IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G202 OF 2019

BETWEEN:

DEBRA ANN BODDEN
(*Administratrix* of the Estate of Antoinette Irene Bush deceased)
1st Plaintiff

DEBRA ANN BODDEN
(*Administratrix* of the Estate of Myrtle Vernice Bodden deceased)
2nd Plaintiff

DEBRA ANN BODDEN and ANTOINETTE AMANDA POWERY
(*Administratrices* of the Estate of Ramona Louise Bush deceased)
3rd Plaintiff

AND

ALFRED EARL DALE BODDEN
1st Defendant

SHEILA VENICA CHRISTIAN
2nd Defendant

Appearances:	**Mr. James Chapman of Chapmans for the Plaintiff** **Mr. James Kennedy of KSG Attorneys-at-Law for the Defendants**
Before:	**Hon. Justice Richard Williams**
Hearing:	**27 May 2021**
Circulation Draft:	**16 June 2021**
Judgment:	**23 June 2021**

HEADNOTE

Preliminary Issue - Grand Court Rues Order33 Rule - Whether any cause of action is statute barred - Section 19 Limitation Act (1996 Revision) – Section 23 Limitation Act (1966 Revision).

JUDGMENT ON PRELIMINARY ISSUE

1. In their Amended Writ of Summons and Amended Statement of Claim dated 27 April 2021, the Plaintiffs claim the following relief:

(i) A declaration that Registration Section South Sound Block 15E Parcel 343 ("Parcel 343") (formerly Registration Section Block 15E, Parcel 156 ("Parcel 156") and part of formerly Registration South Sound Block 15E, Parcel 23 ("Parcel 23")) is property belonging to the estate of Antoinette Irene Bush (P&A 39/89), alternatively a declaration as to the proportion thereof remaining property of the Estate of the deceased;

(ii) Such further or other consequential relief and directions to secure for the Plaintiffs and the benefit of their beneficiaries, including the First Defendant, the legal title to assets that remain, in law and/or equity, assets of the deceased's Estate including rectification of the proprietorship details on the Land Register for Parcel 343 and/or other relief; and

(iii) Costs.

2. In their Amended Defence dated 3 May 2021, the Defendants plead that it is:

> *"denied that the amended statement of claim contains any cause of action against the defendants and is liable to be struck out summarily and furthermore that any cause of action that could be pleaded is statute barred having been time barred 12 years after February 2001 with such proceedings being a matter as between Leon Bush and Ramona Louise Bush."*

The Listing of the Preliminary Issue Hearing

3. On 31 March 2021, the matter came on before Richards J for what was listed to be a two day hearing.[1] However, upon review of the Court file, I note that Richards J's Personal

[1] Directions to trial had been administratively made by Ramsey Hale J on 31 March 2020. The Notice of Hearing dated 19 January 2021 has the hearing fixed for 23-24 March 2021, but the parties agreed to vacate and move the

Assistant wrote to the parties on 25 March 2021 stating that the Learned Judge had advised that, *"in light of concerns raised by the Plaintiff"*, the matter would be listed for a short case management hearing on 31 March 2021 rather than for a trial. The Defendants' attorney wrote back indicating that the decision to adjourn had been made without his input and that he sought a written ruling *"as a matter of urgency*" as he *"wished to appeal the decision"*. I also note from the Court file that, before Richards J's decision was communicated to the parties, the Listing Officer had received an email[2] on the same day from the Defendants' attorney stating that *"this is a case where a straightforward limitation defence is at play"* and that the time estimate for the hearing could be reduced to two hours. I further note from the file that the Plaintiff's attorney sent a letter to Richards J dated 28 March 2021 in which he stated that he disagreed with that contention.

4. At that time of the 31 March 2021 hearing the relevant pleadings were the 1st Plaintiff's Writ of Summons with Particulars of Claim filed on 29 November 2019 by the 1st Plaintiff's then attorneys and the Defendants'[3] Defence filed on 27 December 2019. In the Defence, the Defendants pleaded that a claim to assert ownership of Parcel 343 was statute barred being a claim to recover title from the Defendant for an asserted breach of trust that occurred on 8 June 2001. Also filed were opening written submissions prepared by the Defendants' attorney in which he stated that *"centra*l" to the question was an issue of limitation and that it was *"the end of the matter"*. Therein, as he has again done before me, he highlighted s.19 and s.23 of the Limitation Act (1996 Revision) and the Cayman Islands

hearing date to 31 March 2021 to accommodate Mr. Chapman who had requested an adjournment because he had recently became the Attorney on record for the Plaintiff on 1 March 2021.

