

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 345

CS50/2019

In the matter of:

GEORGES BIBI AND ORS

(rep. by Ms. K. Dick)

Plaintiffs

and

TERRENCE STRAVENS

(rep. by Mr. B. Hoareau)

Defendant

Neutral Citation: *Bibi & Ors v Stravens* (CS 50/2019) [2020] SCSC 345 (26 June 2020)

Before: Andre J

Summary: Claim of damages – Plea in limine litis: Interruption of prescription

Heard: 11 March 2020

Delivered: 26 June 2020

ORDER

The following Order is made:

Plaintiff's action is time-barred under Article 2271 of the Civil Code, hence the Plaintiff is dismissed accordingly.

RULING

ANDRE-J

Introduction

[1] This case concerns a claim for damages by the family members of Georges Paul Bibi, who died as a result of injuries he sustained in an accident involving the defendant on 6 April 2013. The defendant was convicted on 2 February 2018 of the offence of dangerous driving in respect of the accident.

- [2] In the plaint, dated 26 February 2019, the plaintiffs seek a total of SCR1,155,000 in damages from the defendant. The defence, dated 21 June 2019, seeks that the plaint is dismissed. The defence includes a *plea in limine* that the action is prescribed according to Article 2271 of the Civil Code.
- [3] The plaintiff filed written submissions on the issue of prescription. The defendant, despite being given several extensions, failed to do the same and the Court has given due consideration to the submissions as filed for this Ruling.
- [4] The plaintiff's written submissions in gist are that the action that has been brought is *prima facie* prescribed. However, the prescription period was interrupted by the admission of the defendant that he caused the accident pursuant to Article 2248 of the Civil Code. The interruption occurred when the defendant made an unsworn statement during the hearing which led to his conviction of negligent driving. The statement included an admission that the defendant's vehicle, which he was driving, hit the deceased when he stepped out of the shop and onto the pavement. The statement was made between 19 May 2015 and 14 December 2017 (i.e. the duration of the trial). The consequence of this extra-judicial admission, the plaintiff submits, is that the prescriptive period was interrupted. The earliest date of the statement was 19 May 2015, which means that the period started again from that date (at the earliest). The plaintiff thus submits that the cause of action is not prescribed.

The Law

- [5] In *Public Utilities Corporation v Elisa (2011) SLR 100*, Domah JA explained the rationale behind the doctrine of prescription. He stated:

Limitation periods are not unknown in the history of law. Laws give rights. If those rights are not exercised within a set time or a reasonable time, that right lapses against the person claiming that right in favour of the person against whom it is claimed. Most rights do not have an eternal life. Some have longer lives than others. The law of prescription sets the span of life of the rights. Some rights have to be exercised within days (mise-en-Demeure); some within weeks (appeals); some within months (employment); some within years ranging from one to as long as thirty (extinctive and acquisitive prescription). The Civil Code has a

special chapter on Prescriptions based on certain rationalization” (at [7])

- [6] The prescription period for ‘all rights of action’ in the Civil Code is five years (Article 2271). Article 2242, however, provides that: ‘Prescription may be interrupted either naturally or by a legal act’. Article 2248 further stipulates that: ‘The prescription shall also be interrupted **by an acknowledgment** by a debtor or a possessor of the right of the person against whom the prescription was running’. (Emphasis mine)
- [7] Though not expressly invoking Article 2248, the case referred to in the written submissions of the plaintiff is most apposite on the present facts. In ***Attorney-General v Voysey & Ors [1996] SCCA 5, Civil Appeal No. 12 of 1995***, the issue was whether a civil action for damages arising out of a helicopter accident was time-barred.
- [8] In the *Voysey case*, the Supreme Court held that the respondents’ delay in instituting proceedings had “been caused by the absence of an official cause for the crash”. The Supreme Court accordingly took the view that the civil action was not time-barred because the plaintiffs did not know the exact cause of the accident until later, i.e. “only after a technical inquiry which the defendants were obliged to hold who alone could initiate a technical investigation.”. The prescription period only started running, in the Court’s view, after the release of the report: ‘In conclusion, it was held that the respondents’ delay in instituting proceedings, in this case, had “been caused by the absence of an official cause for the crash, which the defendants [the government] were obliged to provide and which was obviously within their knowledge.”
- [9] The Court of Appeal rejected this reasoning and allowed the appeal. It identified the issue on appeal as:

The central issue, in this case, is not whether the respondents were justified to await receipt of an official report as to the cause of the helicopter crash before they could commence a civil action against the appellant, but rather when did the cause of action arise; in other words, when did time begin to run against the respondents? ...

