IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO. 427 OF 2019

BETWEEN

(MELVIN REIMER	**CLAIMANT**
(	
(AND	
(	
(ATTORNEY GENERAL OF BELIZE	**1st DEFENDANT**
(COMMISSIONER OF POLICE	**2nd DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Decision:
13th May, 2021

Appearances:

Ms. Misty Marin, Counsel for Claimant/ Respondent.

Mrs. Samantha Matute-Tucker, Counsel for Defendant/Applicant.

KEYWORDS: Civil - Strike Out - Statute Barred - Conversion - Vehicle - Limitation Act Cap 170 - Lost and Abandoned Property Act Cap 335

DECISION

1. This is an Application to strike out the Claim as being statute barred.

2. The Claim is one in tort for conversion. The Claimant says the Second Defendant unlawfully confiscated and converted his 2014 Ford Edge motor vehicle for which he seeks damages including exemplary and/or aggravated.

3. He said he purchased the vehicle on or about the 18th June, 2015 and duly registered and licensed same. On the 31st October, 2017, he was visited by officers of the Transport Department in Belmopan who apparently suspected that the import duties had not been paid on the vehicle. The next day the vehicle was confiscated by the police.

4. When he visited the Major Crimes Unit in Belmopan around the 6th November, 2017, he was then informed by Ismael Westby and Holly Vasquez, servants and agents of the Defendants and he believed that the vehicle would be released if he paid the duty. In writing, he subsequently indicated his willingness to do this and informed that he would not renounce the vehicle. This was about the 27th November, 2017.

5. On the 4th January, 2018, he was advised by Ismael Westby that the Defendants had decided to acquire the vehicle and have the title transferred. His attorney wrote to the Defendants seeking an explanation as to the legal basis on which the vehicle had been detained. There has been no response to that letter to date. He confirmed on the 23rd January, 2018 that the vehicle had indeed been transferred to the Government of Belize.

6. He was never afforded an opportunity to be heard nor did he receive any compensation or the return of his vehicle.

7. In their Defence, the Defendants stated that the vehicle was reported as having been illegally imported. It was seized and secured at the National Police Training Academy.

8. The Claimant was informed of the circumstances surrounding the confiscation and he produced the certificate of title issued by the Belmopan National Transport Department. However, their investigation revealed that the importation and registration were both illegal and unlawful. The Claimant was invited to give a written statement which he did. He never filed a report.

9. The vehicle had, allegedly,been stolen and then imported into Belize. Since no request had been made by Guatemala for the return of the vehicle, the Police Department made a request to the Ministry of Finance for the vehicle to be confiscated and assigned to the Police Department.

10. On receipt of approval, the vehicle was registered in the Government's name and is currently being used for the performance of police duty. There was no need to pay compensation under the Lost and Abandoned Property Ac**t**.

11. Moreover, the Claim is statute barred not having been filed within one (1) year of the date on which the cause of action accrued. That date would either be the date it was seized (1st November, 2017) or the date it was given to the Police Department (2nd January, 2018).

The Issues:

1. Should the Claim be struck out as being statute barred and an abuse of process?

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The Relevant Statute:

Section 27 of the **Limitation Act**:

> *"27. – (1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued.*
>
> *Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.*
>
> *(2) This section shall not apply to any action to which the Public Authorities Protection Act, Cap. 31 does not apply, or to any criminal proceeding."*

The Defendant/ Applicant's Submissions:

12. Counsel was resolute that the cause of action had accrued more than one year prior to the filing of this claim and ought not to be entertained. She referred to ***Donovan v Gwentoys Limited (1990) 1 WLR 472***, which outlined the primary purpose of a limitation period as being *"to protect a defendant from the injustice of having to face a stale claim with which he never expected to have to deal."*

13. She relied on ***Kimola Merritt v Dr. Ian Rodriguez, AG [2015] JMCA Civ 31***, where the Court considered very similar limitation legislation in relation to the continuance of injury or damage. At **paragraph 39**, the Court stated:

> *"[39] In a later case, Freeborn v Leeming [1926] 1 KB 160, the question arose as to the meaning of the same statutory provision. In that case, the plaintiff was injured in an accident and on 6 September 1923 was placed under the care of the defendant who was the medical officer at a workhouse infirmary to which he was taken. The defendant negligently failed to diagnose the nature of the plaintiff's injury and made no attempt to give him treatment, which, if given at the time, would have effectively cured him. The plaintiff left the infirmary on 15 October 1923 and ceased to be under the care of the defendant. The plaintiff consulted another doctor who discovered that his hip was dislocated, but as it was then too late to apply the necessary remedy, the plaintiff's injury*

was permanent. On 25 April 1924, more than six months after he had ceased to be under the defendant's care, the plaintiff brought his action claiming damages.

[40] It was held on the authority of Carey, by which the court held itself bound, that the action was statute-barred by virtue of section 1 of the 1893 Act, it not having commenced 'within six months next after the act, neglect, or default complained of'. Salter J said at page 164: 'The words of the Act seem to me to be very plain. It is very easy to imagine cases of hardship and it may well be that by the time a cause of action has accrued, the happening of the damage as a result of the act, it may be too late to sue. But it must be remembered that this Act is obviously intended for the protection of public officers who are defendants. It assumes misconduct, and it is designed to protect public officers even where they have been guilty of misconduct. No doubt it contemplates an 'act, neglect, or default' complained of in an action. It seems quite clear that the date from which the period is to run is not the date of the accrual of the cause of action, but the date of the act, neglect or default complained of.'"

14. Counsel then referred to ***Anna Hegarty v Francis O'Loughran and Gerald Edwards [1990]*** **1 IR 148** which also held that the cause of action accrued at the time of provable personal injury capable of attracting compensation. Thus, where the original surgery was done in 1973 with remedial surgery in 1974 and deterioration beginning in 1976, the proceedings instituted in 1982 were found to be statute barred. At page 153 Finlay CJ explained:

> *"A tort is not completed until such time as damage has been caused by a wrong, a wrong which does not cause damage not being actionable in the context with which we are dealing. It must necessarily follow that a cause of action in tort has not accrued until at least such time as the two necessary component parts of the tort have occurred, namely, the wrong and the damage. The time of the act, neglect or default complained of cannot therefore be equated with the date on which the cause of action accrued."*

The Claimant/ Respondent's Submissions:

15. Counsel contends that the Defendant's neglect and default was continuing so that the limitation period did not apply. Her rationale was as follows; the Defendants claimed to have obtained the vehicle pursuant to the Lost and Abandoned Property Act Cap 335**.** Section 7 of that Act states:

"Subject to the Police Act, Cap. 138 or any other law regulating the detention of property by the police as an exhibit in any criminal cause or matter, if a person claims any lost or abandoned property under this Act he shall be entitled to receive such property upon giving satisfactory proof to the Police officer in charge of the Police station where the property is deposited that he is the owner of such property, and upon paying any expenses incurred in bringing the property to the place where it is deposited and in storing and maintaining such property."

16. Since the Claimant had abided by the requirements of the Lost and Abandoned Property Act by giving proof of ownership and had not renounced the vehicle, the Defendants were under a continuous duty to provide him possession. This duty, she submitted, would continue until possession is provided.

17. She placed reliance on ***Placencia Land and Development et al v R&R Construction Co Ltd, Registrar of Lands and the Attorney General Claim No. 212 of 2017*** where the duty of the Registrar to record a restrictive covenant was found to be a continuing one which continued even after her omission was first brought to her attention. The Claim for loss occasioned by her failure was, therefore, found not to be statute barred.

18. Counsel went on to say that the police officer was under a duty to provide adequate reason for the detention and retention of the Claimant's property, but had failed to do so. This default or neglect to provide the vehicle or reasons was continuing and so the limitation could not have expired.

Discussion:

19. This Application to strike out was brought pursuant to Rule 26.3(1) (b)of the **Supreme Court (Civil Procedure) Rules 2005** which provides:

"In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

(a)

(b) That the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings…."