[2] Copied into the Plaintiff's attorney.

[3] Including a Third Defendant who is not a named party in the present Amended Writ.

Court of Appeal reasoning handed down in its decision in ***Phillip Bradley Hinds v Clive Montrivelle Hinds, Administrator of the Estate of Esther Rosalind Hinds et al,*** Civil Appeal No. 5 of 2015. The Learned Judge also had before her the Skeleton Argument prepared by the Plaintiff's attorney who stated that the limitation issue was not a simple one and he sought to distinguish the decision in ***Hinds v Hinds.***

5. At the 31 March 2021 hearing, the parties and Richards J were aware that there existed a limitation issue which the Defendants wished to have determined. At the hearing Richards J adjourned the matter to a two day hearing on 27 and 28 May 2021, reserving the matter to herself. She gave directions with a timetable to that hearing, including requiring a case management hearing to come before her on 27 April 2021.

6. At the case management hearing held on 27 April 2021, Richards J gave leave to the 1st Plaintiff to amend her pleadings. The application to amend was opposed by the Defendants who argued that, even if amended, the claims would remain statute barred[4].

7. At the case management hearing, the Learned Judge also gave consequential directions flowing from the amendments and timetabled to the 27 May 2021 final hearing date. The order on the Court file from the hearing signed by the Judge makes no mention of there being a preliminary issue hearing to determine the limitation issue. The draft of the order was prepared by Mr. Chapman and provided to Mr. Kennedy. Mr. Kennedy states that he

[4] Defendants' Position Statement for the 27 April 2021 hearing - paragraph 12. Although, Mr. Chapman states that the application to amend was opposed by the Defendants with Mr. Kennedy submitting to the Learned Judge that allowing the amendments set out in the draft Amended Writ and Statement of Claim would remove the limitation defence.

informed Mr. Chapman by email that he would not approve the draft, as it did not include any provision about there being a preliminary hearing to be determined prior to the commencement of the substantive hearing. Mr. Chapman told this Court that he could not recall any such email. No email chain between parties which included a communication containing Mr. Kennedy's above representation was shown to the Court. On 7 May 2021 a member of staff in the Civil Registry indicated to Mr. Chapman in an email that the order could not be sealed until Mr. Kennedy had affixed his signature and forwarded it to the Judge for consideration. Mr. Chapman complained about this approach in an email to the Civil Registry which he copied to Richards J's Personal Assistant, the Court Administrator and to the Listing Officer stating that a *"level playing field is needed".* It is not clear from the Court file whether the Learned Judge was aware about the dispute concerning the terms of the draft order as she signed the order[5] which was then sent by Judge's Personal Assistant to the Civil Registry by email on 13 May 2021.

8. Any doubt about whether the Judge intended there to be a determination of limitation preliminary issue prior to the commencement of the substantive application should have been dispelled by the email sent by Ms. Suzanne Livingston (evidently acting on Richards J's instructions) to the parties on 20 May 2021. In the email she stated:

- *Justice Richards would be grateful if counsel would confirm, by reply to this email, that the agreed time estimate <u>for the hearing of the preliminary issue in the captioned matter</u> on Thursday the 27th May 2021 is ½ day.*
- *Upon confirmation of this time estimate from counsel, the Judge will ask the Listing Officer to set the matter down for half day only the 27th May.*
- *The judge will rule of that application in short order.*

[5] No filing date entered on the order.

- *The judge will agree any future dates for the captioned matter with counsel in Chambers on the 27th May.*
- *On the afternoon of the 27th May the Judge will return to ongoing jury trial in the Criminal Division."*

It is evident that, neither at the time she directed on 27 April 2021 that there would be a preliminary issue to be determined nor in any of her communications with the parties thereafter concerning the preliminary issue hearing, did the Judge give any directions (or was asked to do so by the attorneys) concerning the format of the preliminary issue hearing, for example whether there was a need to file evidence or skeleton arguments dealing with the issue.

