IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT KINGSHILL

PEDRO GAUTIER, BERNABE GAUTIER, GUILERMINA GAUTIER and ANA GONZALEZ Plaintiffs vs. ESTATE OF MONSERRATE GARCIA Defendant	CIVIL NO. 541/1985 ACTION TO DECLARE LEASE INVALID

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FINCH, Judge

MEMORANDUM OPINION AND ORDER
(Filed January 26, 1987)

I. INTRODUCTION

This matter came before the Court on a motion for summary judgment filed by the defendant, Estate of Monserrate Garcia. Plaintiff opposed the motion, and a hearing was held on November 10, 1986. At the hearing, the parties were permitted to submit additional supporting memoranda, however, plaintiffs have not submitted any. Defendant has submitted additional memoranda, and has presented the majority of the facts before the Court. The motion will thus be decided based upon these facts.

Defendant's motion raises two issues which challenge this Court's jurisdiction to entertain plaintiffs' suit. First, whether an action which seeks to declare a lease invalid, and to recover possession of property based upon undue influence and fraud, is governed by the statute of limitations for undue influence and fraud, or by the statute of limitations for recovery of possession of property? Second, whether this action was filed within the applicable statute of limitations? This Court holds that plaintiffs' action is governed by the statute of limitations applicable to undue influence and fraud, and that it was filed without such limitations. Accordingly, summary judgment will be entered in favor of the defendant.

II. FACTS

The facts in this case are straightforward and undisputed. Plaintiffs are the heirs of Julio Gautier. Mr. Gautier died on January 26, 1974, and his estate was adjudicated to plaintiffs on April 8, 1976. Plaintiffs have since then been the owners of Plot No.7A Whim Estates, the portion of Gautier's estate involved in the action subjudice. Defendant, Monserrate Garcia, is also deceased. Consequently, this action is brought against his estate.

On January 1, 1967, Julio Gautier and his wife, Anastacia Gautier, entered into a land lease with Monserrate Garcia. The lease gave Garcia possession of Plot No.7A Whim Estates for ten years. This lease was revised on March 3, 1969, thereby providing for three consecutive ten year renewal options as follows:

Period	Monthly Rent
1/1/67 to 12/31/68	$191.30
1/1/69 to 12/31/76	200.00
1/1/77 to 12/31/86	300.00
1/1/87 to 12/31/96	400.00
1/1/97 to 12/31/06	500.00

Both the 1967 and 1969 leases were written in English and duly recorded in 1967 and 1969 respectively. At the time of the lease revision in 1969, Plot No.7A consisted of 3.8 acres of bare land. Monserrate Garcia was a close personal friend of Julio Gautier, and was represented by counsel during negotiation of the revised lease. The lease was actually drafted by Garcia's counsel. Gautier, however, was not represented by counsel.

On August 4, 1974, plaintiffs filed a petition for settlement without administration of Gautier's estate. In that petition, they accepted the estate "purely, simply and unconditionally," and made themselves and the estate responsible for any debts that may be owing by Gautier. Plot No.7A consisted of almost half of Gautier's entire estate.

In December of 1984, the executors of the Estate of Monserrate Garcia exercised their option to extend the 1969 revised lease for the second ten-year period ending December 31, 1996. They gave plaintiffs notice of this exercise. Plaintiffs allege that they first became aware of the existence of the 1969 revised lease in December of 1984 upon receipt of defendant's renewal notice. Subsequently, they filed this action on April 29, 1985 alleging that the 1969 revised lease "was extracted from Julio and Anastacia Gautier by deceit, connivance and fraud by Monserrate Garcia." The complaint also alleges that Julio Gautier was led to believe everything related to him by Garcia because of their close friendship. Plaintiffs request that the 1969 revised lease be declared invalid.

III. DISCUSSION

A. Applicable Statute of Limitations

In their response to defendant's motion for summary judgment, and at the hearing, plaintiffs asserted that defendant assigned all his rights and interest in the 1967 lease to Two Williams, Inc. Thus, they contend, defendant had no authority to negotiate a revised lease. Neither the fact of an assignment nor the contention of want of authority to negotiate the revised lease was hinted to in plaintiffs' complaint or in any pleadings filed prior to the motion for summary judgment. Therefore, that claim is not properly before the Court and will not be considered.

The principal task in this case is to determine the applicable statute of limitations. The initial inquiry must be into the nature of plaintiffs' claim. Plaintiffs seek one remedy, i.e., the invalidation of the 1969 revised lease. The substantive bases for seeking that remedy is that the lease is the product of undue influence and fraud. Paragraph 7 of the complaint alleges that Mr. and Mrs. Gautier were aged and in ill health at the time of the 1969 revision. Paragraph 8 alleges that Mr. Gautier was uneducated and was unable to read or write in English. Paragraph 9 alleges that Garcia was "a close personal friend of Julio Gautier who was led to believe anything related to him by the lessee." Finally, Paragraph 10 alleges that "the revised lease was extracted from Julio and Anastacia Gautier by deceit, connivance and fraud by Monserrate Garcia." It is thus rather pellucid that plaintiffs' claim arises out of the alleged tortious conduct of Monserrate Garcia, namely undue influence and fraud.

