IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM NO. 479 of 2010

SCOTIA BANK (BELIZE) LTD.	**CLAIMANT**
AND	
DELROY FAIRWEATHER	**1st DEFENDANT**
CAROL GENTLE	**2nd DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Hearing by written submissions only
Filed 2015
23rd October – Claimant
23rd October – First Defendant
23rd October – Second Defendant

Mr. Yohhahnseh Cave for the Claimant.
Mrs. Robertha Magnus-Usher for the 1st Defendant.
Mr. Philip Zuniga, SC for the 2nd Defendant.

Keywords - Limitation Act Cap 170 - Bills of Exchange Act Cap 245 - Promissory Note - Accrual of Cause of Action - Statute Barred

RULING

1. This is a ruling on a narrow, but very interesting, preliminary issue relating to when the cause of action accrued on a promissory note for the purposes of the Limitation Act.

2. The facts as have been accepted by all parties are that on the 29th June, 2001, the Defendants signed a promissory note with the Claimants in the following terms:

> *"for value received the Undersigned jointly and severally (if more than one) promise to pay THE BANK of NOVA SCOTIA at its Branch as set out above, the sum of Eighty one thousand seven hundred fifty 00/44 dollars together with interest calculated on a daily basis at the rate of 12.000% per annum, payable by installments as follows: the sum of $917.45 on the 30th day of July, 2001 and thereafter, the sum of $890.57 on the 30th day of each month, "the Payment Date," until the principal and all interest accrued thereon is paid in full ....*
>
> *In the event that any installment is not made when due on a Payment Date, the Principal then outstanding together, with all interest accrue thereon shall immediately become due and payable."*

3. The Claimant postulates that time began to run from the 1st day of January, 2007 when the Defendants defaulted in making the payment due on the 30th December, 2006. No payments were made thereafter. The first Defendant urges the court to accept the date of 30th September, 2001. They submit that according to the payment history that was the first occasion on which there was a failure to pay on the Payment Date. The second Defendant proffers the 30th July, 2001. Since, under the promissory note, that was the day on which the first payment was to commence. What is interesting in this matter was that all Counsel relied on the same basic precedents, most of which date back to the 1800′s. I thank them all for their most helpful submissions.

4. The court will make a determination by considering the following issues:
    1. What is the precise nature of the promissory note.
    2. When did the cause of action accrue under the promissory note.

3. Is the action statute barred.

What is the precise nature of the Promissory Note:

5. *"..... In an action for money lent, it is a matter of construction of the contract to determine the date from which time will run. If a time is stipulated for repayment, the limitation period will run from that time; if the agreement provides that the occurrence or non-occurrence of a particular event is to trigger the obligation to repay, time will run from the date of that occurrence or non-occurrence."* **Halsbury's Laws of England, Volume 28, p447**.

6. Counsel for both Defendants seem to have accepted that the promissory note was payable on demand. But before arriving at such a conclusion the construction of the document itself must be scrutinized within the context of the applicable law.

7. In accordance with Section 4 of the **Limitation Act**, actions founded on simple contract shall not be brought after the expiration of six years from the date the action accrued. Promissory notes are contracts regulated under the **Bills of Exchange Act**. Section 85(1) of which, provides that:

   > *"A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to the order of a specified person or bearer."*

8. It is clear therefore that all promissory notes are not payable on demand. The one before the court does not state the words "payable on demand," nor does the holder have the expressed, unrestricted and unilateral

right to determine the time for payment. These are the hallmarks of a loan payable on demand. Such loans create an immediate debt. It is settled law that a cause of action accrues from the moment such a note is executed and action for its recovery may commence at any time thereafter. The obligation to repay the debt is not conditional on a demand for repayment - **Norton v Elam [1837] 2 M&W 461** as applied and affirmed by the Court of Appeal in **Allendale Limited v Khaldoun Moualem [2004] EWCA Civ 915**. Therefore these loans are subject to a six year limitation period which runs from the date of execution.

9. By its very terms, the promissory note before the court, requires payment of a certain amount (installments, the exact number of which is not specified), on certain specified dates (there is no stated date of maturity), subject to acceleration. All of which are inconsistent with a demand note. The right to accelerate payment of the whole, may not be enforced unless the other party has indicated in some way that he is unable to perform in the time originally agreed. That is the trigger.