9. On 20 May 2021, Mr. Kennedy replied to Ms. Livingston confirming agreement with the time estimate for the preliminary issue and that he understood the remainder of her email. Mr. Chapman wrote indicated that he was happy to agree that the matter not take more than time permitted on 27 May 2021, but he questioned what the preliminary issue was.

10. Although Richards J had reserved the matter to herself, due to her Criminal Division commitments, the matter was transferred to me on 21 May 2021. The Listing Officer had, evidently following Richards J's recent directions, listed the matter for a half day hearing on 27 May 2021 to deal with the preliminary issue. Due to the different positions that the parties were taking, despite the clarity in Ms. Livingston's email to them sent on the previous day about the nature of the hearing, I instructed my Personal Assistant to write on 21 May 2021 to inform them and to make it abundantly clear that:

"The matter is now to be heard by me on Thursday 27 May 2021. The matter is now listed for a half day hearing to deal with "the preliminary issue" concerning limitation….. Any further skeleton arguments and case authorities on the issue must be filed by 3:30 PM on Tuesday. It is likely that I will reserve my judgment."

By this communication, I wished the parties (i) to have no doubt about what the nature of the upcoming hearing was, so that they could adequately prepare; and (ii) to provide them with case management directions in relation to the skeleton arguments to enable the matter to proceed properly argued on 27 May 2021.

11. As Richards J no longer had conduct of the matter, Mr. Kennedy felt that he should seek further clarification from the Learned Judge. He sent an email to Richards J's Personal Assistant on 22 May 2021, in which he wrote:

"At the last CMC on 27th April 2021 my recollection was that at the end of the hearing the Judge asked if any further directions were sought and I asked that at the commencement of the trial, that the preliminary issue of limitation be dealt with at the start of the trial and the Judge agreed and ordered this."

Mr. Kennedy then commented that the draft order which Mr. Chapman had prepared was not agreed by him and that it had been submitted to the Judge without his approval. Mr. Kennedy went on to say that:

"The Court has clearly communicated over the last week that the trial this week will be limited to the limitation preliminary issue and I have no desire to trouble to (sic.) Judge over the contents of the Order but Mr Chapman has now written an email…, indicating that he disagrees that any direction was made by the Judge to hear the preliminary issue and indicating that some form of objection or appeal will arise if such a hearing occurs…

I am asking if you can please forward this correspondence to Justice Richards and have her indicate if she made an order on the 27th April 2021 that at the commencement of the trial that the issue of limitation should be heard as a preliminary issue?"

12. Mr. Chapman then sent an email to Richards J's Personal Assistant and to Mr. Kennedy in which he stated that, as leave to amend was given at the last hearing and as the Amended Defence was filed on 3 May 2021, the issues joined on the pleadings (including any that might be set down as a preliminary issue) could only have been known after 3 May 2021. He added that:

"Limitation is not a preliminary issue in this case. If there were a summons seeking such an order it will be dismissed."

Mr. Chapman further contended that there was no summons, no framed issue, no agreed facts and that the Plaintiffs were entitled to open the trial. He gave the impression that he was willing for the two-day trial to start for half a day on 27 May 2021 and then be adjourned part-heard, but not be treated as being a separate preliminary issue hearing. He also suggested that another option was for the hearing to be vacated to the next available two days for the substantive hearing to commence without there being consideration of the preliminary issue.

13. On 24 May 2021, Ms. Livingston wrote to the parties on behalf the Richards J and stated:

"Justice Richards herein confirms that the position is as stated by Counsel for the Defendant. The preliminary legal point as to limitation was ordered to be heard prior to the substantive hearing as the attached partial transcript of the hearing sets out."

