

Civil Case No.27 of 2011

Maria Tamakin and Others

Plaintiffs

V

Defendant

Ronphos Corporation

JUDGE: Eames, C.J.
DATE OF HEARING: 11, 12 June 2012
DATE OF JUDGMENT: 12 June 2012 (Ex tempore)
CASE MAY BE CITED AS: Tamakin v Ronphos
MEDIUM NEUTRAL CITATION: [2012] NRSC 9

CATCHWORDS:

Practice and Procedure – Application to strike out plaintiff’s action- Order 15 Rule 19 Civil Procedure Rules 1972 - statement of claim – Claim said to be statute barred pursuant to the UK Limitation Act 1939, as adopted – whether claim is an action for an account, an action for breach of contract, or claim under an enactment – Onus on application to show claim unarguable- Application refused.

APPEARANCES:

For the Plaintiff Mr D Aingimea (Pleader)
For the Defendant Mr R Kun (Pleader)

CHIEF JUSTICE:

1 This is an application to strike out the defence, brought pursuant to Order 15 Rule 19
of the Civil procedure Rules 1972, and the inherent jurisdiction of the court.

2 The plaintiff's claim is for payment of a specific sum for royalties with respect to
land known as PL "Atawad", portion No 128, Anabar District.

3 The plaintiff pleads that phosphate mining took place on that land between 1999 and
2001. The plaintiff pleads that from 1 July 2005 the defendant has failed to pay
royalties to which she was entitled.

4 Mr Kun submits that the action is statute barred by virtue of s.2 of the UK Limitation
Act 1939 as adopted in Nauru.

5 Omitting irrelevant portions, that statute reads in s.2(1)(a) and (d):

2. Limitation of actions of contract and tort, and certain other actions.

(1) the following actions shall not be brought after the expiration of six years
from the date on which the cause of action accrued, that is to say:-

(a) actions founded on simple contract or on tort;

(d) actions to recover any sum recoverable by virtue of any enactment,
other than a penalty or forfeiture or sum by way of penalty or
forfeiture.

6 Also relevant is s.2(2), which reads:

"(2) An action for an account shall not be brought in respect of any matter
which arose more than six years before the commencement of the action"

7 For this application Mr Kun primarily relies on s.2(2), contending that the plaintiff's
claim amounts to an action for account.

8 I pointed out to Mr Kun that the prayer for relief in the statement of claim does not include a claim for an account, but requires payment of a sum of \$186,444, plus interest. That sum is said to derive from the mining of 15,537 tonnes at \$12 per tonne.

9 Thus, I am not persuaded that this is a claim for an account. However, even if it is an action for account, the claim will be statute barred only if it is not brought within 6 years after the cause of action for account arose. Where by the express or implied terms of a contract the defendant is liable to account only on demand, the defendant becomes liable only when a demand for an account is made: See *Halsbury's Laws of England* 3rd Ed Vol 24 at par 415, page 226.

10 Mr Kun was unable to tell me when the demand for an account was made, and therefore when the time period commenced to run. I cannot therefore say that 6 years has expired on an action for account.

11 However, Mr Kun also claimed that this is an action on contract, which requires action to be brought within 6 years of the breach of contract: *Halsbury's Laws of England* 3rd Ed, Vol 19, at page 64. Again, he must persuade me that the breach of contract occurred more than 6 years before the action commenced. Mr Kun was unable to demonstrate that to be the case.

12 Finally, it might be said that this was an action to recover a sum recoverable by virtue of an enactment, thus also having a 6 year time limit under s.2(1)(d).

13 The plaintiff pleads her entitlement by virtue of s.27 of the *Ronphos Act* 2005 and s.14(1)(2) and(3) of the *Nauru Phosphate Royalties (Payment and Investment) Act* 1968. Thus it seems to be a claim for amounts recoverable under an enactment. The question arises, when does such a claim arise? Is it when the sums become due under the statutes, or when demand is made for payment, or when funds are available and should have been allocated?

14 An application to strike out an action will be granted only in a plain and obvious

case; the case must be unarguable: *Nagle v Fiedler* [1966] 2 QB 633 at 651 per Salmon LJ; see too *Drummond-Jackson v British Medical Association* [1970] 1 WLR 688. The absence of a cause of action must be clearly demonstrated: *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125, at 129 per Barwick CJ.

- 15 In this case the application has not clearly demonstrated that the action is statute barred on any of the three alternative bases of claim. Accordingly, the onus being on the applicant, the application is dismissed.

Geoffrey M Eames AM QC

Chief Justice

12 June 2012