

IN CHAMBERS

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

CAUSE NO. 144 OF 1997

BETWEEN: Carolyn Cupidon (As Administratrix of the
estate of Dean Alfred Knight, Deceased)

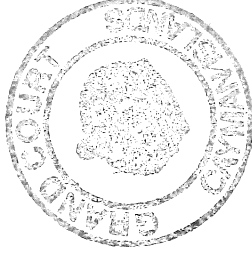
Plaintiff

AND: Estanislao Cruz-Martinez

Defendant

Appearances

Mr. Andrew Jones and Mr. Robert Grierson
of Maples & Calder for the plaintiff
Mr. Ramon Alberga Q.C. and Mr. D. Murray of L.A. Samson
& Co. for the defendant.



Before the Hon. Mr. Justice Graham

JUDGMENT

1. The Chronology of this tragic matter is as follows:-
 - (i) On the 16th July 1993, Dean Knight, a semi-professional squash player, (the deceased) was seriously injured when he was knocked off his bicycle as a result of a collision with a vehicle driven by the defendant.

The defendant was later convicted of driving that vehicle under the influence of alcohol. Prima facie, therefore, some, if not all liability for the collision is likely to be established against the defendant if this matter ever comes on for trial.

(ii) It is alleged that as a result of the injuries suffered by the deceased he committed suicide on 15th March 1995. At the time of his death no proceedings had been instituted by him in respect of his injuries.

(iii) On the 13th June 1996, letters of administration intestate, were granted to his mother, the plaintiff.

(iv) On the 4th March 1997 a Writ was issued claiming damages. It was a little under two years after his death. The Statement of Claim endorsed on the Writ in its finally amended form, claims damages under two statutory bases:-

(a) Under the Estates Proceedings Law (1995 Revision) and

(b) Under the Torts Reform Law of 1996.

(v) A defence was filed on behalf of the defendant, which in its final form pleaded, *inter alios*, that each of the two claims was statute barred.

In respect of the claim under the Estate Proceedings Law because:-

(a) There was no action pending in any Court in the Cayman

Islands on behalf of the deceased at the time of his death, arising out of the collision on the 16th July 1993; and

(b) The cause of the action accrued on the 16th July 1993,

which was one year before the death of the deceased on

15th March 1995 and the commencement of the action.

Section 5 of the Estates Proceeding Law (1996

(Revision).

(c) In respect of the proceedings under the Torts (Reform) Law 1996 this matter was said to be time barred by virtue of Section 4 of the Law as the proceedings were commenced after the expiration of one year from the death of the deceased on the 15th March 1995.

(vi) On the 20th July 1998 an application was made to the Court to strike out the whole of the claim under GCR Order 18 Rule 9 and/or GCR Order 14 (a) and/or under the inherent jurisdiction of the Court. This application was heard by me on 29th July 1998.

2. The case for striking out.

(i) It is submitted to me by Mr. Ramon Alberga Q.C. that I can only consider what appears to be the mutually contradictory nature of

aspects of the present legislation by referring to the historical background of the Cayman legislation viz a viz the equivalent legislation in the United Kingdom. The respective history of the Cayman and the United Kingdom legislation is as follows:-

- (ii) The first Fatal Accidents Law to be enacted in the Cayman Islands, Chapter 54 of the 1963 Revised Laws, was in identical terms to Section 3 of the United Kingdom Fatal Accidents Act of 1946.

The relevant proviso section read as follows:-

“Not more than one action shall be for and in respect of the same subject- matter or complaint and that every action shall be commenced within 12 calendar months after the death of such deceased person.”

- (iii) In 1977 Chapter 54 was consolidated with the Law Reform (Tort Feasors) Law of 1964 and the Law Reform (Contributory Negligence) Law of 1954 under the title “ The Law of Torts Reform Law Revised”. Part II of that Law dealt with fatal accidents. Section 4 (1) read precisely the same way as the proviso to Section 4 of the old Chapter 54.
- (iv) The legislature must be taken to have known about the 1954 amendment to the United Kingdom legislation in which the period of one year was extended to three years. In the event it did not amend the Cayman Law.

- (v) In 1996 the Law of Torts (Reform) Law was again, revised and renamed The Torts Reform Law but again, although there was an opportunity to do so no change was made in Section 4 and the limitation continue to read as it did in Chapter 54.
- (vi) Accordingly, it is submitted that the legislature in the Cayman Islands had a number of opportunities to extend the one year period to three years but never did so, although it had been done in England in 1954. This was consciously to ignore the trenchant comments of Lord Justice Singleton in Finnegan v. Cementation Company Limited [1953] 1 Q.B. p.688 in which the one year limitation period was described as a “blot upon the administration of the law”. On the basis of all the foregoings I am invited to

strike out the whole of the plaintiff's case. I was to consider

Section 44 of the Limitation Law (1996 Revision) as read with

Section 13 of that Law.

3. The case for the plaintiff

- (i) It is the plaintiff's case that the defendant's summons should be dismissed because the limitation periods imposed by the Torts (Reform) Law and the Estates Proceedings Law have been repealed by necessary implication and/or overridden by the Limitation Law (1996) Revision which was enacted in 1991. It is submitted to me that the Limitation Law constituted a comprehensive reform of the Law relating to the limitation of

actions which is the only explanation as to why its relevant provisions are plainly inconsistent with the earlier Law. Section

13 (1) of the 1991 Law reads as follows:-

“This section applies to any action for negligence, nuisance or breach of duty (whether such duty exists by virtue of the contract, a provision made by or under an instrument of a legislative character, or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to himself or any other person.”

Subsection 4 reads:-

“Except where subsection (5) applies, the period applicable is three years from -

- (a) the date on which the cause of action accrued; or
- (b) the date of knowledge (if later of the person injured).

Subsection 5 reads:-

“If the person injured dies before the expiration of the period mentioned in subsection 4, the period applicable in respect of the cause of action surviving for the benefit of his estate by virtue of Section 2 of the Estates Proceedings Law (1995 Revision) shall be three years from -

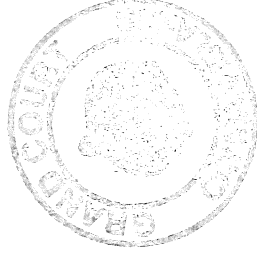
- (a) the date of death; or
- (b) the date of the personal representative knowledge, whichever is the later.”

In the context of this legislation it is important to note that Section 13 (1) refers to “negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to himself or any other person”.

(ii) Section 2 of the Estates Proceedings Law (1995 Revision) deals with the survival of actions for the benefit of the estate. Section 5

(a) and (d) contains a restriction as to the bringing of an action within one year of the date of the death if an action has not been brought during the lifetime of the deceased. The basic law in respect of which the Estates Proceedings Law (1995 Revision) is the modern form of the Estates Proceedings Law of 1974.

Accordingly, the 1991 legislation must be taken to have repealed the earlier basic legislation of 1974. The “1990 Revision” is just



that: it is not legislation but the mere re-arrangement of existing legislation apparently in force.

(iii) Section 44 (1) of the Limitation Law reads:-

“This Law does not apply to any action or arbitration for which a period of limitation is prescribed by any other Law or to any action or arbitration to which the Crown is a party and for which, if it were between subjects a period of limitation would be prescribed by or under any such Law” .

Subsection 44 (2) reads:

Nothing in this law shall -

(a) enable any action to be brought which was barred before the

15th August, 1991; or

(b) affect any action or arbitration commenced before the

15th August, 1991 or the title to any property which is

subject of any such action or arbitration.

(vi) It is plain that as the cause of action in this matter did not arise

until the 13th July 1993. Section 44 (2) (a) can have no

application to the matter. Section 44 (1) must be interpreted

according to the ordinary canons of statutory interpretation which

include the rule that a later law which is at plain variance

to a pre-existing law must be taken to repeal it unless

by its plain language such an interpretation is impermissible.

See *Vauxhall Estates v. The Liverpool Corporation [1932]*

1 K.B. 733.

- (a) A unanimous decision of the Divisional Court containing three judges.
- (b) That decision was especially approved and followed in

Ellen Street Estates Limited v. Minister of Health [1934]

1 K.B. 590 a unanimous decision of the Court of Appeal in England and Wales.

- (c) Most relevantly in respect to the Cayman Islands that rule has been applied by the Privy Council, the ultimate Court of Appeal for this jurisdiction, on an appeal from Canada in **British Columbia Electric**

Railway Company Limited v. Stewart [1913] A.C. 816.

I therefore interpret Section 44 (1) to mean any Law not specifically repealed by the totality of the Limitation Law.

(v) The statement of claim herein seeks relief under two heads of damages. For personal injuries, and other loss and damage suffered by the deceased prior to his death under the Estates Proceedings Law, and secondly, for loss of dependency on the part of the mother of the deceased under the Torts (Reform) Law.

Both these causes of action arise out of an allegation of negligence, and the damages claimed by the plaintiff “consist of or include damages in respect of personal injuries either to the deceased or to any other person,” namely the plaintiff.

Accordingly this action fits into the regime contemplated by Section 13 (1) of the Law.