The relevant part of the transcript of the hearing of 27 April 2021 mentioned by Ms. Livingston records:

> *"**Mr. Kennedy:** ….I think the only question which perhaps we could consider is whether at the commencement of the trial we have preliminary legal arguments of the limitation point which may, if successful end the case and if not successful then we move on to the evidence.*
>
> ***Judge**: Yes*
>
> ***Mr. Chapman**: if one is pleaded, my learned friend frankly said that I have taken that away from him*
>
> ***Judge**: Okay. I think that is sensible. So we will set preliminary legal arguments, to commence before the substantive hearing*. [My emphasis]
>
> ***Mr. Chapman**: Thank you My Lady."*

At the hearing before me it was evident that the Plaintiffs interpret the content of the transcript in a different way than the Defendants do and, as made clear by her later communications, as does Richards J. It seems that they interpret it as them saying that possibly there is an issue and the Plaintiffs responding that such a hearing would only be if the issue is again pleaded because Mr. Kennedy had said, when opposing the application to amend the Writ, that the existing limitation defence would thereby be removed. The Plaintiffs' contentions fail to recognise the Learned Judge's clear statement that preliminary arguments would be set prior to the commencement of the substantive hearing as well as the clarity given by the content of her later communications to the parties.

14. Due to the confusion being caused by the ongoing disagreement between the parties about the nature of the hearing on 27 May 2021, I again instructed my Personal Assistant to write

to the attorneys. I again made clear that the matter was not now listed for trial on 27 May and 28 May and that:

> *"As per the Court List and as per the recent directions of Richards J (confirmed in her email of 24 May 2021 with attachment) there is a preliminary limitation issue that she found should be dealt with first. In her earlier communication of 20 May 2021 Richards J. made it clear that, now only the preliminary limitation hearing would be listed to be heard on 27 May for half a day, that she would 'rule on that application' and that other any future dates would then be agreed.*
>
> *Even if Richards J had previously felt that she might have been able to give an extempore ruling on the limitation point and then immediately move on to deal with the substantive issue if required, I do not share that view. I will require time to carefully consider what is an important point and will provide a reserved written ruling.*
>
> *The Listing remains, as per the Court List and as per Richard J's recent directions to the parties, in the list for a half day on 27 May 2021 for consideration of the preliminary issue."*

15. I have had to set out the above rather laborious review of how the present hearing has been arrived at being a preliminary issue hearing to deal with limitation because, at the outset of this hearing, Mr. Chapman was still contending that there was no preliminary hearing which had been fix to be heard prior to the substantive hearing. He contended that the Court could not have set down such a hearing, as to do so would be inconsistent with the guidance in relation to the principles to be applied when considering fixing preliminary issues hearing provided by Doyle J in ***Arnage Holdings et al v Walkers (A Firm)*** FSD 105 of 2014 5 May 2021.

16. Unlike in the ***Arnage*** case, I am not the judge who conducted the exercise of considering whether this matter is suitable for preliminary issues hearing. That exercise has already been conducted by Richards J, who concluded that the limitation issue raised by the Defendants must be dealt with as a preliminary issue. There is nothing before me to show what factors the Learned Judge considered when so exercising her discretion, but it is evident from my above review that: (i) the Plaintiffs were aware that was a live issue, pre and post the belated amendment of the pleadings[6]; and (ii) that the parties were afforded the opportunity to address the Judge before she directed that she would *"set preliminary legal arguments, to commence before the substantive hearing"*. I accept that Richards J was of the view that she could have ruled on the limitation preliminary issue immediately after receiving submissions and then, if required, move straight on to start the substantive hearing if required. Having regard to the length of and the nature of the submissions I received during the preliminary issue hearing, I greatly commend the Learned Judge if she felt that she would be able to take that approach, but I do not feel that I could.

17. I am satisfied that both parties should have been fully aware that the raised limitation defence required determination and that Richards J had exercised her discretion when directing that it be heard as a preliminary hearing before the substantive trial commenced. The draft order arising from the 27 April 2021 hearing which was submitted to Richards J should have contained her direction about the preliminary issue hearing. At the very least, even if there remained a disagreement about whether the Learned Judge had directed a

[6] It was clear from the transcript that even when leave was given to amend the Writ at the hearing on 27 April 2021 that the limitation issue was still going to be relied upon. See paragraph 13 above.

preliminary issue hearing, that dispute should have been drawn to her attention at the same time that the draft order was submitted to her for her to perfect.

