

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2019/CLE/gen/0276

B E T W E E N

(1) Rose Island Beach and Harbour Club Limited

(2) Rose Island Beach and Harbour Club Developments Limited

Claimants

AND

(1) LRLA Rose Island Ltd.

(2) RC Rose Island Hotel Company Limited

Defendants

Before: Her Ladyship the Honourable Madam Senior Justice Deborah Fraser

Appearances: Mr. Lovejoy – Pro Se for the Rose Island Beach and Harbour Club Limited and Rose Island Beach and Harbour Club Developments Limited
Mr. Christopher Jenkins KC and Mr. Sebastian Masnyk for the LRLA Rose Island Ltd. for the Defendants

Trial Dates: 7th May, 8th May, 19th July and 10th September 2024

Statute barred – Limitation Act – Ritz Carlton Project – Class D Shares – Receiver – Pleadings
Conveyancing and Law of Property Act – Companies Act

JUDGEMENT

FRASER, SNR J:

Introduction

1. The present action concerns an alleged breach of contract. The Claimants assert that the Defendants violated the contract by failing to pay the agreed-upon considerations. However, Counsel for the First Defendant contends that the First Defendant is involved in the matter solely because the Second Defendant has been struck off the Companies Registry, and the Claimants are attempting to hold the First Defendant liable for the actions of the Second Defendant. Additionally, Counsel for the First Defendant argues that the claim is statute-barred and, as such, should be dismissed.

Background

2. By a Writ of Summons filed on the 11th March, 2019, the Claimants commenced this action against the Defendants, alleging a breach of contract of an agreement that originated between the First Claimant and the Second Defendant.

Evidence

Claimants' Evidence

3. The Claimants relied on the Witness Statement of Sean Lovejoy filed on the 20th February 2023 and no documents were exhibited.

First Defendant's Evidence

4. The First Defendant relied on the Witness Statement of Tamika Thompson filed on the 9th April 2024 along with its exhibits which has been amended during the Examination in Chief on the 19th July 2024.
5. The First Defendant also relied on the Witness Statement of D'Andre Brice filed on the 17th February 2023.

Issue

6. The issue that arise for consideration and determination is:
Whether the Claimants are statute barred from bringing the current claim.

Submission

First Defendant's Submission

7. Mr. Christopher Jenkins KC and Mr. Sebastian Masnyk, Counsel for the First Defendant, assert that the Claimants initiated the action more than 12 years after the date of the alleged

breach and the filing of the Writ of Summons. Consequently, the Claimants are barred from bringing the claim as it is statute-barred

8. Counsel relied on the **Limitation Act Ch. 83 section 5(1)(a)** which provides:

“5.(1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say – (a) actions founded on simple contract”

[Emphasis added]

9. The First Defendant also asserted that the Claimants are not entitled to enforce a contract to which they are not a party. The First Defendant relied on the case of **Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co. Ltd [1914-15] All ER Rep 333** where Viscount Haldane LC stated:

“In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a law quaesitum tertio arising by way of contract.”

[Emphasis added]

10. The First Defendant further contended, in response to the Claimants' assertion, that the First Defendant was not a Receiver at any material time. In reliance of the **Conveyancing and Law of Property Act Ch. 138 Section 26(1) and (2)** which provides:

“26(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.”

“26(2) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides[...].”

[Emphasis added]

11. The First Defendant concluded that the Claimants have failed to substantiate any of their claims, as such claims are neither sufficiently clear nor particularized to be considered arguable.

Law

12. The **Limitation Act Ch. 83 section 5(1)(a)** which provides the time frame from which an individual may bring forth an action regarding contract(s):

“5.(1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say – (a) actions founded on simple contract”

Discussion and Analysis

Whether the Claimants are statute barred from bringing the current claim.

13. The Claimants brought this current action by Writ of Summons on the 11th March, 2019 as seen in paragraph 2. I shall acknowledge that every person is afforded to exercise the doctrine of Locus Standi, however, in certain circumstances there are exceptions. The exception focused on in this matter would be the limitation period. As per the **Limitation Act Ch. 83 section 5(1)(a)** no actions relating to contract disputes shall be brought after the expiration of six years from the date the cause of action accrued.

