overseas, the 1st and 2nd defendants without her permission, entered the property she was renting from the 3rd Defendant and removed personal and household items belonging to her and her daughter. The Claimant says she returned to the country having received a report concerning the entry into her premises, and between April and October, 2009 she thereafter discovered more items missing from her premises.

[3] The Claimant made a report to the police about the unlawful entry to her premises and removal of her property, but according to her, no action was taken. The Claimant also alleges that the 1st and 2nd Defendants agreed to compensate her for the items removed from her premises. There was no compensation paid however, and after several years of the Claimant's

demands for action, the 2nd Defendant was charged for theft in 2017 and pleaded guilty to removing a telephone and answering machine from the Claimant's premises. The 2nd Defendant was reprimanded and discharged by the magistrate, but no order for compensation was made against him. The Claimant initiated these proceedings in July of 2019 just shy of 10 years after the incident occurred, according to her case, in April, 2009.

[4] In November, 2019 the Claimant's Notice of Application was dismissed by order of court, in her absence. The Claimant in December, 2019 applied for the dismissed Notice of Application to be reinstated (pursuant to CPR Rule 11.15). In July, 2020 the Claimant also orally requested permission to renew the claim form and to serve the 3rd Defendant overseas, as the Court pointed out that her service on the 3rd Defendant by registered post without permission was ineffective. These oral requests have not yet been attended to by the Court as Counsel for the 1st and 2nd Defendant sought and was granted permission to make an oral application to strike out the Claimant's proceedings. If the application to strike are successful, there would thereafter be no need for the Claimant's oral requests to be considered.

[5] The 1st and 2nd Defendants' oral application to strike was heard on Monday August 10th 2020. The sole ground of the application was that the Claim is statute barred under the **Limitation of Actions Act, Cap. 231 of the Laws of**

Barbados ('The Limitation Act'). The plea of limitation was based on the facts pleaded in the Claimant's statement of case (which comprised her claim form, statement of claim and affidavit filed in support of the notice of application which had already been struck out). Counsel for the 1st and 2nd Defendants submitted that according to the Claimant's case, her cause of action was at best one of trespass, which as a tort, is subject to the limitation of six (6) years, as provided in section 6 of the Limitation Act. Having occurred in April of 2009 or at best in October 2009 when the Claimant says she discovered more items missing, the Claimant's cause of action would have become statute barred in October of 2015.

[6] The Claimant's reply to the application to strike out on the ground of limitation engaged several sections of the Limitations Act. The first was **section 3**, which applied to the Claimant's daughter who was minor at the time of the trespass and as such under a disability. Section 46 of the Act thereafter provides that a minor's cause of action does not begin to run until the disability is overcome. Counsel for the 1st and 2nd Defendants responded to this argument by indicating that by the Claimant's own case, the Claimant's daughter would have become an adult at least by April, 2012, it being pleaded that she was 1 year old in 1995 and 14 years at the time of the action complained of in April, 2009.

On the Claimants' own case therefore, Counsel submitted that the 2nd Claimant's limitation would have expired sometime in 2018. Notwithstanding section 3 of the Limitation Act, the 2nd Claimant's claim filed in July, 2019 was nonetheless statute barred.

[7] The Claimant also referred to **section 54** of the Limitation Act which speaks to latent damage and economic loss. The Claimant pointed out that her claim consists of loss arising as a result of the damage to her property. For example - loss of income from interior design supplies which she alleges were removed from the premises; as well as income arising from what seems to amount to subletting to students, occasioned by the removal of her telephone and answering machine. Counsel for the 1st and 2nd Defendants responded that latent damage within the contemplation of **section 54** meant damage arising after the fact, for example, in the sphere of construction. On the Claimant's case, there was nothing pleaded that amounted to latent damage within the context of the section.

[8] The Claimant also directed the Court's attention to **section 58** of the Limitation Act, which excludes application of certain limitation periods from actions for specific performance, inter alia, in respect of actions founded in simple contract. The Claimant said her claim included an action for specific performance of a simple contract, insofar as it sought performance of her

agreement with the 1st and 2nd Defendant, for compensation of the items they removed from her premises. Counsel for the 1st and 2nd Defendants countered that on the Claimant's case, there was no legally enforceable agreement for compensation which could be identified. Specifically, counsel referred to paragraphs 6 and 8 of the Claimant's statement of claim, which referred broadly to compensation allegedly agreed by the 1st and 2nd Defendants.

