

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division

2017/CLE/gen/00685

IN THE MATTER OF THE ESTATE OF JULIAN OUTTEN

BETWEEN

ELECIA VERNETTA OUTTEN AND EDWIN BURROWS

Plaintiffs

AND

THE ATTORNEY-GENERAL

1st Defendant

AND

THE COMMISSIONER OF POLICE

2nd Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Travette Pyfrom-Farrington for the Plaintiffs
Gary Francis for the Defendants

30 November 2018

JUDGMENT

WINDER, J

This is the defendants' application for a striking out of the plaintiffs' Originating Summons.

1. By Originating Summons filed on 1 June 2017 the plaintiffs have applied for an order that the defendants' forthwith pay to the plaintiffs the sum of \$69,145.40 and for an order that the 2nd Defendant give an account of what is due and owing and the costs including costs.
2. The Defendants have applied by Summons dated 19 July 2018 seeking to strike out the claim on the basis of Section 12 of the Limitation Act. Section 12 provides:
 12. (1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the provisions of subsection (2) shall have effect. (2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof.
3. The defendants say at paragraphs 6-8 of their submissions that:
 6. The Defendants content that this action is statute barred on two distinct fronts. Firstly, the deceased died on February 4th, 2015 and any action would, in this instance would, have had to have been commenced by the twelve (12) months anniversary of his death or by February 3rd, 2016. This did not happen.
 7. Secondly, the Letters of Administration exhibited in the Plaintiff evidences that said Letter of Administration was granted on May 5th, 2016. Again even if this date was the operative date (albeit, not admitted as such) where a cause of action arose an

action would have had to be commenced before by May 4th, 2017. Again this did not happen.

8. The action was not commenced until June 1st, 2017. On both counts the action was commenced outside the twelve month permissible period from when the cause of action accrued. In either instance, it is respectfully submitted, that this failure renders this action statute barred.

4. The plaintiffs say at paragraphs 5 and 6 of their submissions:

5. The default complained of is the refusal of the Defendants to pay the estate the sum claimed. The refusal was only communicated to the Plaintiffs (sic) attorneys in June 2018 when the Defendant (after having represented that the matter will be settled and months of delay) indicated that the Defendants had taken a new position.
6. Prior to June 2018 no cause of action arose due to any default or omission on the part of the Defendants as required by section 12(2). There was no indication prior to June that the Defendants intended to withhold the monies claimed. Between February 2018 and June 2018 the Defendants acknowledged the claim herein and offered to settle this matter.

Respectfully, the plaintiffs' contention is untenable. This action was commenced in 2017 and as such the allegation that the cause of action began to accrue subsequently in June 2018 cannot be maintained.

5. The plaintiffs also say that:

"In any event even if the action was statute barred (which is denied) the Defendants have by their actions in acknowledging that the debt is owed, have revived or renewed the period of limitation."

They rely on Section 38(4) of the LA. Section 38 (4) of the LA provides:-

"(4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgement or the last payment"

6. I am unable to accept the plaintiffs' submissions as section 38 provides for an extension of the limitation and not a revival thereof. Section 38(5) provides:

"Subject to the proviso to subsection (4), a current period of limitation may be repeatedly extended under this section by further

acknowledgements or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgement or payment.

The acknowledgment alleged against the plaintiff are alleged to have been made since the commencement of the action in June 2018 and after Section 12 would have become operative. According to Section 38(5) however, once the action had become barred it became permanently barred.

7. In the circumstances therefore I am satisfied that Section 12 of the LA applied and the action therefore statute barred. I order that the Originating Summons be struck out.

Dated this 28th day of January 2019


Ian Winder

Justice