

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2021-01916

BETWEEN

LAWRENCE MOLLENTHIEL

Claimant

AND

MEREDITH MOTTLEY-HAYNES

First Defendant

GEORGE ALCINDOR

Second Defendant

ROCK PROPERTIES LIMITED

Third Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: 8 March 2022.

Appearances:

1. Mr. N. Ramnanan Attorney-at-law for the Claimant.
2. Mr. G. Delzine instructed by Ms. D. Mano, Attorneys-at-law for the First Defendant.
3. Mr. R. Dolsingh Attorney-at-law for the Second and Third Defendants.

ORAL DECISION REDUCED INTO WRITING

1. Before the Court for its determination is the First Defendant's, Ms. Mottley-Haynes, Notice of Application filed on 5 November 2021 to strike out the proceedings filed herein by the Claimant, Mr. Mollenthiel.
2. The Court considered the pleadings and all the information before it and determined that it had to address its mind to the following issues:

- a. Whether the principles of res judicata and issue estoppel arise on the factual matrix that is before the Court;
- b. Whether the instant action amounts to an abuse of the Court's process having regard to the principles outlined in Henderson v Henderson [1843-60] All ER Rep 378 and;
- c. Whether the claim should proceed against the First Defendant.

Background:

3. In April 2018, an action, CV2018-01194 Meredith Mottley-Haynes -v- Rock Properties Limited, George Ferrel Alcindor, Lawrence Anthony Mollenthiel and Lorne Danquah Theophilus, was commenced by the Ms. Mottley-Haynes against Mr. Mollenthiel, the Second Defendant, the Third Defendant and Lorne Danquah Theophilus for the repayment of the sum of \$8,427,528.45 (the previous action).
4. In the previous action, the instant Defendant, Ms. Mottley-Haynes, pleaded *inter alia* that she had entered into an agreement for the sale of land with the Third Defendant, Mr. Mollenthiel. She asserted that based on the advice of Mr. Mollenthiel she transferred the sum of \$10,867,301.00 to him. It was pleaded that the agreement contained a clause which provided for the refund of the purchase price subject to the payment of a penalty. It was further pleaded that Ms. Mottley-Haynes requested a refund in US dollars and relied upon representations by the defendants that such a refund was permissible under the agreement. Eventually, due to persistent delays, excuses and doubts as to the Defendants' *bona fides*, Ms. Mottley-Haynes requested full repayment of the purchase price in TT dollars.
5. Mr. Mollenthiel failed to file a defence in the previous action and same was compromised before this Court in its entirety and a consent order was perfected on the 21 September, 2018. In December 2018, Ms. Mottley-Haynes initiated enforcement action against Mr. Mollenthiel which was premised upon his non-compliance with the consent order.

6. On the 13 March, 2019, Mr. Mollenthiel paid the sum of \$800,000.00 towards the judgment debt.
7. On the 14 March, 2019, after the consent order was entered, Mr. Mollenthiel applied to the Court out to strike out Ms. Mottley-Haynes' Claim Form and Statement of Case on the following grounds:
 - a. That Ms. Mottley-Haynes' claim was a false claim since:
 - i. Ms. Mottley-Haynes claimed that the transaction was for the sale and transfer of lands in St. Lucia whereas the true nature of the agreement was a forex transaction to convert TTD to US.
 - ii. Ms. Mottley-Haynes was a party to a forex transaction and fully aware that none of the defendants intended to transfer any land to her.
 - iii. Ms. Mottley-Haynes' statements in the claim were untrue and/or false
 - iv. No cause of action was disclosed as against Mr. Mollenthiel.
 - b. That Mr. Mollenthiel was suffering from a mental ailment at the time of the execution of the consent order.
 - c. That Mr. Mollenthiel was improperly represented by his attorneys.
8. Mr. Mollenthiel's application to strike out Ms. Mottley-Haynes' claim was dismissed on the 23 July, 2019. Mr. Mollenthiel's appeal was also dismissed on the 7 July, 2019. He was ordered to pay Ms. Mottley-Haynes' costs in both the Court of Appeal and the Court below.
9. Enforcement proceedings were recommenced, and Mr. Mollenthiel and his wife were extensively cross-examined on the 29 April, 2021 and 12 May, 2021 respectively.
10. The instant action was filed by the Claimant on 11 June, 2021 and amended on the 21 October, 2021.
11. To date, Mr. Mollenthiel has failed to pay the cost orders made against him in the sum of \$300,000.00 or to make any payment into court as security for costs. Additionally, the