- [9] Counsel submitted that the required elements of consideration and intention to create legal relations could not be ascertained from the Claimant's case. The Claimant replied that her affidavit set out that the agreement for compensation was made in exchange for her not pressing charges. Her agreement not to press charges was therefore the consideration for the agreement to compensate. Counsel replied that according to paragraph 8 of her statement of claim the Claimant pleaded that there was no agreement concluded and in any event the Claimant continued to seek police action and the 2nd Defendant was criminally charged.

The Court's Consideration

- [10] In considering the plea of limitation the first issue is to identify what the Claimant's cause of action is, thereby establishing what period of limitation applies to it.

The Court agrees with Counsel for the 1st and 2nd Defendants, that on the Claimant's case, the identifiable cause of action is one of trespass – but twofold - in relation to (i) the alleged unauthorized entry to her rented premises; and (ii) in relation to the unauthorized alleged removal of her personal items. All things being equal, the Court also agrees, that the limitation applicable to the Claimant's cause of action, is section 6 of the Limitation Act.

- [11] The second issue to determine is when the Claimant's cause of action arose. On the Claimant's case, she alleges that in April, 2009 she became aware that the 1st and 2nd Defendants without her permission, had entered her rental premises and removed her and the 2nd Claimant's personal belongings. The 1st and 2nd Defendant's actions were pleaded to have been authorized as agents for the 3rd Defendant (the owner of the premises), and to have been legally advised by the 4th Defendant (an attorney-at-law). In the first instance therefore, the Claimants' cause of action arose in April of 2009 when she became aware of the 1st and 2nd Defendant's actions, and would have expired 6 years hence, in April, 2015. As it pertains to the 3rd and 4th Defendants, the authority and legal advice respectively given in relation to the trespass, would also be governed by the same (or prior), date of accrual and expiry, of the cause of action.

[12] Alternatively however, given that the Claimant pleads that she discovered between April – October, 2009, that more of her personal belongings were missing, the Court will accept, as did Counsel for the 1st and 2nd Defendants, that the Claimant's cause of action can be taken to have arisen in October, 2009. This extended date notwithstanding, the cause of action would have at best expired in October, 2015, still well ahead of the institution of proceedings in July, 2019.

Exclusions of or Extensions to the Limitation Period:-

[13] In considering the Claimant's particular references to the Limitation Act which either excluded or extended the limitation period, the later date of October, 2009 is accepted as the date of accrual of the cause of action, as it is more favourable to the Claimant.

- (i) Disability of the 2nd Claimant under section 3 - The 2nd Claimant's status as minor at the time of accrual of the cause of action is accepted based on the facts pleaded in the Claimants' case. With reference to that same case however, the Court agrees with Counsel for the 1st and 2nd Defendants that having been 14 years in April, 2009 (consistent with being 1 year old in 1995 as also pleaded), the 2nd Claimant would have attained 18 years, becoming

an adult, sometime before the end of April, 2012. Applying the limitation period even as at the end of 2012 (as opposed to April, 2012), the 2nd Claimant's cause of action would have expired in December, 2018; thereby being statute barred at the time of institution of the claim in July, 2019. The plea of disability in relation to the 2nd Claimant fails.

- (ii) Latent damage and pecuniary loss under section 54 - This section deals with latent damage meaning damage that manifests or is discoverable subsequent to the underlying event or action giving rise to liability. The most common example would be damage occurring in the field of construction. For example, where construction work is carried out and damage such as cracks or faulty foundation is discovered after the date of completion of the construction. For example, **London Congressional Union Inc v Harris & Harris**¹ The position in the UK was alleviated by the Latent Damage Act, 1986 as thereafter amended. Barbados' section 54 addresses latent

¹ [1988] 1 All ER 15

damage to property. The Claimant's case is not one of latent damage. Further, the reference to economic loss in section 54 speaks to economic loss that arises from the latent damage; the reference to economic loss does not stand on its own. Therefore unless there was latent damage to begin with, the Claimant's attempt to rely on the economic loss referred to in section 54 is misconstrued.