18. Counsel were aware that subsequent to giving the preliminary issue direction on 27 April 2021, Richards J directed that only the preliminary issue would now be considered on 27 May 2021. They then could have had no doubt after I, acting on Richards J's direction and having regard to the Overriding Objective, confirmed on 23 May 2021 (the same day that the case was transferred to me) that the matter would remain listed as directed by the Learned Judge. At the hearing, despite the parties' ongoing inability to agree what Richards J had ordered, I did not feel it appropriate to further adjourn the matter to come on before Richards J at a later date. Accordingly, I have conducted the preliminary issue hearing. The parties provided both written and oral submissions. This is my reserved judgment from that hearing.

Background

19. There is no issue that on 19 February 1984, Antoinette Irene Bush ("the deceased") died intestate. There is little or no dispute about the facts set out in the pleadings, there being common ground about the dates and the actual dealings with the estate of the deceased and the relevant property.

20. From the pleadings, as confirmed by the content of the various probate files which Mr. Chapman had insisted in emails should be available to the Court to review for the purposes

of this hearing, one can see how the land was administered. There is no factual dispute in that regard.

21. Parcel 23 and Parcel 156 had been registered at the Land Registry to the deceased on 5 May 1975. Parcel 343[7] (as it is now registered), formed a part of the deceased's estate. Leon Bush ("Leon"), the deceased's son, was granted Letters of Administration on 18 August 1989 under Probate and Administration (P&A) file 39 of 1989. Leon died on 19 June 2008.

22. On 6 November 2000, Ramona Louise Bush ("Ramona"), the daughter of the deceased and a beneficiary in her estate, applied for Letters of Administration in the estate in P&A 131/00.[8] Unfortunately, the affidavit sworn on 11 October 2000 in support of the application for a grant and her affidavit sworn on 11 October 2000 in support of her application for special leave both incorrectly recorded the date of the death of the deceased as being 19 February 1994 and made no mention of Leon (her brother) having been granted Letters of Administration in 1989. The certified copy of the deceased's Death Certificate dated 18 February 1994, which was provided in support of the application, wrongly recorded the date of death as being 19 February 1084.

[7] Parcel 343 was created by the 1st Plaintiff in or about December 2017 by combining Parcel 156 with a part of Parcel 23.

[8] Special leave having been applied for on 20 October 2000 and initially granted on 23 October 2003 – Note on the file dated 11/11/00 indicates that the reviewing Judge said that the application had to be resubmitted and that this had been notified to Ramona's attorney on 18/12/00.

23. On 12 December 2000, when carrying out the checks on the application, the Clerk of Court noted in a Memo dated 12 December 2000 in file P&A 131/00 that there needed to be an amended certified death certificate, as the one presented recorded the year of death as being 1084. In the Memo to the Judge, the Clerk of Court also noted that the inventory recorded 1984 and the affidavit stated 1994 as the year of death and stated that the Judge *"may wish to hold this until the attorney complies since we do not have a definitive date"*. Handwritten notes in the Court file in P&A 131/00 sent to the reviewing Judge from the Clerk of Court recorded that the attorney for Ramona had informed him that the copy of the death certificate had a typing error relating to the date of death. He also informed in the notes that the inventory had the correct date 1984, that a new certified copy of the death certificate had been provided and he highlighted that the affidavit wrongly recorded the date of death as being in 1994.

24. The Letters of Administration were granted to Ramona in relation to the deceased's estate on 29 December 2000. The Judge when doing so ordered that a supplemental affidavit containing the correct date of the death, 1984, be filed[9]. It appears from the face of the file that the reviewing Grand Court Judge, or less likely the Clerk of Court, noted that there was no previous application found, that no caveat was filed and that the application had been sent to the Gazette on 20/11/00. From this note, it does not appear that a diligent review was performed as from at least 12 December 2020 the Clerk of Court was aware that the date of death was likely either 1984 or 1994.

[9] That affidavit was sworn on 10 January 2000 and filed on 11 January 2000.

25. Following on from the grant of the Letters of Administration, on 12 January 2001 Ramona applied, as personal representative of the deceased, to be registered by transmission as proprietor in place of the deceased of her interest in the land at Parcel 156. It is contended by the Plaintiffs that the grant is invalid and void and therefore any instrument upon application of Ramona (purporting to be in her capacity as the personal representation of the estate of the deceased) in relation to the relevant parcel should be set aside because it ought not to have been made to anyone other than Leon.