(vi) It is the submission of the defendant that Section 44 (1) leaves untouched the limitation periods of one year imposed by the two laws. In my judgment, the apparent conflict with the Limitation Law must be tested with regard to the other provisions in the Limitation Law. Section 16 (1) of the Law reads as follows:-

“An action under part II of the Torts (Reform) Law (1996 Revision) shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury.

Whether because of the time limit in this or any other law or for any other reason. Where any such action by the

injured person would have been barred by the time time
limi in Section 13, no account shall be taken of the
possibility of that time limit being overridden under

Section 39”.

Section 39 deals with discretionary powers of the Court in cases such as
delay, knowledge of the extent of an injury, and like matters.

(vii) The marginal note to Section 16 reads ‘Fatal Accidents 1996
Revision.’ Part II of the Torts (Reform) Law is concerned with fatal
accidents. This is a clear indication that the limitation period prescribed
in the Limitation Law was intended to effect claims made under part II of
the Torts (Reform) Law. It is hard to see what other interpretation can be
given to the marginal note.

16 (2) reads:-

“None of the time limits in Sections 4 to 15 apply to an action under part II of the Torts (Reform) law 1996, but no such action shall be brought after the expiration of three years from -

- (a) the date of the death; or
- (b) the date of the knowledge of the person for whose benefit the action is brought, whichever is the later.”

This appears to mean that the three year period in Section 13 may be excluded by one part of subsection 2 and re-imposed by the remainder of it. There is no mention of the Estates Proceedings Law.

(viii) The Memorandum of Objects and Reasons in respect of the “Bill to repeal and replace the legal provisions relating to the Limitation of

Actions” included the following:-

“Clause 12 seeks to deal with the issue of contribution.

Personal injuries are sought to be dealt with in Clause 13”.

Clauses 14 and 15 seeks respectively to impose a special

time limit and an overriding time limit for

certain types of action for negligence.

Clause 16 seeks to deal with actions arising from fatal

accidents, whilst in Clause 17 provision is sought

to be made for the operation of the time limit under

Clause 16 in relation to different dependants.”



(ix) Where the effect of the words in a law are obscure the Court is entitled to look at the Bill for guidance as to the intention of the legislature especially as all the proposed provisions appeared in the law under the identical numbering as that in the Bill. Vide *Pepper v. Hart* [1993] A.C. p. 593. I accordingly propose to interpret the effects of Sections 13, 16, 17 and 44 in the light of the quoted material contained in the Bill.

(x) I must confess that I have not found it easy to make an adjudication in this matter. Doing the best I can however, in dealing with, if I may say so, somewhat rather ill-considered legislation, I interpret the Limitation Law (1996 Revision) as imposing a three year limitation on proceedings both under the Torts (Reform) Law (1996) and the Estates

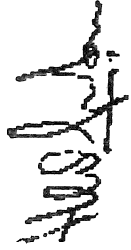
Proceedings Law (1996 Revision). If that is not the correct interpretation it is impossible to make any sense of Sections 16 and 17 of the Limitation Law. I therefore dismiss the defendant's application to strike out the plaintiff's Statement of Claim with costs.

4. Because of the most persuasive arguments put to me on behalf of the plaintiff, I realise that I may very well be wrong in my interpretation of the Limitation Law. What is critical is not whether I am right or wrong but that the Law be settled. Accordingly I give leave to the defendant (if he wishes to exercise it) to appeal this matter to the Court of Appeal so that a final ruling on the matter may be made in the public interest. If the Court of Appeal is to hear this matter, an early listing is

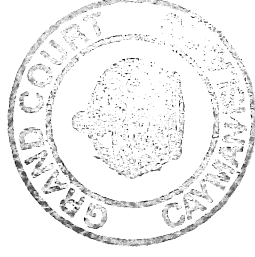
desirable in view of the number of cases where this legal dispute is relevant to the proceedings.

5. If the Court of Appeal were to allow this appeal then it may very well that there is a case for the legislature to look at the matter again and to change the law to a three year limitation period. This has been the law in the United Kingdom for many years. The dramatic advances in medical science mean that there could be many cases where a very trivial episode results in death up to three years after the event. It would be wholly inappropriate that the estate of the deceased should suffer due to an artificially and historically dated short limitation period. In respects of claims for dependency in the complicated world we live in today, there might be many factors which could delay the commencement of

proceedings for periods up to three years after a death. One can well imagine a deceased who had worked in many jurisdictions, at differing rates of pay and with differing prospects in different jobs. There could well be complicated research and computations in order properly to present such a claim to a Court. This might well take a considerable time.



The Hon. Mr. Justice Graham
Judge of the Grand Court



6th July 1998