- (iii) Section 58, specific performance of simple contract - In relation to section 58 the Claimant did not expressly plead specific performance of any contract, however the Court will address the issue as there was reference to an agreement for compensation in the Claimant's statement of case. The statement of claim refers in paragraph 6 to compensation having been agreed with the 1st and 2nd defendants but thereafter in paragraph 8 the statement of claim pleads that there was no agreement to pay having been concluded. Paragraph 10 also refers to failed attempts at compensation. The Claimant's submission is that there was an oral contract for compensation, thus satisfying the provision for specific performance in relation to a simple

contract. A simple contract is a contract not under deed, of which an oral contract would qualify. A contract oral or otherwise however, is still subject to the basic principles of formation.

- (iv) Counsel for the 1st and 2nd Defendants' position was that there was no evidence of the formation of a contract evident from the Claimant's case as pleaded - particularly, in relation to the requirement for consideration. Ms. Medford attempted to say that there was consideration in the form of her foregoing criminal prosecution but as pointed out by Counsel, charges were pursued by the Claimant and filed against the 2nd Defendant in the final analysis. The Court agrees with Counsel for the 1st and 2nd Defendants, that there is insufficient pleading of any concluded agreement for compensation that could ground a claim for specific performance and reliance upon section 58. There are no certain terms which comprise particulars of any agreement and the Claimant's submission that her agreement to forego criminal prosecution amounts to consideration, is negated by her own words.

Particularly at paragraph 23 of her affidavit the Claimant states that after years of communicating with the police and there being no compensation forthcoming, she rekindled the criminal complaint in 2015.

[14] Having regard to the above, all of the submissions put forward by the Claimant in relation to the application of the Limitation Act have failed and the action remains statute barred. For completeness however, the Court considers the authorities submitted by the Claimant in support of her claim. Ms. Medford has referred the Court to the case of **Faiz Saddiqui v University of Oxford**². This case does not however assist the Claimant as the cause of action in that case arose as a result of the statutory provision³ for extension of the limitation period based upon the Claimant's knowledge of when his cause of action arose. The issue of when the claimant became aware of his cause of action was in dispute and as a result the University's applications to strike out and for summary judgment were dismissed in favour of a trial on the issue of limitation as a preliminary issue (the Claimant lost this preliminary issue and his claim was ultimately dismissed). This is not the case in relation to the limitation in the Claimants' case.

² [2016] EWHC 3150 (QB)

³ Section 14(1) Limitation Act, 1980 UK

There is no dispute as to the Claimant's knowledge of when her cause of action arose, it is definitively pleaded on her own case to have arisen during April – October, 2009.

[15] The Claimant also referred to **Aston Barrett v Universal Island Records et al**⁴, specifically paragraphs 279 and 283. These were proceedings involving royalties and artistic rights to music written by Bob Marley. There were multiple proceedings over a number of years. The reference by Ms. Medford is a tangential reference to a preliminary issue of limitation pleaded which had been tried in one of the suite of matters. There were allegations of fraud made against the defendants, therefore the question of when the cause of action accrued once again was at the root of the issue on limitation. This case is of no assistance as again it has to be stated that there is no dispute as to when the Claimants' cause of action accrued, according to their own case.

[16] Finally, the Claimant referred to the case of **Fisher v Brooker**,⁵ in support of her submissions regarding the viability of her case. This case however was not about limitation at all, but (inter alia) of laches in relation to a claim for musical copyright. The claimant herein, asserted co-ownership of a famous song but failed to assert his right for 38 years.

⁴ [2006] EWHC 1009

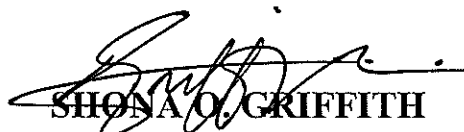
⁵ [2006] EWHC 3239

Copyright is valid for 40 years, but the defendant raised the defence of laches. Limitation and laches are two entirely different legal principles. Limitation arises from the statutory constriction of rights; laches is a defence to claims for equitable relief on account of delay by the pursuer. This case has no application to the Claimant's case.

Disposal

[17] Having regard to the Court's consideration as set out above, the 1st and 2nd Defendants oral application to strike out the Claimants' case is determined as follows:-

- (i) The Claimants' claim for damages for trespass to goods and property is struck out on account of being statute barred;
- (ii) Costs are awarded to the 1st and 2nd Defendants to be assessed if not agreed.


SHONA O. GRIFFITH
Judge of the High Court