The act complained of here is the helicopter crash which culminated in the deceased’s death; and the resultant damage is the loss which the

respondents suffered thereby and for which the appellant was allegedly liable.

Silungwe JA concluded as follows:

In the circumstances of this matter, it cannot conceivably be argued that the damage was "not immediately apparent" as the contrary was the case. The respondents were "conscious or aware" of both the delict (negligence i.e. fault) and the damage that they had consequently suffered. The effect of this is that the respondents should have instituted their action against the appellant within the prescriptive period of five years; and that the waiting for the official information on the helicopter crash was done at their peril since they had obviously known all along that their case lay in negligence. The official report was seemingly intended to confirm the respondents' case.

In any event, the fact that a plaintiff might have a weak, though not a helpless or frivolous case, cannot per se preclude him/her from prosecuting it.

I would venture to say that where a prospective or not he/she can maintain is subject to prescription steps to preserve his/her plaintiff is an action in not certain whether he/she rights might delay should court which action takes appropriate by, for instance, commencing the action, even if this necessitates requesting the Supreme Court Registry to service of the court process where this is legally permissible.

I am satisfied that the action by the respondents was time-barred. The appeal succeeds and the ruling of the Supreme Court is set aside.

[10] Now, turning to Article 2248, the current case law more clearly fit within the reference to 'a debtor' or a 'possessor of the right' in Article 2248.

[11] In ***Becker v Hackle (1992) SLR 51, CS 208/1990***, the Court found that the defendant's acknowledgment of the debt by letter to the plaintiff constituted an interruption to the prescriptive period. The Court explained:

*In the instant case, it is essential to determine the legal effect of the letter written to the Defendant by the Plaintiff's attorney and the Defendant's reply of the 20th September 1988 thereto. In his reply, the Defendant did not dispute the existence of the loan agreement but would appear to challenge the amount claimed which according to him was excessive and preposterous. **The said reply amounts to an acknowledgment of the debt which in turn would bring about an interruption of prescription.** This is consonant with article 2248 of the Civil Code of Seychelles ...*

- [12] This case is referred to in the Court of Appeal judgment of *Tree Sword (Pty) Ltd v Puciani (SCA 09/2014) [2016] SCCA 19 (12 August 2016)*. The Court of Appeal distinguishes the facts in the case from those in *Becker*, though it does not undermine the relevant finding therein. The Court noted:

All that has happened in the instant case is that the Respondent upon learning of an intended transfer of the property he had wanted to purchase, and for which he had deposited monies, registered a restriction against its sale at the Land Registry. In his submission, this does not satisfy the provisions of article 2248 to interrupt prescription. We agree with this submission.

- [13] In *Review Commissioner v Yangtze Construction Co Pty Ltd [2018] SCSC 545*, the Supreme Court addressed the issue of prescription and what constitutes an interruption under the Civil Code. The Court noted:

*It is the view of this Court that the defendant agreeing to pay the debt by monthly installments of SR 500,000.00 is an acknowledgment of the debt which occurred in October 2011. This is supported not only by the oral evidence of the prosecution witness Rovette Moustache but also by document, exhibit P2. The defendant had further written seeking a grace period of 6 months and that a waiver of the surcharge is granted as per letter P12 dated 27 May 2012, a letter admitted by the defendant. **This is a further indication in writing by the defendant not only acknowledging the debt but seeking further relief by seeking time to settle it. Therefore this court is satisfied that the prescription claimed by the defendant has been interrupted by the acknowledgment of the debt by the defendant.** (emphasis mine)*

- [14] The case of *Anglesey v Mussard & Anor (1938) SLR 31* is also relevant. The case concerned a claim for recognition of a water right acquired by prescription. Before bringing the claim, the plaintiff had sent the defendant a letter asking for leave to repair certain pipes and a claim of right. In the last sentence, the letter offered to pay for a 'prise d'eau'. The issue was whether this constituted an 'aveu extrajudiciaire' on which the defendant could rely. In coming to its conclusion, the Court noted at p. 35 that:

*The enjoyment must be uninterrupted, i.e. it must fulfill the essentials of acquisitive prescription. Possession must be continuous on the part of the proprietor of the dominant tenement, not interrupted by the proprietor of the servient tenement, peaceful, public and unequivocal, animo domini ... There are two sorts of interruption: natural and civil. Natural interruption means deprivation for more than one year. This did not happen here. **Civil interruption occurs in various ways, amongst others when the person who is prescribing expressly or tacitly admits the right of the proprietor.***

...

Admissions by parties are known in French law as ‘aveux’. An ‘aveu’ is the acknowledgment of a fact by a party who has the interest to deny it.

- [15] The Court found that the relevant sentence in the letter was inconclusive, and ultimately concluded that because the extrajudicial offer had not been accepted, the Defendant was not entitled to rely on it, i.e. the prescription period had not been interrupted.

Legal analysis and findings

- [16] Prescription is either acquisitive, in that an individual is allowed, after a specified period, to acquire title, or extinction in that an individual is barred after some time from taking certain legal action. The present case concerns the latter. The issue concerns whether the defendant’s purported admission of liability interrupts the prescription period in respect of the civil claim for damages. The extrajudicial admission relied on by the plaintiff is as follows:

‘And I drove on the pavement and when I reached the shop suddenly the victim just came out of the shop and I couldn’t do anything for me to avoid the accident. It was so quick that he stepped out of the shop and the car continues to move...’

- [17] The facts in the present case are very similar to those in *Voysey csae*. In *Voysey*, interruption (Article 2248) was not addressed, rather the claim appears to have been that the cause of action arose after the accident (i.e. when the report was released). Nevertheless, the reasoning of the Court as regards the effect of the inquiry report makes it clear that the ‘extrajudicial admission’ in the present case would not have the effect of interrupting the prescription period. As admitted by the plaintiff, the cause of action stems from the car accident or death of the deceased in April 2013, not the purported admission in 2015. Furthermore, as in the *Voysey case*, nothing was preventing the plaintiffs here from bringing this civil action earlier, for example, following the death of Mr. Bibi or when the defendant was charged with a criminal offence connected to the accident. It is common knowledge that a plaintiff can bring civil proceedings in respect of an accident, even if criminal proceedings have been filed. Reference to the case of *Alfonse v Monthy (SCA 28 /2013) [2015] SCCA 52 (17 December 2015)*.

- [18] There is also reason to doubt the applicability of Article 2248 on the facts. The defendant here is not a ‘debtor’. He also does not appear to fall into the latter category, i.e. ‘a possessor of the right of the person against whom the prescription was running’. This is confirmed when considered in light of the purpose of Article 2248. Where there is an outstanding debt, the prescription period is interrupted by an acknowledgment by a party as it confirms an understanding that the debt is still owing: the acknowledgment is proof that the person to whom the debt is owed has not ‘sat on their hands’ by failing to exercise their right, but are rather still in the process of settling the debt owed. This

applies in the same way to acquisitive prescription, whereby an acknowledgment serves to confirm that the owner has not abandoned their rights to the land: the acknowledgment confirms a common understanding as to the nature of the rights acquired (or not acquired) by one of the parties. Here, the purported interruption is simply not of this nature.

Conclusion

[19] Following the above analysis and findings, in the end result the Court finds as admitted by the Plaintiff that the action is time-barred under Article 2271 of the Civil Code and thus the interruption of prescription invoked by the Plaintiff is untenable in all the circumstances of this case and the Plaintiff is thus dismissed accordingly.

[20] Both parties shall bear their costs.

Signed, dated, and delivered at Ile du Port on 26th day of June 2020.

ANDRE J