26. In a Transfer Form dated 26 May 2002, Ramona, as personal representative to the deceased's estate, applied to transfer Parcel 156 to herself stating that she was the person entitled to the interests of the deceased. In a transfer form of the same date, Ramona applied to transfer Parcel 156 in consideration of natural love and affection for her nephew Alfred Earle Dale Bodden, the 1st Defendant, so that they both held Parcel 156 as proprietors in common. These transfers were registered on 8 June 2001.

27. In a Transfer Form dated 26 May 2007, Leon, as personal representative to the deceased's estate, applied to transfer Parcel 23 to himself stating that he was the person entitled to the interests of the deceased. The transfer was registered on 14 February 2007.

28. On 19 June 2008, Leon died. The grant of Letters of Administration made to him in 18 August 1989 remained in place until his passing.

29. On 11 October 2009, Ramona passed away.

30. On 4 March 2010, Letters of Administration were granted to the 3rd Plaintiff, Debra Ann Bodden ("Debra") and Antoinette Amanda Powery ("Antoinette") in P&A No. 131/09. They were both nieces of Ramona.

31. On 4 February 2011, the 1st Defendant removed Ramona's name from the Register and added his step-daughter, Sheila Christian, the 2nd Defendant, to the title of Parcel 156.

32. On 15 March 2013, Letters of Administration De Bonis Non were granted to Debra as lawful successor – Administratrix to the estate of her uncle, Leon, in Grand Court Case No. G114 of 2021 and P&A No. 39/89.

33. On 1 October 2013, upon application by Debra, Hall J ordered the return of Parcel 23 to the estate as Leon had wrongly applied for and had it transferred to himself.

34. Following the commencement of proceedings Grand Court No. 37 of 2014 issued by Debra's brother, Burnes Bodden ("Burnes"), Debra pleads that she first became aware that Parcel 156 was also property belonging to the estate of the deceased at the time of her death. The Defendants' plead that they cannot say when Debra became aware, but they also plead that the relevant information was at the Land Registry and was available to the beneficiaries and Leon upon reasonable inquiry.

35. In or around December 2017, Parcel 343 was created by Debra by combining old Parcel 156 with part of Parcel 23.

36. On 10 May 2018, Letters of Administration were granted to Debra in the matter of the estate of her mother, Myrtle Vernice Bodden in P&A No. 34/18.

37. Debra, as Administratrix of the estate of the deceased, subsequently instituted these proceedings by filing a Writ of Summons on 29 November 2019 in which an alleged breach of trust had occurred on 8 June 2001 when Ramona registered the transfer of Parcel 156[10]. A declaration that Parcel 343 is property belonging to the estate of the deceased was sought as well as an order for the Defendants to deliver up the property by transferring it to the Adminstratrix. A Defence was filed on behalf of the then three Defendants in which it was asserted that the then Plaintiff's Claim was statute barred being a claim to recover title from the Defendant from an alleged breach of trust that occurred on 8 June 2001. The relevant procedural background thereafter is set out in paragraphs 1-18 above.

The Plaintiffs' Claim

38. The nature of the claim took on a different complexion after Mr. Chapman came on the record for the Plaintiffs as evidenced by the content of the Amended Writ and Statement of Claim in which the breach of trust claim was removed. The basis of the claim being now plead is: (i) that letters of Administration were wrongly granted[11] to Ramona as Leon was still Administrator at the time and it therefore should be regarded as being a void grant; and (ii) that Ramona did not have any right or title or equity in Parcel 156 to transfer the same the same to anybody[12], including to herself. It appears that the amendments were

[10] See paragraph 26 above.
[11] The pleaded claim being that the grant was false/wrong/mistaken and obtained by false representations made on oath by Ramona in support of her application.
[12] Including the 1st Defendant.

made to try to defeat the limitation defence as the Plaintiffs recognised that the breach of trust cause of action brought by the 1st Plaintiff with a pleaded start date of 8 June 2001 could well be statute barred. The Amended Writ with Amended Statement of Claim, although detailing the historical facts relied upon, do not clearly plead what cause of action is actually being brought. It is evident that not only the aforementioned declarations[13] are sought by the Plaintiffs, but that they are also seeking relief including the securing of the legal title to assets that remain for the Plaintiffs and beneficiaries including rectification of the details on the Land Registry.