10. This court finds that the promissory note is not payable on demand and the law provided by the defence in relation to such a promissory note is therefore inapplicable.

11. All counsel cited the case of **Reeves v Butcher [1891] 2QB 509** where repayment of a loan was deferred for five years conditional upon the defendant paying the interest quarterly. The defendant paid no interest whatsoever. It was held that time did not run from the expiry of the five year period for which the loan was deferred, nor did it run from the date the

document was executed. It began running from the earliest default in payment, which according to the agreement, was 21 days after the first installment was to have been paid. Lindley LJ stated *"The right to bring an action may arise on various events; but it has always been held that the statute runs from the earliest time at which an action could be brought."* Our next inquiry should therefore be what is the earliest date on which this action could have been brought or

When did the cause of action accrue under the promissory note

12. I agree to some extent with Counsel for the first defendant that the earliest breach by the debtors should engage section 6 of the **Limitation Act**. However, section 6 must be read in conjunction with Section 29(3)

> *"Where any right of action **has accrued** to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, **the right shall be deemed to have accrued** on and not before the date of acknowledgement or the last payment:*
>
> *Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt."* (emphasis mine)

13. In giving effect to section 29(3), Counsel and I must necessarily, part ways. The evidence before the court is that the loan continued to be paid long after the first breach raised by Counsel. This means that the limitation period continued to be extended on each part payment. Time would not begin to run until the 31st December 2007 (one day after the last default), because

there were no further payments. The condition for payment of the entire sum and interest was then triggered. That was, in fact, the first date on which the right of action could have been brought. The limitation, under those circumstances would have expired on the 31st December 2013.

14. Neither the particular event (payment after default) nor a section akin to section 29(3) of our Limitation Act was considered in ***Reeves v Butcher*** **(ibid)**. On those grounds this case is easily distinguishable.

15. Counsel for the first Defendant also presented the case of ***Hemp v Garland (1843) 4 QB 519*** which (much like the case at bar) considered an agreement to pay by installments with acceleration of payment of the whole for default. What is clear for that judgment is that time did not begin to run from the moment the agreement was made (as per a demand promissory note). Instead, the **Reeves** principle was applied and the court found that *"the cause of action accrued upon the first default for all that then remained owing of the whole debt."*

16. Lord Denman CJ continued: *"(t)here was no other contract for forbearance or giving time than that which is expressed in or to be implied from the terms of the warrant of attorney."* That simple proviso leaves room enough for a provision such as section 29(3). It contemplates that there might be another mechanism through which time could property be extended. Such a section was not discussed in ***Hemp v Garland*** (ibid) either, because it simply did not then exist. Perhaps, legislators realized the need to change the common law hence the enactment of section 29(3) in 1953.

17. One may look at ***First Caribbean International Bank (Barbados) Ltd. V Orient Water Eastern Caribbean Supreme Court Claim No. ANU HCV 2008/0386*** for recent approval of the **Reeves** principle closer to home. I therefore state without reservation that the **Reeves** principle remains good law and its applicability has not changed. It is only the deemed date of the earliest default which has been statutorily altered here in Belize.

Is the action statute barred

18. Part 8.1(3) of the **Rules of the Supreme Court** directs that "(f)or the purpose of any enactment relating to the limitation of proceedings, a claim is brought on the day on which it is filed at the court office." It is undisputed that the claim in this matter was filed on the 30th June, 2010; a date well within the limitation period. Having found as I have, it can be no surprise that I now hold that the action is not statute barred.

19. By way of completeness, mention is made of an issue raised by counsel for the second defendant at the end of his submissions. He presented section 31(4) of the **Limitation Act** which directs that where part payment is made after the expiration of the limitation period, it binds only the payer and his successors, no one else. The effect of this, he urged, was that his client was not bound by the part payment. The simple answer is, since no payment was found to have been made after the limitation period, that section is likewise inapplicable to the matter before the court.

IT IS DECLARED AND ORDERED

1. The action herein is not statute barred.
2. Costs to be in the cause.

3. Case management conference is scheduled for 12th November, 2015.

SONYA YOUNG
JUDGE OF THE SUPREME COURT
6.11.2015