20. Thus, the Court is empowered to strike out this Claim if indeed it is statute barred. Allowing it to trial would certainly be an abuse of the court's process since the matter would be bound to fail as a matter of law. However, striking out a party's pleadings is draconian and the Court's exercise of this discretion is used sparingly and cautiously.

21. The Court, having considered the Claimant's pleaded case, agrees with the Defendant that the Claim is indeed statute barred.

22. In the **Kimora Merritt case *(ibid)*** the Jamaican Public Authorities Protection Act (as it then was) stated at Section 2(1)(a):

"2 – (1) Where after the commencement of this Law any action, prosecution, or other proceeding, is commenced against any person for any act done in pursuance, or execution, or intended execution, of any Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Law, duty, or authority, the following provisions shall have effect –

(a) the action, prosecution, or proceeding, shall not lie or be instituted unless it is commenced within one year next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within one year next after the ceasing thereof..."

23. The Appellant alleged that the 1st Respondent's medical negligence caused 11 month old Kimola to suffer brain damage. She continued to suffer for the remainder of her life and eventually died before the appeal was concluded. The Claim, however, had been brought over four (4) years after the first Respondent had treated her.

24. The Appellant contended that time for the action to be brought ought to begin to run from the date of her death when the injury or damage ceased. On the other hand, the Respondents asked the court to find that time should run from the date the 1st Respondent ceased treating Kimola which was when she had been discharged from the hospital.

25. The Court of Appeal, in upholding the trial judge's decision, found at paragraph 54 that *"the cause of action in negligence would have accrued, at latest, from the date Kimola was discharged from the care of the 1st respondent and the Savanna-La-Mar Hospital in October 1986. After that, the 1st respondent's treatment of her (and so any act, default or neglect on his part) would have already occurred and definitively ceased by that date and the resulting damage to her would have been known. There would have been a provable personal injury capable of attracting compensation based on the appellant's assertion as to what she knew happened in the hospital from the time Kimola was admitted up until her discharge from the first respondent's care."*

26. Continuing injury or damage was therefore interpreted to mean *"a continuance of the original act, neglect or default complained of"* (see **paragraph 53**). This interpretation was grounded on the need for promptitude in bringing claims of this kind against persons while in the performance of a public duty.

27. The Court of Appeal accepted that this restrictive interpretation was not without its problems or hardships since a claimant may lose his remedy. However, on the facts of the case the Court could find no reason to abandon the established principles of ***Carey v Bermondsey Metropolitan Borough of Bermondsey (1903) 20 TLR 2 and Freeborn (ibid)***.

In the case at bar the conversion occurred when the Claimant was no longer able to get possession of the vehicle whether with or without a reason. That was when title was transferred into the name of the Government of Belize. It is at this point that ownership became inconsistent with the Claimant's own right of possession and the exposure to liability in damages begun.

Although Counsel for the Claimant tried to demonstrate through case law that the Claimant had a right to possession (**Jaroo v Attorney General of Trinidad and Tobago (Trinidad and Tobago) [2002] UKPC 5** and its reliance at **paragraph 21** on **Costello v Chief Constable of Derbyshire Constabulary [2001] 1 WLR 1437**) that is not what is integral here. It must be remembered that in these circumstances a claimant may well lose his right to a remedy.

The circumstances of the present case could easily be distinguished from those of the **Placencia Land and Development case (ibid).** There, the Registrar was under a statutory duty to perform a particular function. The negligence sprang from her failure to perform. This failure caused the loss which the claimant suffered. In the present case the failure to give reasons formed no part of the tort. The loss occasioned was not as a result of the Defendant's failure to give reasons. It was as a result of certain decisions made by the Defendants and/or their agents. It is those decisions which caused the eventual transfer of title.

This Court finds that the transfer, by the Claimant's own admission, occurred more than a year before the Claim was brought. The Claim is, therefore, statute barred and an abuse of process.

Determination:

1. The application is granted as prayed.
2. The Claim herein is struck out as an abuse of process.
3. Costs to the Defendants in the sum of $1,500.00 as agreed.

SONYA YOUNG

SUPREME COURT JUDGE