Plaintiffs contend, nevertheless, that their claim is an action to recover property, and is based on a sealed instrument. Thus, they argue, the applicable statute of limitations is twenty years. Indeed, the statute of limitations for an action to recover possession of real property or an action upon a sealed instrument is twenty years. 5 V.I.C. 31(1)(A) and (C). However, such is not the nature of plaintiffs' action. Plaintiffs allege fraud in the inducement and as such they have two remedies. They "may rescind the transaction--tendering back what they have received and suing for what they parted with--or they may affirm the transaction and maintain an action in deceit" for money damages. Associated Hardware Supply Co. v. Big Wheel Distributing Co., 355 F.2d 114, 120 (3rd Cir. 1966); and Ingvoldstad v. Estate of Young, 19 V.I. 115, 121, (D.C.V.I. 1982). However, in either case the action is based on the moral wrong. Ingvoldstad, supra, at 122. This Court will "consider the nature of the right sued upon and not the nature of the remedy by which the wrong is sought to be rectified," for purposes of determining the applicable statute of limitations. Ingvoldstad, supra, at 121; and Davis & Cox v. SUMMA Corporation, 751 F.2d 1507 (9th Cir. 1985). The gravamen of plaintiffs' claim clangamorously sounds in undue influence and fraud. Accordingly, the general two year tort statute is applicable. 5 V.I.C. 31(5)(A); Ingvoldstad, supra, at 121; Tradewinds, Inc. v. Citibank, N.A., 20 V.I. 152, 157 (D.C.V.I. 1983).

B. Compliance With Applicable Statute

The next issue for decision is whether plaintiffs' action was commenced within the two year period prescribed for tort actions in 5 V.I.C. 31(5)(A)? 5 V.I.C. (32)(c) states that the limitation in an action for fraud "shall be deemed to commence only from the discovery of the fraud." This Court construes that statute to include commencement when the fraud should reasonably have been discovered. This construction serves the public interest of barring ancient claims, and has been recognized by the District Court. See Fountain Valley Corp. v. Wells, 98 F.R.D. 679, 684 nt. 12 (D.C.V.I. 1983). Accordingly, the statute of limitations for undue influence and fraud commences from the time such undue influence or fraud is, or should have been discovered.

Plaintiffs allege that they first learned of the existence of the 1969 revised lease in December of 1984 upon receipt of the "Notice of Exercise of Option". Thus, they contend, this action was timely filed on April 29, 1985. In essence, plaintiffs argue that the undue influence and fraud was discovered in December of 1984. Further, they admit, albeit inadvertently, that the mere existence of the lease revealed the alleged undue influence and fraud. This admission was made clear at oral argument. Plaintiffs' counsel stated that:

> "It was not until in 1984 when I was told that this lease, the second lease was news to them. The testimony in the deposition will show that at all times, old Gautier showed and possessed only the first lease... There are issues as to whether or not a man who can speak English, can sign a document in English, or can read English. You have a lease which projects 40 years at a fixed rental. Such a thing is too fantastic... But you determined in 1969 the rent to be in 1990. Such a thing is so gross that it just tears you apart."

The revised lease should have been discovered on August 4, 1974. On that day, plaintiffs filed a "Petition for settlement without administration" of Julio Gautier's estate. The estate included Plot No.7A Whim Estates. The plaintiffs "purely, simply, and unconditionally" accepted the estate, and made themselves and the property of Gautier liable for any debts owing by Gautier. Having done so, they had appropriate cause to examine the public records to determine what encumbrances, if any, existed on the estate. Such an examination would have revealed the existence of the 1969 revised lease and consequently the alleged undue influence and fraud. Plaintiffs failure to exercise due diligence where such action was not only reasonable, but rather simple is unjustifiable and crippling to their action. The undue influence and fraud should have been discovered on August 4, 1974. On that date, plaintiffs' cause of action accrued and the statute of limitations began to run. This action was brought on April 29, 1985. Accordingly, it was not filed within the applicable statute of limitations.

IV. CONCLUSION

Plaintiffs seek to invalidate the 1969 revised lease and to recover possession of the leased premises. The basis for their action, however, is undue influence and fraud. The general two year tort statute, 5 V.I.C. (31)(A), is thus applicable. Plaintiffs' cause of action accrued on August 4, 1974, when they should have discovered the alleged undue influence and fraud. Their action was therefore untimely filed on April 29, 1985. This Court finds that there is an absence of any genuine issue of material fact. Accordingly, summary judgment in defendant's favor is warranted as a matter of law.

DATED: January 26th 1987

Raymond L. Finch, Judge