

CIRCULATE

Legal Dept
7.10.2002



IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause No: 817 of 1997

BEFORE: The Hon Mr. Justice Sanderson

BETWEEN: ROBERT EBANKS ET AL

Plaintiff

AND: ESAU BROOKS

Defendant



APPEARANCES:

Mr. McDonnell, QC and Mr. C. Allen for the Plaintiff
Mrs. Sheridan Brooks for the Defendant

Hearing on 30th August & 6th September 2002

REASONS FOR JUDGMENT

The Defendant applies for Summary Judgment under Order 14, GCR on the basis that the Plaintiff's claim is statute barred or alternatively, that the declaratory relief requested has no prospect of success.

On May 1st 2002 the Plaintiffs filed a re-amended Statement of Claim pursuant to an order of this Court granting them leave to do so. It was a term of that order that the amendment was granted without prejudice to the Defendant's right to raise any limitation defence that would be available and further that the claims

contained in paragraphs 1 to 6 in the prayer for relief would be deemed to have been commenced, on April 30th 2002, for the purpose of determining any limitation defence.

Paragraph 1 to 6 of the claim seeks to declaratory relief, including a declaration that the Plaintiff's are Trustees of an unincorporated association known as "The Church of God (Full Gospel Hall)", and declaratory relief regarding the trustees powers and authority in respect of the church property.

The Defendant submits that the claims against him are based on complaints regarding his conduct that allegedly occurred before the end of 1986.

Alternatively the Defendant says that paragraph 16 of the amended statement of claim alleges facts which if proved, would start the commencement of a limitation running as of April 10th 1991.

The Defendant says that the actions should therefore had been commenced within the six year limitation (for a claim based in contract or tort or as provided in Section 27 (3) of the *Limitation Law* (1996 Revision) for claim relating to recovery of trust property) no later than the end of December 1992, or alternatively, no later than April 10th 1997.

The Writ in this case was initially issued in December 4th 1997 and re-amended on May 1st 2002, claiming the present relief. The Defendant claims that the

matters raised by the request for a declaration of trust are new and were “commenced” on May 2nd 2002, almost ten years (or alternatively five years) too late.

Section 27 (3) of the *Limitation Law* applies to an action by a beneficiary to recover trust property. It also provides, however, that the six year limitation only applies where there is no other period of limitation prescribed by the Limitation Law. The Plaintiff submits that Section 19 (1) of the *Limitation Law* (supra) would apply and it provides for a twelve year limitation period for an action to recover any land.

The Plaintiff argues firstly, that there is no limitation period for recovery of trust property when it is a charitable trust or alternatively that the twelve year limitation period pursuant to Section 19 (1) of the *Limitation Law* (supra) would commence to run on May 15th 1997, when the Defendant was notified that he was no longer a trustee and was directed to hand over the property.

The Plaintiffs rely on the decision of the Supreme Court of British Columbia in *Rowland v Vancouver College Ltd.* International Trust and Estate Law Reports Vol. 3, pages 182, 187 and 197–208, and the English decision in *Attorney General v Cocke and another* [1988] 2 All ER 391 Ch. D., in support of their argument that there is no time limitation with respect to a declaratory claim of rights in respect of a charitable trust.

Without ruling finally on the points, I think there is some merit in both of the Plaintiff's arguments on the limitation issue. It cannot be said that the Plaintiff has no prospect of success based on the limitation defence.

The Defendant next argued that each of the declarations sought in paragraph 1 to 6 of the prayer for relief, should be dismissed because they had no prospect of success. Ms. Brooks took me to the affidavit material filed and argued the evidence could not sustain the various pleas. In reply Mr. McDonnell referred me to other evidence which if correct, might sustained the plea. I did not feel that on the material before me I was properly able to conclude that the Plaintiff had no reasonable prospect of success.

Accordingly, I conclude that the defendant's application should be dismissed.

I will direct, however, that there be a full directions hearing to be listed within 30 days of this order.

DGSanderson

D. Sanderson
Judge of the Grand Court

Dated this 7 of Oct 2002