Michigan Law Review

Volume 53 | Issue 8

1955

Limitations of Actions - Conversion

Irving L. Halpern
University of Michigan Law School

LIMITATION OF ACTIONS—CONVERSION—Defendant purchased and went into possession of land in 1944 at which time a logging donkey was upon the land. The donkey had been on defendant's land without having been moved or used since 1942. From 1944 to 1952 defendant made numerous inquiries as to the ownership of the donkey without success. Through various conveyances, beginning in 1946, and without any transfer of possession, plaintiff acquired title to the donkey in 1952. In May 1952, in order to further develop his land, defendant sold the donkey. In a suit by plaintiff for conversion of the donkey, the lower court ruled that the action was barred in 1945 by the three-year statute of limitations.[1] On appeal, *held,* affirmed. Plaintiff's cause of action accrued when the donkey came to rest on defendant's land, since the title of the true owner was then reduced to a right of immediate possession or to a cause of action in the event immediate possession was denied.[2] *Jones v. Jacobson,* (Wash. 1954) 273 P. (2d) 979.

Statutes of limitations do not begin to run until plaintiff has a cause of action that contains all the elements necessary to prosecute successfully such an action.[3] The issue in cases involving statutes of limitations thus becomes one of determining what elements constitute a particular action. A cause of action in conversion accrues when the defendant has asserted such dominion over property belonging to plaintiff as to be inconsistent with the rights of plaintiff, or in derogation, exclusion, or defiance of such rights.[4] Such acts therefore

[1] Wash. Rev. Code Ann. (1951) tit. 4, §4.16.080.

[2] There is some indication that the lower court ruled that the donkey had been abandoned. However, on appeal, this court proceeded on the assumption that such an abandonment had not taken place.

[3] Smith v. Seattle, 18 Wash. 484, 51 P. 1057 (1898); Strong v. Sunset Copper Co., 9 Wash. (2d) 214, 144 P. (2d) 526 (1941).

[4] Ashbrook v. Hammer, (Tex. Civ. App. 1937) 106 S.W. (2d) 776; Ray v. Pilgrim Health & Life Ins. Co., 206 S.C. 344, 34 S.E. (2d) 218 (1945); Martin v. Sikes, 38 Wash. (2d) 274, 229 P. (2d) 546 (1951).

may include a wrongful assertion of ownership as a denial of plaintiff's interest in the property but in any event must include a wrongful deprivation of plaintiff's possessory interests. It follows from this that when defendant has come into possession of plaintiff's property lawfully, a mere detention or failure to deliver does not constitute a conversion, there being no assertion of defendant's, or denial of plaintiff's, right in the property.[5] Under such circumstances defendant, to raise a cause of action, must manifest some evidence of adverse possession or must refuse delivery of possession on a demand by plaintiff.[6] The evidence in the principal case indicates that defendant, prior to his sale of the donkey, did not indicate any intent toward the property that was adverse to the interest of the owner. By seeking out the true owner over a period of eight years, he manifested his recognition of the true owner's title to the property, and until the sale of the property was not guilty of a conversion. The general rule is that where a demand is necessary to raise a cause of action, the statute of limitations does not start running until such demand is made.[7] However, where the power to raise the cause of action is in the owner and he is under no disability, courts of equity have been unwilling to allow him to defeat the policy of the statute of limitations by neglecting to make a demand. Thus by in effect applying an equitable doctrine of laches, the statute of limitations will be held to have started to run within a reasonable time after the owner could have made a demand.[8] What constitutes a reasonable time within which a demand will have been presumed to have been made depends on the circumstances but is usually held to be the period of the statute of limitations for bringing the action.[9] The court in the principal case based its decision on the finding that plaintiff's cause of action accrued when the chattel came to rest on the land but at the same time admitted that such cause of action came into being only in the event a request for immediate possession was denied. Since no demand of the defendant was ever made, the court had no basis for

[5] Obviously, if defendant acquires possession by unlawful means, a cause of action for conversion arises immediately and without further acts by plaintiff or defendant.

[6] Clay County Abstract Co. v. McKay, 226 Ala. 394, 147 S. 407 (1933); Mueller v. Technical Devices Corp., 8 N.J. 201, 84 A. (2d) 620 (1951); Lockit Cap Co. v. Globe Mfg. Co., 158 Wash. 183, 290 P. 813 (1930); Hanson v. Ostrander Ry. & Timber Co., 147 Wash. 104, 265 P. 159 (1928); Persson v. McKay Coal Co., 200 Wash. 75, 92 P. (2d) 1108 (1939). The courts generally agree that where a demand by plaintiff would be unavailing, it is not necessary to raise a cause of action. See Hochstetler v. Graber, 78 N.D. 90, 48 N.W. (2d) 15 (1951). If plaintiff had chosen to sue the present owner in replevin, he would have been subject to the same requirement, i.e., a timely demand must be made on a party who withholds possession lawfully. Edison Oyster Co. v. Pioneer Oyster Co., 22 Wash. (2d) 616, 157 P. (2d) 302 (1945).

[7] Washington Security Co. v. State, 9 Wash. (2d) 197, 114 P. (2d) 965 (1941); First Mortgage Loan Co. v. Allwein, 186 Okla. 491, 98 P. (2d) 910 (1940); Wilson v. Weber County, 100 Utah 141, 111 P. (2d) 147 (1941); Kaplan v. Reid Bros., 104 Cal. App. 268, 285 P. 868 (1930).

[8] Gossard v. Gossard, (10th Cir. 1945) 149 F. (2d) 111; Ilse v. Burgess, 28 Cal. App. (2d) 654, 83 P. (2d) 527 (1938); Bell v. Brady, 346 Pa. 666, 31 A. (2d) 547 (1943). See also 23 A.L.R. 10 (1923), 128 A.L.R. 158 (1940).

[9] Ilse v. Burgess, note 8 supra; Fallon v. Fallon, 110 Minn. 213, 124 N.W. 994 (1910); Beard v. Citizen's Bank of Memphis, (Mo. 1931) 37 S.W. (2d) 678.

holding that plaintiff had a good cause of action in conversion. The court's seemingly contradictory language is a result of its determination to find some basis for denying plaintiff his cause of action while at the same time recognizing that a cause of action is necessary to start a statute of limitations running. The court could have reached the same result by applying the laches concept which would estop plaintiff from denying that a demand and refusal was made when defendant asserted the statute of limitations defense to plaintiff's suit in conversion. In this way, the court would have avoided the confusion and ambiguity that prevails in the principal case. Some have raised objections to such an application of equitable estoppel on the grounds that defendant at all times had it in his power to start the statute running by manifesting some indication of adverse possession, and that until he did there could be no cause to start the statute. However, if such were the law plaintiff by his laches could force defendant to remain his involuntary bailee, a position that defendant could avoid only by committing some act that would subject him to a suit for conversion. In addition to imposing all the risks and burdens attendant on such a suit on the defendant, such a result would in effect be tantamount to requiring an innocent party to become a wrongdoer in order to create rights against him in another party who by his willful delay has avoided such rights. The equitable doctrine of laches was developed to avoid anomalies and it should be applied in cases where circumstances and policy warrant it.

Irving L. Halpern