outstanding judgment debt under the previous action stands at \$5,913,128.71 with interest up to the 10 December, 2021 in the sum of \$811,637.67.

The Instant Action:

12. In the instant action, Mr. Mollenthiel is seeking the variation of the consent order to remove liability from himself and place same upon the Second and Third Defendants. Alternatively, Mr. Mollenthiel is asking that the consent order be set aside, and the proceedings commence *de novo*.

13. The claim is based largely on the same facts and allegations presented in his previous application to strike out the consent order in the previous action i.e. the falsity of the claim in the previous action, his purported medical ailment and the lack of proper legal representation. Mr. Mollenthiel has however included new allegations of collusion between Counsel for Ms. Mottley-Haynes and his (the Claimant's) previous instructing attorney.

The Law:

14. . The Court considered **Halsbury's Laws of England (Volume 12A) (2020), paragraph 1568** which states as follows:

“... The purpose of the principle of res judicata is to support the good administration of justice in the interests of the public and the parties by preventing abusive and duplicative litigation, and its twin principles are often expressed as being the public interest that the courts should not be clogged by re-determinations of the same disputes; and the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter...”

15. In **Arnold & Others v National Westminster Bank PLC [1991] 2 AC 93** at page 104 , Lord Keith of Kinkel opined as follows:

““Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue ... issue estoppel ... has been extended to cover not only the case where a particular point has been raised and specifically determined in the earlier proceedings, but also that where in the subsequent proceedings it is sought to raise a point which might have been but was not raised in the earlier proceedings.”

16. In **CV2010-01850 Bhagwandat Rampersad v Gloria Cooblal and another** the Court at paragraph 33 stated the conditions necessary for a successful plea of issue estoppel:

“33. The conditions necessary for a successful plea of issue estoppel are:

- i. The same question was decided in both proceedings;
- ii. The judicial decision said to create the estoppel was final; and,
- iii. The parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.”

17. In **Henderson v Henderson [1843-60] All ER Rep 378**, Wigram V.C. opined that a claimant should be prevented from reopening a new case which should have been brought in earlier proceedings and said at page 381:

“...where a given matter becomes the subject of litigation in, and of adjudication by a Court of competent jurisdiction, *the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward only because they have, from negligence, inadvertence or even accident, omitted part of their case.* The plea of res judicata applies, except in special cases, not only to points upon

which the Court was actually required by the parties to form an opinion and pronounce a judgment, *but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.*”

(Emphasis Court’s)

18. The Court also addressed its mind to Part 26.2 of the CPR 1998 (as amended) and considered the Caribbean Court of Justice decision **Elroy Garraway v Ronald Williams and others [2011] CCJ 12 (AJ)** where at paragraph 17 the Court stated:

“17. The fundamental rule in Henderson v Henderson (supra) has stood the test of time, albeit it has been restated in more flexible terms in more recent times. There remains a basic obligation on a litigant to present the entirety of his case all at once rather than in a piecemeal fashion. Failure by one party to present the whole case at once is detrimental to the interests of the other parties and the efficiency of the judicial system. In assessing whether a defence of res judicata will succeed in barring new proceedings, the courts adopt a broad merits-based approach which takes into account all the relevant facts in order to decide whether in all the circumstances of the case a party is misusing or abusing the processes of the court by bringing proceedings in respect of issues that should reasonably have been brought in earlier proceedings (see Lord Bingham of Cornhill in Johnson v Gore Wood & Co).”