39. In relation to the limitation preliminary issue raised by the Defendants and ordered to be heard by Richards J, the Plaintiffs say that such an issue is not pleaded. It is contended that, the breach of trust cause of action having being removed from the pleadings, no cause of action is now pleaded against the Defendants and therefore there is no action date from which the limitation clock can run. It is contended that the February 2001 date relied upon by the Defendants for calculating any limitation period is imprecise and that it is not made clear what the relevance of that date is.

The Defendants' Case

40. In light of the manner in which the Plaintiffs have pleaded their case, the Defendants rightly highlight that the Plaintiffs' pleaded case concentrates on the grant of Letters of Administration to Ramona in December 2000, as well as the transfer of Parcel 343 to herself and to the 1st Defendant in May 2001 and June 2001 respectively. The Defendants

[13] See Paragraph 1 above.

note that the pleadings contain no *"particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence or breach of trust, willful deceit for undue influence"* against the Defendants. The Defendants highlight that the facts, most of which have been set out above herein, are pleaded and are on the whole agreed.

41. The Defendants contend that the declarations sought[14] and claim for relief set out in paragraph (c) in the Amended Statement of Claim are statute barred as at least 12 years have accrued since the cause of action. Although the Defendants plead in the Amended Defence that the relevant date is after February 2001, at the hearing Mr. Kennedy conceded that the date could have been pleaded with greater specificity. The Plaintiffs contend that the fact that the February date is pleaded and the lack of clarity as to the reason why that date is pleaded mean that there is no way to discern what (if any) cause of action and commencement date is being relied upon in a limitation defence and, as a consequence, the preliminary issue arguments fail. Mr. Kennedy informed the Court that a better date would have been to plead that it was from after 17 January 2001 as that was the date that Ramona's application to be registered as proprietors by transmission in relation to Parcel 156 was processed by the Registrar of Lands. He stated that if the Court found that the January date was not the correct date when considering the limitation issue then, from the agreed facts in the pleadings, the *"latest possible pertinent date"* for the time running for limitation purposes could only be 8 June 2001 (just under 19 years ago) when the legal title in Parcel 156 was transferred into the names of both Ramona and the 1st Defendant.

[14] Paragraph a) in the Claim on page 5 of the Amended Statement of Claim.

42. It is contented by the Defendants that if the limitation applies, then the declarations cannot be given by the Court. It is submitted that in such circumstances the Court cannot now declare that the property belongs to the estate of the deceased when the claim is statute barred.

The Law

43. When considering the issue to be determined, namely whether the Plaintiffs' claim is statute barred by the Limitation Act, I must consider the relevant sections.

44. Section 19(1) of the Act provides that:

> *"An action shall not be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."*

45. Section 23 of the Act provides:

> *"Subject to –*
> *(a) section 24; and*
> *(b) section 135 of the Registered Land Law (1995 Revision)*
> *at the expiration of the period prescribed by the Law for any person to bring an action to recover land, including a redemption action, the title of that person to the land shall be extinguished."*

46. The exemptions to the period of limitation set out s.27 of the Act do not apply in the pleaded circumstances of this case as the claim is not brought by a beneficiary under a trust and it is not pleaded that the Defendants were acting as a trustee of the estate.

47. The Court of Appeal considered the limitation issue in ***Hinds v Hinds.*** In that case, following him dying intestate, the Letters of Administration of the estate had been properly granted in the United States and resealed in the Cayman Islands to the deceased's widow. Under the Succession Law 1975, the persons entitled to a share in that estate were the mother and her son with the deceased. In her capacity as the deceased's personal representative she held legal title to certain parcels of land in the Cayman Islands. She transferred one of the parcels to three of her sons from a previous marriage, excluding the claimant who was her son with the deceased. After his mother's death, the claimant son sought to establish in the proceedings that the parcel was, at his mother's death, still an asset of his deceased father's estate. He sought a declaration that his mother held the parcel subject to the trust arising on the deceased's intestacy and transferred it in breach of trust to the three brother's on trust absolutely for him as the deceased's issue. The respondent's three other sons sought to establish that the parcel was an asset of their mother's estate and that it was vested indefeasibly in them.

