IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT KINGSHILL

BERYL FRETT PITT, through her Agent ELEANOR ROSS Plaintiff vs. DAVID DREW, CLAUDE CHRISTIAN, Commissioner of Finance, and GOVERNMENT OF THE VIRGIN ISLANDS Defendants	CIVIL NO. 784/1983 ACTION TO AVOID TAX SALE & CERTIFICATE OF PURCHASE

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FINCH, Judge

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This matter came before the Court on defendant, David Drew's motion to dismiss. The simple issue raised by the motion is whether this action is time barred by limitations set in 5 V.I.C. 31(5)(A)? This Court holds that this action is governed by 5 V.I.C. 31(1)(A) and is not time barred by the limitations set therein. Accordingly, defendant's motion will be denied.

II. FACTS

Plaintiff alleges to be the owner of certain real property located in Estate Catherine's Rest, St. Croix, Virgin Islands. This property was sold at a public auction on February 25, 1977 due to non-payment of real property taxes. Defendant David Drew was issued a certificate of purchase by the Virgin Islands Government on April 19, 1977. Plaintiff brought this action on September 27, 1983, alleging that certain deficiencies were involved in the sale. She requests a present right of redemption, as well as the invalidation and cancellation of the certificate and records of title resulting from the sale.

III. DISCUSSION

The defendant in this case contends that plaintiff's action is time barred by the two year statute of limitations set out in 5 V.I.C. 31(5)(A). Plaintiff, on the other hand, maintains that this action is controlled by the twenty year statute of limitations provided in 5 V.I.C. 31(1)(A). Before deciding which statute applies, the nature of plaintiff's action must first be determined. In paragraph 4 of her complaint, plaintiff claims to be the owner of the subject property. She seeks a present right of redemption, and the invalidation and cancellation of the certificate and records of title resulting from the sale of the property. It is thus, clear, and this Court so finds, that plaintiff's action is one to recover title to real property.

There are three statutes which set limitations on the commencement of actions for recovery of real property. 5 V.I.C. 31(1)(A) requires that "actions for the recovery of real property, or for the recovery of the possession thereof" must be commenced within twenty years after the cause of action accrues. 5 V.I.C. 32(b) states that "an action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property." 5 V.I.C. 31(5)(A) requires that actions "to set aside a sale of real property for non-payment of real property taxes" must be commenced within two years after the cause of action accrues. Section 31 (5)(A) specifically addresses the type of action plaintiff seeks to bring. Indeed, plaintiff is attempting to recover title by setting aside a sale of property which was made for non-payment of property taxes. However, Section 31(5)(A) was amended on August 1, 1977 to make the two year limitation applicable to actions to set aside tax sales of real property. The amendment was not made to apply retroactively. Accordingly, it is inapplicable to this case since the sale of plaintiff's property occurred prior to August 1, 1977.

In the absence of 5 V.I.C. 31(5)(A), plaintiff's action must be governed by 5 V.I.C. 31(1)(A) and 32(b). Both statutes are broad enough to encompass an action to recover title of property. They both set the limit on commencement of such actions at twenty years after the cause of action accrues. Plaintiff's cause of action accrued on February 25, 1977, the date of sale. Her complaint was filed on September 27, 1983, and is therefore not time barred.

In conclusion, this Court holds that plaintiff's action is one to recover title to real property and is governed by 5 V.I.C. 31(1)(A). The Court further holds that this action was commenced within the applicable period of limitations. Accordingly, defendant's motion to dismiss is hereby denied.

DATED: 10/1/86

Raymond L. Finch