Resolution of the Issues:

19. Mr. Mollenthiel argued that issue estoppel does not arise since no defence was filed in the first proceedings and that the consent order in the previous action and his involvement in relation to same was triggered by fraud, misrepresentation and mistake. The procedural history in the previous action clearly demonstrates that no defence was filed on Mr. Mollenthiel’s behalf but interestingly he now asserts that a defence was not filed as he

formed the view that he was compromising the claim on the previous action on favourable terms.

20. This position struck the Court as odd. Mr. Mollenthiel in the instant proceedings has outlined that Ms. Mottley-Haynes' claim in the previous action was manifestly weak and hopeless and that he was in a position to easily expose the alleged fraud. If the position now asserted is accurate, the Court found difficulty in reconciling same with the course of action adopted by the instant Claimant in the previous action.
21. It is also strange that Mr. Mollenthiel failed to file the defence which he now advances and he was before this Court in the previous action and was party to the consent order which was entered.
22. The Court also notes that the very issues now raised in the instant proceedings mirror the issues which were raised in the application to set aside the consent order in the previous action.
23. As was noted by the Court of Appeal and by this Court in the previous action, the purpose of filing a defence enables the party to join issue with the material particulars relied upon by the opposing party and to present his version of the relevant and material facts. Where a litigant fails to do so then the Court must consider the facts as outlined by the opposing party which have not been challenged and determine whether or not there is entitlement based on the pleaded facts to the relief which has been sought.
24. Mr. Mollenthiel adduced no evidence that his failure to file a defence in the previous action or to assert that the course adopted which was induced by fraud, misrepresentation or mistake. The Court carefully considered the procedural history in the previous action and recalled that this Court had granted extensions of time for filing of defence on two occasions during its management of same. The Court also noted that the gist of Mr. Mollenthiel's complaint is premised on the alleged non-performance of a separate agreement which was effected between himself and the Second and Third Defendants, that

agreement purportedly outlined the arrangement which would be engaged as between the named parties in relation to the apportionment of repayment of Ms. Mottley-Haynes' judgment debt. Any such agreement does not affect, touch or concern the Ms. Mottley-Haynes' right to be paid. She was neither a party to nor was she privy to the said purported agreement or arrangement and as a stranger to the said arrangement it would be manifestly unfair and unjust to set aside the consent order on the basis that there was an agreement between the instant Claimant and the Second and Third Defendant in the previous action.

25. The consent order which was entered into before this Court in the previous action compromised the matter as between two parties – Ms. Mottley-Haynes on one hand and Mr. Mollenthiel and Second and Third Defendant on the other. Any separate agreement which was in play prior to the entry of the consent order as between Mr. Mollenthiel and the Second and Third Defendant with respect to the apportionment of repayment quite simply has no impact upon Ms. Mottley-Haynes.

26. The Court also considered the referenced case of **CV2013-03930 Mohammed v Harrilal** and formed the view that the factual matrix before this Court is such that the facts can be clearly distinguished from the operative facts in that case. This Court having looked at the procedural history and the law bears no uncertainty as to the fact that the consent order in the previous action compromised the entire action.

27. In the instant case Mr. Mollenthiel has instituted this further litigation which is premised on facts and matters which were available to him and which ought to have been pleaded by way of a defence in the previous action.

28. Mr. Mollenthiel's strikeout application in the previous action was not an interlocutory application. That application was instituted 6 months after the consent order was entered and at a time when the dispute regarding the issues of fact and law were at an end. The application was in fact made during the enforcement proceedings and enforcement proceedings were separate and distinct from the substantive action.