Findings of Fact

14. On the 20th October 2006, the First Claimant and the Second Defendant entered into an agreement for sale (the 'Ritz Carlton SPA'). Under the terms of the agreement, the First Claimant agreed to sell certain property, along with the associated development rights, to the Second Defendant for a total consideration of \$14,500,000 in cash and \$7,500,000 in Class D Shares. These Class D Shares were held by the Second Claimant.
15. The Second Defendant sought to undertake a project (the 'Ritz Carlton Project') on the aforementioned property and requested a loan of \$80,000,000 from Lehman Brothers Holdings Inc. In consideration of providing the loan, Lehman Brothers Holdings Inc. required the execution of various securing documents. These included: (1) a security interest over the recently acquired real estate of the Second Defendant, as evidenced by the debenture executed on 12th March 2007; (2) the rights and benefits held by the Second Defendant under various contracts, including the recently acquired development rights; (3) a mortgage and pledge of the Class D Shares; (4) a Debtor-Creditor Relationship Agreement executed by the Second Claimant; (5) a non-interference letter from the Second Claimant to Lehman Brothers Holdings Inc.; and (6) an irrevocable proxy for the shares.
16. The Claimants anticipated that the project would generate substantial profits; however, their expectations were disrupted by the onset of the Financial Crisis of 2008-2009. Facing financial difficulties, the Second Defendant sought to raise funds through a shareholder debt on 2nd September 2008. On 15th September 2008, Lehman Brothers Holdings Inc. entered liquidation, triggering the calling in of the \$80 million loan extended to the Second Defendant by the liquidators.
17. As a result, the Class D Shares held by the Second Claimant became worthless, leading to significant financial losses for the investors. Consequently, in 2010, the United States Bankruptcy Court authorized the liquidation and transfer of the Debenture, along with the associated development rights and other securities and collateral, to Rose Island Villa Harbor Resorts Limited, in accordance with a settlement agreement within the liquidation proceedings. In 2016, these assets were subsequently transferred to the First Defendant pursuant to a 2013 Creditor's Scheme of Arrangement from Rose Island Villa Harbor Resorts Limited.
18. The First Defendant, as an assignee of the rights of the Debenture holder, Lehman Brothers Holdings Inc., held a power of sale over the secured assets, including the Ritz Carlton Development Property and the development rights transferred by the First Claimant. The

First Defendant subsequently exercised its power of sale and transferred the property to Hotel Consult Inc.

19. The Claimants contend that while they have received the \$14.5 million in cash, they have not yet received the \$7.5 million in Class D Shares. As a result, the Claimants have initiated legal actions between 2009 and 2019, alleging breach of contract and seeking appropriate relief. Additionally, the Second Defendant was struck off the Companies Register on 1st January 2011 and has not been restored for the purposes of this matter or any other legal claim. In light of the Second Defendant's removal, the Claimants assert that the First Defendant should be held liable for their losses.

The Limitation Period

20. The First Claimant entered into a contract with the Second Defendant, which was completed on 20th October 2006, whereby the property was conveyed from the First Claimant to the Second Defendant. The Claimants initiated an action on 11th March 2019. Under the **Limitation Act Ch. 83**, a claim for breach of contract must be brought within six (6) years of the breach, specifically regarding the failure to issue the Class D Shares. It is reasonable to conclude that such consideration under the agreement for sale should have been issued prior to the actual conveyance of the property. Accordingly, it is my position that the limitation period for the breach began when the property was conveyed from the First Claimant to the Second Defendant. As such, the Claimants are barred by the limitation period.

Comment on Claimant's Pleadings

21. The Claimants have failed to adequately establish their causes of action and have not provided sufficient evidence to support their assertions. They have also failed to produce any closing submission in this matter. As established in the case of *Wilding v Commissioner of Police for the Metropolis* [2004] EWHC 3042 (QB) at **paragraph 60**, the purpose of pleadings is to clearly specify each cause of action. The Court stated, 'A Defendant should not be left to guess at the cause or causes of action pursued against him.' When a Claimant fails to specify all relevant causes of action, the Court can only conclude that the Claimants have not proven their case.

Receivership

22. The Claimants assert that the First Defendant is a receiver of the Second Defendant. A receiver may be appointed under one of three circumstances: (1) by a mortgagee under an instrument pursuant to the **Conveyancing and Law of Property Act Ch. 138**; (2) in accordance with the **Companies Act 1992 Ch. 308**; or (3) under Section 21 of the **Supreme Court Act**. In each of these scenarios, the appointment must be made in writing. However, the Claimants have failed to provide any documentary evidence to substantiate the appointment of the First Defendant as a receiver, and as such, the First Defendant does not owe any legal obligations to the Claimants.

Conclusion

23. In light of the limitation period, the ambiguity of the Claimants' claim, and the insufficiency of the evidence provided by the Claimants, the Claimants fail to succeed in this action against the First Defendant for breach of contract.

24. The Court makes the following Order:

- a. The Claimants' Writ of Summons is hereby dismissed.
- b. Interest pursuant to the Civil Procedure (Award of Interest) Act Ch. 80.
- c. The Claimants shall pay the First Defendants costs to be taxed if not agreed.

Senior Justice Deborah Fraser

Dated this 25th day of March 2025