48. The Court considered that the parcel was an asset of the deceased's estate, and the three brothers were not entitled to any interest in that estate. As a consequence the transfer by their mother to them was a breach of trust by her. Martin JA noted that:

> *"Immediately after the transfer"*, the mother *"had, in her capacity as personal representative of the deceased, a right (and an obligation) to reclaim it for the benefit of the estate".*

He added:

"That right accordingly accrued immediately after the transfer. Any claim by her to enforce the right would have been a claim to recover land, and section 19 of the Limitation Law (1996 Revision) would have applied to it."

Martin JA then stated that:

"Accordingly, (the mother) had twelve years from the transfer in which to bring the claim. She dies before that period expired, without having brought a claim in her lifetime. No substitute personal representative (of the deceased) was appointed before the twelve year period expired…without a claim being brought. The prima facie consequence was that the estate's title to the land was extinguished on that date by virtue of section 23, which so far as relevant provides that, subject to section 24, "at the expiration of the period prescribed by this Law for any person to bring an action to recover land… the title of that person to the land shall be extinguished. It is irrelevant, so Mr Hamm asserted, the respondents had failed to plead a limitation defence despite being given leave to do so: on the expiry of the time allowed for a claim to recover land the title is extinguished by virtue of section 23 whether limitation is pleaded or not. On the face of it, therefore, the estate's title to (the parcel) has been extinguished, and the three brothers have an unassailable right to it."

49. Martin JA then went on to review s.23 of the Law which made clear that position may be altered if the provisions in s.24 apply. It has not been pleaded or submitted during the hearing that the provisions in s.24 would apply if the Court was (despite the submissions made on behalf of the Plaintiffs) to find that the limitation applies.

Discussion

50. The Plaintiffs contend in their submissions that ***Hinds v Hinds*** should be distinguished because the deceased's wife was *"lawfully"* appointed as the Administrator and because

she *"owed duties in that office to be enforced in an administration action until the Estate was "administered" by ascertaining the residue. – then she held on trust per the statutory trusts"*. The Plaintiffs state that the position here is that Ramona was not validly appointed and nothing was vested in her to hold on statutory trusts. It is further contended in the written submissions that that Ramona had obtained her bare legal title under false pretenses. It is also submitted that ***Hinds v Hinds*** should be distinguished because the estate in that matter was "rich" and that in its administration there was always going to be a trust fund of some residue that would exceed the debts and expenses.

51. Although noting the different factual background highlighted by the Defendants, I do not find that this affects the applicability of the approach taken by the Court of Appeal in ***Hinds v Hinds*** to the present matter before me.

52. The justification for limitation of actions is to provide certainty of title and to put an end to litigation. However, the Court should, when considering whether the limitation period applies, still be cautious as the consequence of its finding may deny the Plaintiffs an opportunity to have their claim heard on its merits.

Conclusion

53. Critical to the limitation period is when the right to bring an action or suit first accrued. In other words, when does the time start running against the person making the claim as there must be a trigger to set time in motion against a claimant.

54. I hold that the right to bring the action first accrued in June 2001, it being common ground in the pleadings that that was the date of the transfers. The Writ and Statement of Claim were filed on 29 November 2019. That is clearly well outside the 12 years limitation period. Once that limitation period prescribed for bringing an action to recover land expires, whatever title the Plaintiffs may have had is extinguished. The provision that a claimant may then potentially rely upon is found at s.27, but that provision is not relied upon by the Plaintiffs.

55. For the above reasons, and not without sympathy for the injustice done to the Plaintiffs and their other beneficiaries, I find that the action is statute barred and the orders and declarations sought cannot be made. It is clear that the claim is to secure for the Plaintiffs and their beneficiaries the legal title to the assets that remain of the deceased's estate as well as rectifying the Register in relation to Parcel 343. Merely because one of the reliefs sought is a declaration does not mean that the 12 year limitation defence does not apply. In a claim of this nature concerning title a claimant will ordinarily pray for a declaration that the property/title belongs to him (in this case to the estate of Antoinette Irene Bush).

Costs

56. Unless any party applies within 21 days to be heard on costs, the costs shall be awarded to the Defendants on the standard basis be taxed if not agreed.

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The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT