



CIVIL JURISDICTION
1998: No. 295

BETWEEN

DILTON MARTIN ROBINSON

Plaintiff

-and-

THE BANK OF BERMUDA LIMITED

Defendant

Mr Cottle for the Plaintiff
Mr Martin for the Defendant

RULING
(Strike Out)

This is an application brought by the Defendant from a consent order for directions dated the 15th January 2007. Said order provided for the trial of a preliminary issue raised by paragraph 19 of the Defendant's defence.

THE ISSUES

The issues are: firstly, whether with respect to paragraph 19 of the Defendant's defence and pursuant to the Limitation Act 1984, section 4 of the Plaintiff's statement of claim is time barred; and secondly, the Defendant seeks to strike out all references in the Statement of Claim to the Defendant owing the Plaintiff a fiduciary duty.

The relief sought by the Defendant is that the Plaintiff's claim should be struck out on the grounds that it discloses no reasonable cause of action and/or is frivolous or vexatious, and/or is an abuse of process; or that it ought to be struck out under the inherent jurisdiction of the court.

The facts have been well rehearsed in previous judgments in this action that have been before the court. Suffice it to say that the action arises out of matters occurring in 1992 between the Plaintiff, in his personal capacity and the Defendant bank of which he was a customer.

THE PLAINTIFF'S CASE

On the day of the hearing of these preliminary issues counsel for the Plaintiff, Mr. Cottle reiterated the difficulty that he faced when inheriting the file; it was badly drafted, and notwithstanding his earlier ardent attempts at putting it into proper order, the amendments sought had for various reasons been disallowed.

To his credit, Mr. Cottle conceded that the claim admits of no cause of action that has a basis in law. He further conceded, that no amount of detailed reasoning or authority could be called in support of the only glimmer of a prospective legal claim, that of breach of confidentiality, because it could not stand alone, could not be cured by amendment, and offends the Limitation Act 1984.

Notwithstanding this concession, Mr. Cottle to the Plaintiff's credit sedulously sought to save the action. He suggested that the claim should not be struck out but stayed to abide the result of the related but separate 2002 action, or that the court should consolidate the two actions.

CONCLUSION

It is beyond peradventure that neither reason nor authority could support either of the Plaintiff's suggested methods of saving this action; the former would only postpone the inevitable, and the latter flies in the face of not only the Court of Appeal ruling in this matter but also the trite principles underlying the limitation of actions.

There being no other matter in this case, accordingly, this action is dismissed for want of a reasonable cause of action, and, in any event, because the action is statute barred.

COSTS

It had been conceded by the Defendant's former counsel that one of the matters of concern in this protracted action was the fact that the Plaintiff is legally aided. I had in an earlier ruling mentioned that I had formed the view that there had been delay on both sides in moving this case on to a final conclusion. I have not changed my view. In the circumstances I would not make an order for costs in the Plaintiff's favour.

In any event there is to my knowledge no statutory authority for making an award of costs against the legal aid fund; for that reason alone I would make no order for costs.

Dated this 11th day of July 2007

Charles-Etta Simmons
Puisne Judge