29. The law as it relates to issue estoppel clearly demonstrates that the principle operates so as to debar the re-litigation of previously determined facts. The claim to set aside the consent order is primarily based on the same facts that the Court considered in the previous action and ultimately these facts were not put before the Court during the pleading stage in the previous action.

30. The facts and/or issues which arose to be determined in the previous action are as follow:

- i. Whether Mr. Mollenthiel, Second and Third Defendants were liable to pay to Ms. Mottley-Haynes the total sum of \$8,427,528.45.

In the procedural application to strike out the consent order, the issues raised by Mr. Molenthiel were as follows:

- i. Whether Ms. Mottley-Haynes perpetrated a fraud on the Court with respect to the true nature of the transaction.
- ii. Whether Mr. Mollenthiel lacked proper legal representation in the matter.
- iii. Whether Mr. Mollenthiel was suffering from a mental impairment when the matter was compromised.
- iv. Whether the words in the consent order which Mr. Mollenthiel signed were different from the order which was presented and perfected.
- v. Whether Mr. Mollenthiel believed that the consent order related to the costs of the proceedings.

31. In the instant action, the Claimant is seeking to re-litigate all these issues albeit with the production of a more detailed narrative.

32. With respect to the principle as to the finality of court decisions, this Court is resolute in its view that the substantive issues in the previous action were definitively determined by the consent order entered on 21 September 2018.

33. The question of whether a consent order is considered a final decision for the purpose of res judicata was addressed in **Re South American and Mexican Company ex parte Bank of England [1895] 1 Ch. 37** where Lord Herschell stated at page 50:

““The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action”.

34. With respect to the application to set aside the consent order, the Court comprehensively dealt with the issues raised therein (and notes that they are all repeated in the instant action), dismissed the said application and its ruling was upheld on appeal.

35. The parties to the instant action are also the same parties in the previous action.

36. When the Court adopts a broad based merit approach it is also forms the view that the principles outlined in *Henderson v Henderson* applies in the instant case so as to prevent the instant action from proceeding. This is because, all the facts and matters which the Claimant seeks to adduce in support of his claim were available to him in the previous action. In fact, when one considers the pleadings put forth in the present action, they closely resemble the facts and matters deposed in the affidavits filed by the Mr. Mollenthiel in support of his application to strike out. The Claimant’s case in this action relies almost exclusively on facts and matters which were within his knowledge and available to him in the previous action.

37. For the reasons which have been summarised by this Court there is simply no basis in law or fact which can justify the continuation of the instant action.

38. The Claimant is estopped from re-litigating issues of fact and law which were never in issue due to his decision and failure to file a defence in the previous action. In addition, Mr. Mollenthiel unsuccessfully raised most of these issues in his application to set aside the consent order.

39. This claim is centred upon the notion that Mr. Mollenthiel had a defence to the claim in the previous action and that that action was misconceived and/or fraudulent and/or premised on a mistake of fact. The time to have advanced that position has long gone. Mr. Mollenthiel entered into a consent which effectively resolved all of the substantive issues in that matter. Consequently, this Court is firmly of the view that the instant action amounts to an abuse of process as Mr. Mollenthiel seeks to set aside a consent order based on a defence to a claim in the previous action when he never availed himself of that opportunity previously.

40. The Court also notes that a significant portion of the Amended Statement of Case in the instant action is devoid of any cause of action as against Ms. Mottley-Haynes. Ultimately, Mr. Mollenthiel cannot in a structured process litigation be afforded several bites at the same cherry, especially when he refused to take that critical bite and to join issues of fact and outline his defence in the previous action. Mr. Mollenthiel instead elected to enter into a consent order which effectively determined all of the material issues which were outlined in the Statement of Case in the previous action.

41. For the reasons advanced this Court strikes out the instant proceedings on the ground that it amounts to an abuse of process and having applied the law as to issue estoppel and the principles outlined in *Henderson v Henderson* (supra).

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FRANK SEEPERSAD

JUDGE