

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCv2025/0371

BETWEEN:

JULIE CHANDLER

Claimant

and

CIBC FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD.

Defendant

Appearances:

Mr. Lawrence Daniels and Mr. Jamal Gordon, Counsel for the Claimant
Mr. Clement Bird, Counsel for the Defendant

2026: February 5th, 6th.
March, 10th (*Reissued*)

DECISION

[1] **MICHEL, M.:** Before the Court is an application filed by the Defendant on 16th September, 2025 for an order that the Claimant's statement of case be struck out and for all further proceedings in this action to be dismissed with prejudice on the grounds that it is frivolous and vexatious and an abuse of the process of the Court ("**the strike out application**"), in that:-

- a. This action is brought for the same or substantially the same relief/remedy as an action previously finally determined between the same parties in the High Court intituled Julie Chandler v CIBC First Caribbean International Bank (Barbados) Limited ANUHCv2024/0273;
- b. The action is res judicata and/or issue estoppel, the issues in this action having been determined and adjudicated upon in the said action;
- c. The Claim discloses no/no reasonable cause of action; the statement of claim and each purported fact stated therein fail to state facts sufficient to constitute a cause of action.

[2] The Defendant also seeks costs on the strike out application.

- [3] The Defendant's strike out application was supported by the affidavit of Aika Drakes together with exhibits filed on the same day as the notice of application. A supplemental affidavit of Desiree Irish together with exhibits was filed in support of the strike out application on 4th December, 2025.
- [4] The Defendant's strike out application is made on the following grounds:-
- (i) At the date of filing of the statement of case the complaints raised had been subject to a final order in prior proceeding of this Court, identical in all material respects – and thereby subject to the doctrine of 'res judicata'.
 - (ii) More particularly, the issues/contentions raised herein relative to the Defendant's conduct in respect of a pending public auction were:
 - (1) fully ventilated in the prior proceedings via affidavit evidence and legal submissions previous to the discharge of the ex parte injunction/'striking out' of that claim and/or were eminently relevant to and available to be addressed during the course of that action and ought properly to have been raised then.
 - (2) The claim itself discloses no/no reasonable cause of action. The statement of claim and each purported cause of action stated therein fail to state facts sufficient to constitute a cause of action.
 - (iii) The Applicant has been forced to defend itself anew, and incurring unnecessary cost and expense in circumstances where the Claimant and/or counsel were fully cognizant of the prior proceedings, and the effect of the final order:-
 - (1) The Claimant was present and represented throughout by Counsel.
 - (2) Learned Counsel was granted unlimited access to the prior case file, to include the statements of case, legal submissions and the final order.
 - (3) The Claimant/counsel accordingly had no/no legitimate expectation of successful prosecution of this claim.
- [5] The Defendant's strike out application is opposed by the Claimant. On 11th November, 2025 the Claimant filed a notice of objection to the strike out application, objecting to the application on the following grounds:-

- (i) That the Claimant's claim form and statement of claim disclose the appropriate cause of action in damages and Declarations pursuant to the Eastern Caribbean Supreme Court Act.
- (ii) That the Claimant contends that the principal and interest was wrongly calculated and the Claimant seeks a Declaration of the correct amount.
- (iii) The Claimant has put aside a lump sum of \$92,000.00 and is willing and able to make monthly payment of \$4,000.00 which represents \$2,000.00 towards the current arrears.
- (iv) The sum of \$2,000.00 towards the current Mortgage amount.
- (v) That this matter is different from the other matters which previously came before the court in that the corrected principal and interest were never adjudicated upon and the Claimant never sought Declarations from the Court.

[6] No evidence in response to the Defendant's evidence in support of its application was filed by the Claimant.

Background

[7] It is necessary to set out the background to these proceedings in some detail to place the Defendant's strike out application into its proper context.

[8] Between about 2009 and 2011, the Claimant obtained loans from the Defendant secured by way of a legal charge over a parcel of land more particularly described as Registration Section: South Central; Block: 15 2187 B; Parcel: 556 "**the Property**"). The Claimant signed two facility letters in respect of the loans and a charge and variation of charge over the Property as security for the loans wherein the Defendant's power of sale was expressly acknowledged by the Claimant.

[9] The Claimant defaulted on her loan, and after first issuing a notice to pay off in or about 2016, the Defendant subsequently sought to exercise its power of sale of the Property to recover the sums owed by the Claimant.

[10] By fixed date claim form and statement of claim filed on 15th July, 2024 ("**the Previous Claim**"), the Claimant commenced proceedings against the Defendant for the following declarations and orders:-

- (1) A declaration that the auction sale scheduled for 9th of July 2024 in respect of the Claimant's property located at Clarke's Hill in the parish of St. John, in Antigua and Barbuda, and more particularly described as Registration Section South Central, Block 15 2187B; 15, Parcel: 556 was null and void

- (2) A declaration that to auction for sale the said property as described in the declaration sought above without a minimum reserve price is unlawful.
- (3) An order that the Defendants set a reserve price to ensure that the equity or other beneficial interests of the Claimant are secured;
- (4) A declaration that the Claimant is entitled to a fair market value from any auction sale or sale by private treaty of the said property;
- (5) A declaration that auctioning for sale of the Claimant's property as described above without proper notice to the Claimant, is unlawful;
- (6) Such order relief(s) or order(s) as the court deems fit.
- (7) Damages to be assessed
- (8) Costs in accordance with the Civil Procedure Rules (Revised Edition) 2023;

[11] On 4th July, 2024 days before the Claimant had filed the Fixed Date Claim Form and statement of claim in the Previous Claim, the Claimant applied to the Court for an interim injunction to prohibit the Defendant from carrying out a public auction or otherwise selling the Property. On 8th July, 2024 the Court granted the Claimant an interim injunction prohibiting the Defendant from auctioning or otherwise selling the Property.

[12] The Defendant subsequently applied to discharge the injunction and to strike out the Previous Claim. Following the hearing of the Defendant's application, by order dated 12th November, 2024 a judge struck out the Claimant's Fixed Date Claim, discharged the interim injunction and ordered that the Claimant pay the Defendant costs in the sum of \$2,000.00.

[13] In his ruling on the Defendant's application to discharge the injunction and to strike out the Previous Claim, Williams J cited the English case of **Cuckmere Brick Co. v Mutual Finance Ltd.**¹ and the judgment of the Court of Appeal in **Caribbean Banking Corporation v Alpheus Jacobs.**² The learned judge concluded his ruling on the Defendant's application by stating:-

“In light of the leading authorities quoted above, the Claimant's claim is manifestly unsustainable. Firstly, the Claimant no longer has interest in the property itself but only in the proceeds of any sale if there is a surplus. Secondly, valuation is not an exact science and a mere difference in valuations is not enough to indicate that the bank has breached its obligation pursuant to section 75 of the Registered Land Act. Finally, the bank is not the trustee for the Claimant and once there is no evidence of malfeasance or bad faith it is entitled to realise its

¹ [1971] Ch D 949.

² Antigua and Barbuda High Court Civil Appeal No. 10 of 2004 (delivered 6th October 2008, unreported).

security. I therefore have no alternative but to strike out the claim and discharge the injunction previously granted.”

[14] The Claimant subsequently commenced the Present Claim against the Defendant by claim form and statement of claim filed on 30th July, 2025 (“**the Present Claim**”), claiming the following in her statement of claim:

- (1) A declaration that the principal amount of Two Hundred and Seventy Thousand One Hundred and Forty-Six Dollars and Eighteen Cents (\$270,146.18) is incorrect and should be Two Hundred and Six Thousand Two Hundred and Sixty-Eight Dollars and Forty-One Cents (\$260,268.41).
- (2) A declaration that the interest of One Hundred and Seventy-Six Thousand and Sixty-Four Dollars and Thirty-Two Cents (\$176,064.32) is incorrect, and the correct amount should be One Hundred and Seventy Thousand Eight Hundred and Forty-Six Dollars and Thirty-Four Cents (\$170,846.34).
- (3) A declaration that the payoff Notice issued on the 23rd day of March, 2022 with the sum of Three Hundred and Forty Thousand, Four Hundred and Twenty-One Dollars and Twenty-Seven Cents (\$340,421.27) is incorrect and should be declared null and void and of no effect.
- (4) That the Claimant be allowed to pay the sum of Eighty Thousand Dollars (\$80,000.00) towards the correct arrears of interest and the monthly sum of Four Thousand Dollars (\$4,000.00) to be divided as Two Thousand Dollars (\$2,000.00) towards the correct principal amount and Two Thousand Dollars (\$2,000.00) towards the correct arrears.
- (5) Prescribed costs.
- (6) An Order to stop the Auction sale of the Claimant's House scheduled to be held on Thursday the 31st day of July, 2025 at 1:00 pm due to the fact the Defendant is proposing to sell the Claimant's property below the market value of Seven Hundred and Sixty Five Thousand Dollars (\$765,000.00) as opposed to current value of One Million, Eight Six Thousand, Two Hundred and Thirty-Three Dollars and Eighty Cents (\$1,086,233.80)
- (7) Any other relief this Honourable Court deems fit.

[15] In her Statement of Claim in the Present Claim, the Claimant pleaded *inter alia*:-

- “16) That the Defendant Bank calculated the interest rate on the wrong principal amount and the Claimant will contend that she is not indebted to the bank in the sum of Three Hundred and Forty

Thousand Four Hundred and Twenty-Seven Dollars and Twenty Seven Cents (\$340,427.27) as of the 23rd day of March, 2022 with an interest rate of 8.50% as such the payoff notice amount is wholly incorrect and the Claimant's property cannot go up for auction on an incorrect notice interest or sums that are not due to the Claimant. Such notice is therefore invalid.”

[16] The Claimant further pleaded in her statement of claim:-

- “18) On the 18th day of February, 2025 the Defendant's Attorney wrote to the Claimant's Attorney by Letter which indicated that the outstanding principal was Two Hundred and Seventy Thousand One Hundred and Forty-Six Dollars and Sixteen Cents (\$270,146.18) with the outstanding interest of One Hundred and Seventy-Six Thousand and Sixty-Four Dollars and Thirty-Two Cents (\$176,064.32).
- 19) That the Defendant on the 18th day of June, 2024 put the Claimant's property up for auction and the said property is set for an auction sale on Thursday, 31st day of July, 2025 at 1:00 p.m...
- 20) That the Claimant has made provisions to pay a substantial sum of Eighty Thousand Dollars (\$80,000.00) towards the correct arrears of interest and has written a Cheque #57858 dated the 21st day of July, 2025...
- 21) That the Claimant is proposing to make monthly payments in the sum of Four Thousand Dollars (\$4000.00) which will be distributed as Two Thousand Dollars (\$2000.00) towards any outstanding arrears and the other Two Thousand Dollars (\$2000.00) towards the principal amount...
- 22) Further on the 28th day of July, 2025 the Claimant had her Attorneys Daniels, Phillips and Associates write to the Defendant Bank Attorneys making the representation to pay the sum of Eighty Thousand Dollars (\$80,000.00) towards the correct arrears and Four Thousand Dollars (\$4,000.00) per month to be distributed Two Thousand Dollars (\$2000.00) towards the corrected arrears and the correct principal amount...
- 23) That this is unfair for the Claimant's property to be put up for sale with the incorrect interest and principal was applied by

the Defendant and as such the Notice to pay off would be incorrect. As of the 6th day of January, 2025 the Defendant has put the Claimant's property up for sale for the sum of Seven Hundred and Sixty-Five Thousand Dollars (\$765,000.00). The Claimant's property has a market value of One Million, Eight Six Thousand Two Hundred and Thirty-Three Dollars and Eighty Cents (\$1,086,233.80)...

- 24) The correct principal amount is Two Hundred and Six Thousand Two Hundred and Sixty-Eight Dollars and Forty-One Cents (\$206,268.41) and the interest would be One Hundred and Seventy Thousand Eight Hundred and Forty-Six Dollars Thirty-Four Cents (\$170,846.34) the Claimant is willing and able to make payments towards the correct arrears of interest in the sum of Eighty Thousand Dollars (\$80,000.00) and monthly payment of Four Thousand (\$4,000.00) of which Two Thousand Dollars (\$2,000.00) to be applied to the arrears while Two Thousand(\$2,000.00) to be applied to the principal."

Striking Out a Claim as an Abuse of Process

- [17] It is well settled that the striking out of a party's statement of case is a drastic step; however, the law provides for instances where striking out is appropriate including where a claim is considered to be an abuse of process.

- [18] In **Hunter v Chief Constable of the West Midlands Police**,³ Lord Diplock described the Court's power to strike out a matter as being an abuse of process as follows:-

"The inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people."

- [19] In addition to the Court's inherent power, the Court's power to strike out a matter as an abuse of process is expressly contained in rule 26.3(1)(c) of the Civil Procedure Rules (Revised Edition) 2023.

³ [1981] UKHL 13.

- [20] What can be gleaned from Lord Diplock's description of the Court's power to strike out a matter as an abuse of process is that a litigant's conduct will be considered an abuse of the Court's process where the litigant engages in conduct which, whilst not wholly inconsistent with the rules, is nonetheless a use of the Court's process 'for a purpose that is different from the ordinary and proper use of the court's process'. As stated by Drysdale J in **HMB Holdings Limited v Gaston Browne**,⁴ an abuse of process is 'an improper use of the Court's process in a way which differs or is contrary to its intended ordinary use.'
- [21] In **St. Kitts Nevis Anguilla National Bank Ltd v Caribbean 6/49 Ltd.**, Barrow JA listed 're-litigating a matter that has been decided and bringing a second action based on the same cause of action as forms the basis for the proceedings in existence at the time of the first action,' as among what he described as textbook examples of abuse of process.

Is the Claimant's Claim Res Judicata?

- [22] Learned Counsel for the Defendant first argued that the Claimant's claim should be struck out on the basis that the claim is res judicata. Learned Counsel for the Defendant set out the law on res judicata in his written submission referring to the decision of Thom J in **Kathleen Tyrell v Horace John et al**⁵ and the judgment of the Court of Appeal in **Heritage Plantation Condominiums Ltd et al v Doche and Doche Inc.**⁶
- [23] Put simply, the doctrine of res judicata arises when a decision given by a judge or tribunal with jurisdiction over the cause of action and the parties, disposes, with finality, of a matter decided so that it cannot be re-litigated by those bound by the judgment, except on appeal. In **Levi Maximea v The Chief of Police et al**,⁷ Webster JA [Ag.] further explain the principle of res judicata as follows:-

"The principle applies not only to the decisions of the earlier court or tribunal but to any issue or matter that could have been dealt with in earlier proceedings. This latter aspect of the principle is known as the rule in Henderson v Henderson. The rule is encapsulated in the dictum of Sir James Wigram VC in the following terms–

"[W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the

⁴ ANUHCVP2017/0430 (delivered 8th March 2022, unreported) at para 38.

⁵ Saint Vincent and the Grenadines High Court Claim No. 97 of 2004 (delivered 21st October 2005, unreported).

⁶ SKBHCVP2024/0002 (delivered 23rd July 2025, re-issued 20th August 2025, unreported).

⁷ DOMHCVP2020/0009 (delivered 7th December 2023, unreported).

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 matter which might have been brought forward as part of the subject in contest, but which was not 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.”

[24] Webster JA went on to state that:-

“It is apparent from these cases that one of the fundamental differences between res judicata in the narrow sense and the rule in Henderson is that a decision on the merits in the first claim is required for res judicata to operate, while a decision of the first court is not required for the rule in Henderson to apply. The rule applies as a matter of public policy to prevent abuse of the court’s process whether or not there is a decision on the issue that is sought to be re-litigated.”

[25] In his written submissions, learned Counsel for the Defendant argued that in July 2024 the Claimant sued the Defendant seeking to restrain its power of sale of the property on the pleaded basis that the Defendant intended to rely on a valuation which 'undervalued' the Property. Learned Counsel for the Defendant pointed out that an ex parte injunction was granted and the Defendant Bank applied for its discharge, and dismissal of the proceedings. He submitted that the valuation issue was extensively canvassed by the Parties, and the Court after hearing the Parties, discharged the injunction and dismissed the Claimant’s claim with costs. Learned Counsel for the Defendant submitted that the matter was heard and determined by the Court on its merits.

[26] Learned Counsel for the Defendant further submitted that the calculation issue now raised by the Claimant is of no assistance to the Claimant, it having been entirely within the purview of the Claimant to raise and form part of the Previous Claim. Learned Counsel for the Defendant submitted that specifically that in the Present Claim, no new facts are adduced, and no new documentary evidence is presented which was not previously before the Court and/or were unknown or incapable of being addressed then. Learned Counsel for the Defendant further contended that the calculation issue that the Claimant now

seeks to litigate does not require litigation but a simple clarification from the Defendant Bank as to how the figures have been arrived at.

- [27] In his oral submissions, learned Counsel for the Defendant readily accepted that the issue of calculation of the outstanding principal and interest on the Claimant's loan is a new issue being raised by the Claimant and did not form part of the Previous Claim, however, he submitted that the matter could have and ought to have been raised in the Previous Claim and for the Claimant to commence further litigation on an issue that could have formed part of her Previous Claim when the circumstances of this claim are considered, it is an abuse of process.
- [28] Learned Counsel for the Claimant has submitted on the other hand that the Defendant contended that the Present Claim is *res judicata* in that the Claimant has challenged the valuation of her Property. Learned Counsel for the Claimant submitted however that the Present Claim raises a fundamental issue as to whether or not the principal and interest claimed by the Defendant is correctly calculated. Learned Counsel for the Claimant submitted that this is a new issue which was not canvassed before the Court in any other claim that this Court dealt with on the Claimant's behalf before.
- [29] Learned Counsel for the Claimant submitted that the Claimant seeks a declaration pursuant to Section 22 of the **Eastern Caribbean Supreme Court Act**⁸ which states 'no action shall be open to objection on the ground that a merely declaration decree or order is sought.' Learned counsel for the Claimant submitted that the Bank in their notice to pay off has demanded repayment of all monies that was secured by way of charge which has been registered on the Property. He submitted that the Claimant in her claim is seeking a declaration for the Court to make an order as to the correct amount, which is to be paid and more importantly, that the Claimant's equity in her property far surpass the principal amount that the Defendant would have loaned to the Claimant.
- [30] In his oral submissions, learned Counsel for the Claimant conceded that the calculation issue now raised in the Present Claim could have been raised in the Previous Claim. Learned Counsel for the Claimant essentially placed the blame for the Claimant's failure to do so at the feet of other counsel who represented the Claimant in the Previous Claim. Learned Counsel for the Claimant submitted that the Claimant's previous Counsel could have looked at the matter more wholistically and the issue could have been raised before, however, he submitted that the Claimant should not be punished for the omission of her former Counsel. He therefore urged the Court not to penalize

⁸ Cap. 143, Laws of Antigua and Barbuda.

the Claimant for the failure to put forward her entire claim in the Previous Claim. He submitted that there are triable issues raised on the Claimant's Present Claim and that on the authority of **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al**,⁹ the Claimant's claim should not be struck out.

Discussion on Res Judicata

- [31] I would start by saying that it appears there is no disagreement between the Parties that in the Previous Claim, the Claimant sought to restrain the Defendant's power of sale of the Property on the pleaded basis that it intended to rely on a valuation which undervalued the Property. In essence, the Claimant was challenging the valuation of the property. There can be no dispute that this matter was fully ventilated before Williams J. The issue of the valuation of the Property by the Bank being different from the Claimant's valuation of the Property was ruled upon on its merits by the learned judge. The learned Judge after having considered the evidence and the pleadings and arguments of Counsel, concluded that the Claimant's claim was manifestly unsustainable and struck it out. There is no indication that this decision has been appealed or set aside.
- [32] In the Present Claim, the Claimant seeks declarations as to the alleged correct principal and interest she owes to the Defendant Bank. The Claimant also seeks a declaration that the notice to pay off the loan was based on an alleged incorrect sum and should be declared null and void and of no effect. The Claimant further specifically sought an order to stop the auction sale of the Property which was scheduled to be held on Thursday the 31st day of July, 2025 at 1:00pm due to the allegation that 'the Defendant is proposing to sell the Claimant's property below the market value of Seven Hundred and Sixty-Five Thousand Dollars (\$765,000.00) as opposed to the current value of One Million, Eight Six Thousand Two Hundred and Thirty-Three Dollars and Eighty Cents (\$1,086,233.80).'
- [33] In light of the law on res judicata as canvassed in the Claimant's written submissions and on the authority of **Levi Maximea**, it is clear that in so far as all the relief being claimed by the Claimant on the Present Claim is not the same or substantially the same as the Previous Claim, the claim as a whole cannot be said to be res judicata in the strict sense.

⁹ ANUHCVP1997/0020A (delivered 8th April 1998, unreported).

- [34] Notwithstanding, in my view, the issue of the valuation of the Property as a basis for restraining the Defendant Bank from exercising its power of sale was conclusively determined by the Court in the Previous Claim and in the absence of any changed circumstances of a material nature, I consider that issue to be *res judicata* in the strict sense.
- [35] Matters do not end here however, as the question still remains whether the bringing of the Present Claim by the Claimant is *res judicata* in the broader **Henderson v Henderson** sense in that it is an abuse of process, sometimes called the rule in **Henderson v Henderson** or **Henderson v Henderson** abuse of process.
- [36] As previously stated, the rule in **Henderson v Henderson** is to the effect that the principle of *res judicata* which prevents parties bound by the decision of a court over a particular matter from reopening the same matters by subsequent proceedings, does not apply only to matters decided upon by a court in earlier proceeding, but also to any issue or matter that could have been dealt with in the earlier proceedings. The rule in **Henderson v Henderson** recognizes that it may be abusive for a party to raise in subsequent proceedings any matter which it ought to have raised in the earlier proceedings. As stated by Webster JA in **Levis Maximea**, '[t]he rule applies as a matter of public policy to prevent abuse of the court's process whether or not there is a decision on the issue that is sought to be re-litigated.'
- [37] The public interest aspect of the rule in **Henderson v Henderson** was examined in greater detail in **Johnson v Gore Woods & Co.** The dicta of Lord Bingham is instructive:-

"It may very well be, as has been convincingly argued (Watt, "The Danger and Deceit of the Rule in *Henderson v Henderson*: A new approach to successive civil actions arising from the same factual matter " (2000) 19 CLJ 287), that what is now taken to be the rule in *Henderson v Henderson* has diverged from the ruling which Wigram V-C made, which was addressed to *res judicata*. But *Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to

be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. **That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.** As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not...While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances. Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice. (Emphasis added).

[38] As this Court stated in Isabelle Piquenet et al v Antigua Slipway et al:-¹⁰

“[23] “This policy-focused view calls for a broad-based approach in considering subsequent litigation. It is not just whether a party is estopped from pursuing a cause of action or issue which was determined in previous litigation (*res judicata* in the strict sense) but whether the conduct of a party bringing a claim or raising a defence in later proceedings that should have or could have formed part of the earlier proceedings, when taken as a whole is an abuse of process of the court. Thus, the rule in **Henderson v Henderson** should not be approached restrictively.”

[39] In considering the application of the rule in Henderson v Henderson, Webster JA[Ag.] in Levi Maximea, a case where a claimant in the court below brought

¹⁰ ANUHCv2023/0123 (22nd December 2023, unreported).

subsequent proceedings concerning the same subject matter which were struck out by the judge in the Court below, Webster JA [Ag.] noted the following:-

“This, in my opinion, is a paradigm case of an abuse of the process of the court. Mr. Maximea has had full access to the courts, and it appears that he is prepared to file successive claims based on substantially the same facts and circumstances until he gets the result that he wants. Regrettably for him, the court does not accommodate that type of litigant or litigation. **The commencement and hearing of a claim is not a dress rehearsal—it is the final act and the claimant must present all the issues on which he or she intends to rely. Failure to do so will expose the litigant, as has happened in this case, to an application by the defendant, or an order by the court of its own motion, to strikeout the new claim as an abuse of the court’s process.**” (Emphasis added).

[40] Having considered the pleadings in the Present Claim and the Pleadings in the Previous Claim, and having considered the evidence of the Claimant, I agree with the submissions of learned Counsel for the Defendant that the bringing of the Present Claim is an abuse of process and further that it should be struck out.

[41] At paragraphs 8 and 9 of the Statement of Claim in the Previous Claim, the Claimant recognized that she was in default on her loan with the Defendant Bank and that the loan accordingly fell into arrears. The Claimant also pleaded that she received a notice in 2022 from the Defendant Bank stating the balance she owed on the loan. The Claimant further pleaded at paragraph 15 of the statement of claim in the Previous Claimant that:-

“The Claimant is aware that she defaulted on the loan payments, and that the loan institution, i.e. the 1st named defendant can exercise power of sale; however, the claimant is prepared to be able to make a monthly payment of \$4,000.00 a month selling of Roti which I prepare and make from home.”

[42] Thus the Claimant again acknowledged her indebtedness to the Bank and also recognized the Defendant Bank’s right to exercise its power of sale. The Claimant also specifically pleaded the sum she was notified by the Bank in 2022 that she was to pay.

[43] In the Previous Claim, the gravamen of the Claimant’s claim was that there was a risk that the Property could be sold for a significant undervalue, and she alleged that this would be especially low since no reserve price had been set. A

significant basis of her argument was that the Bank was relying on an incorrect valuation.

[44] I agree with learned Counsel for the Defendant that all the facts grounding the Present claim were known to the Claimant at the time of the filing of the Previous Claim. By her previous claim, the Claimant was seeking to restrain the Defendant Bank from selling the Property. The Claimant could have and should have raised in that claim any concerns about the calculation of the arrears on her loan if it were a legitimate matter for which she required the Court's intervention. The basis of the Defendant exercising its power of sale in the Previous Claim was the notice to pay off that the Claimant is challenging in the Present Claim.

[45] The Present Claim together with an application for an injunction were filed by the Claimant on 30th July, 2025 the day before an auction sale of the Property was scheduled. In the Present Claim, in addition to seeking an order to stop the auction sale of the Property scheduled for the following day 31st July, 2025 the Claimant sought to raise the alleged miscalculation by the Bank of the principal and interest on the outstanding loan and on that basis sought an order that the pay off notice issued on 22nd March, 2022 was null and void. For a second time she sought to restrain the Bank's power of sale, this time, not only on the basis of an alleged undervaluation of the Property, but also on her new allegation that the Property could not be sold by auction or otherwise based the pay-off notice.

[46] This conduct in my view is abusive. It is plain that the Claimant is seeking to restrain the Defendant's exercise of its power of sale of the Property over her default of the loan, which default, on the Claimant's own pleadings in the Previous Claim, first occurred as far back as 2015. The Claimant had every opportunity to bring her entire case forward when she filed the Previous Claim in 2024. The Claimant had before her all the information as to the principal and interest the Bank claimed. She recognized that notice by the Bank in the Previous Claim and attempted to obtain an order from the Court to restrain the Bank from exercising its power of sale on the basis that the Bank was relying on a lower valuation of the property and had not set a reserve price.

[47] That claim having failed, and the Defendant Bank being unrestrained to exercise its power of sale, the Claimant made the present allegations by the filing of the Present Claim, on the day before the scheduled auction of the Property, in relation to facts which were always known to the Claimant and matters which were already litigated by the Court. It is reasonable to conclude the intent of the Present Proceedings was to seek to prevent the auction of the property on the following day.

[48] In my view, weighing the Claimant's interest against the public interest of finality to litigation, it would not be in the interest of justice to allow the Claimant to take a piecemeal approach to her litigation where an unsuccessful result was previously obtained and where one set of proceedings would do. The Claimant's claim is not based on any information that was not known to her for years before the commencement of the Previous Claim. The Bank has been brought before the Court again to defend an action delaying its rights to the realisation of its security on an acknowledged defaulted loan. To reiterate the words of Webster JA in **Levis Maximea**: "The commencement and hearing of a claim is not a dress rehearsal—it is the final act and the claimant must present all the issues on which he or she intends to rely."

[49] Whereas there is a public interest in having Parties ventilate their matters in court and a litigant should not readily be driven out of the seat of justice, there is also the public interest of finality to litigation and a defendant not being unjustly harassed and vexed twice. The Claimant at all times had access to the Court to bring her entire grievance before the court for determination.

[50] I further note that, on the authority of **Caribbean Banking Corporation**, when a chargee is exercising its power of sale:-

"By this time, under the equitable doctrine of conversion, the chargor no longer has an interest in the land itself because of the exercise of the contractual right of the chargee to dispose of such land, but only in the proceeds of sale as the real property is deemed to have been converted into money.

[51] Looking at all the circumstances of the case, considering the history of the matter, the evidence of the Defendant, and taking a broad merits-based approach, in my view, it would be unjust to continue to restrain the Bank's right to realise its security and litigate a second claim which at its core is based on facts which formed part of the Previous Claim. Nothing has been placed before the Court by the Claimant to counter any argument of the Defendant that the Present Claim is abusive. Any further action as to shortfall of proceeds of sale can be dealt with if it arises.

[52] In light of the foregoing, I am of the view that the Claimant's claim is an abuse of process and further that the Present Claim should be struck out. This is sufficient to dispose of the Defendant's application.

[53] For the sake of completeness however, I will consider the Defendant's alternative position that the Claimant's claim should be struck out as disclosing no reasonable grounds for bringing her claim.

Does the Claimant's Claim disclose any reasonable grounds for bringing the Claim?

[54] CPR 26.3(1)(b) empowers the court to strike out a statement of case or part of it, if the statement of case or part of it to be struck out does not disclose any reasonable grounds for bringing or defending a claim.

[55] The strike out principles pursuant to CPR 26.3(1)(b) are well settled and were helpfully summarised by Farara JA in **Ian Hope-Ross v Martin Dinning et al.**¹¹ At paragraph 21 of the judgment, Farara JA [Ag.] stated:-

“As with every discretion conferred upon the court by the CPR, the discretion to strike out must be exercised in accordance with law and with a view to furthering the overriding objective. [See *rule 1.2 of the Civil Procedure Rules 2000*]. The central principles which undergird the court's jurisdiction to strike out all or part of a statement of claim are now settled, have been consistently cited and applied by this Court, and need not be extensively recited. In brief, these principles are as follows:

- (i) The court must be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the case in the sense that it has no real prospect of succeeding at trial.¹⁰ [*CITCO Global Custody NV v Y2K Finance Inc* [2009] ECSCJ No. 165 (delivered 19th October 2009)].
- (ii) A statement of claim is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence. Further, a statement of claim should not be struck out where the dispute between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has

¹¹ AXAHCVP2020/0005 consolidated with Christopher Liss et al v Martin Dinning et al AXAHCVP2020/0006 and Satay Limited et al v Martin Dinning et al AXAHCVP2020/0007 (delivered 30th April 2021, unreported).

not been fully investigated.¹¹ [*Ian Peters v Robert George Spencer* [2009] ECSCJ No. 212 (delivered 22nd December 2009), per Pereira CJ; *Tawney Assets Limited v East Pine Management Limited and others* [2012] ECSCJ No. 284 (delivered 17th September 2012) per Gordon JA [Ag].]

- (iii) On hearing an application to strike pursuant to CPR 26.3(1)(b), the pleadings alone are to be examined. The trial judge should assume that the facts alleged in the statement of claim are true unless they are manifestly incapable of proof.¹² [*CITCO Global Custody NV v Y2K Finance Inc* [2009] ECSCJ No. 165 (delivered 19th October 2009) per Edwards JA at para. 13, and *Martin Didier G.C et al v Royal Caribbean Cruises Ltd. SLUCVAP consolidated appeals 2014/0024 and 2014/0004* (delivered 6th June 2016, unreported) per Pereira CJ at para. 28.].
- (iv) Striking out is a draconian step or “nuclear option” and ought only to be deployed sparingly, in the clearest of cases. The reason for proceeding cautiously is that the exercise of the jurisdiction to strike out deprives a party of its right to a trial and of its ability to strengthen its case through the process of disclosure, the filing of witness statements or witness summaries and other procedures such as requests for further information.¹³ [*Ian Peters v Robert George Spencer ANUHC VAP2009/0016* (delivered 22nd December 2009) per Creque JA; see also *HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and another* [2014] EWCA Civ 1106.]
- (v) As striking out is a draconian step, the court must consider whether the interests of justice are better served by permitting an amendment to pleadings or deploying some other sanction, instead of striking out the statement of claim.¹⁴ [*Pereira CJ in The Attorney General of Saint Lucia v Darrel Montrope* [2020] ECSCJ No. 235. (delivered 9th July 2020); See also *Peerless Limited v Gambling Regulatory Authority and others* [2015] UKPC 29 and *Real Time Systems Limited v Renraw Investments Limited and Others* [2014] UKPC 6.]”

[56] Learned Counsel for the Defendant argued that the Claimant's claim discloses no reasonable grounds for bringing the claim. The Claimant resisted this submission. Learned Counsel for the Claimant submitted that there are triable issues raised on the Claimant's claim.

[57] Learned Counsel for the Defendant first submitted that the Claimant's claim in respect of restraining the Bank from exercising its power of sale based on the valuation of the Property is untenable and relied on the judgment of the Court of Appeal in **Caribbean Banking Corporation**. At paragraph 14 of the Court of Appeal's judgment, Carrington JA [Ag.] delivering the judgment of the Court stated:-

The first question therefore, to be answered in determining whether the bank acted in breach of its statutory duties in accepting the valuation...is whether [Valuator] was negligent in his valuation. As illustrated by the dicta from Cuckmere Brick Co above, the mere fact that this valuation differed significantly from that of [another valuator] is not conclusive. The respondent's argument that the properties were sold at an undervalue because of the disparities in the valuations is therefore, circular and I do not accept it...The true position must be that the bank was only obliged to disregard [the] valuation, if it was incorrect. Once there was no reasonable basis on which this valuation could be challenged, a bank acting reasonably would not need to disregard it ..."

[58] In the Previous Claim, William J roundly rejected the Claimant's claim based on a contention of undervaluing the property based on a different valuation obtained by the Claimant. Learned Counsel for the Claimant made no counter legal argument or submission on the valuation issue, except for the general submission that the Claimant's claim raises triable issues.

[59] I agree with learned Counsel for the Defendant that in light of the authorities, the conclusion reached by Williams J in the Previous Claim would hold equal force in the Present Claim. The Claimant has not pleaded any basis on which the Bank's valuation could be challenged and her claim in such respect in my view is unsustainable.

[60] The Defendant's second argument on whether the Claimant's claim discloses reasonable grounds for bringing the claim, was the submission that whether or not an accurate sum has been advised by a mortgagee does not operate to restrain the exercise of its power of sale, which arises out of a failure to pay. Thus, learned Counsel for the Defendant contended that the Claimant's pleading in her statement of claim in the Present Claim that the payoff notice amount is incorrect and the Claimant's property cannot go up for auction on an

incorrect notice interest or sums that are not due by Claimant and that such notice is therefore invalid, is an unsustainable argument.

[61] Learned Counsel for the Defendant relied on two persuasive authorities. In the Australian case of **Bunbury Foods Pty. Ltd. V. National Bank of Australasia Ltd.**,¹² the Australian High Court opined:-

"...in the absence of a specific statement as of the debt...it is not essential to the validity of a notice calling up a debt that it correctly states the amount of the debt. Even a notice given...as a condition precedent of a power of sale is not rendered invalid because it demands payment of more than is due..."

[62] In the English case of **Bank of Baroda v Panessar**,¹³ in reviewing Bunbury, Walton J stated:-

"...I cannot see any reason why the creditor should not do precisely what he is, by the terms of his security, entitled to do...to demand repayment of all monies secured...Indeed, it is quite clear that that knowledge of the precise amount of the sums outstanding is only required in the exceptional case, because in most cases (as in the present case) the debtor has no real means whatsoever of paying off the sum which is due..."

[63] Learned Counsel for the Claimant presented no argument or authority to the Court to resist the submissions of learned Counsel for the Defendant.

[64] I agree with the submission of learned Counsel for the Defendant that based on the persuasive authorities there is no basis upon which on the Claimant's Present Claim, the Court could conclude the notice to pay off was invalid; and further, even if the Court finds that the figure stated therein was incorrect, this is not a basis to restrain the Defendant Bank from exercising its power of sale. Thus, this aspect of the Claimant's claim is also unsustainable.

[65] Thus, the only aspects of the Claimant's claim which remains would be in respect of the declarations she seeks that the principal and the interest are incorrect and the order she seeks that she be allowed to pay the sum of Eighty Thousand Dollars (\$80,000.00) towards the correct arrears of interest and the monthly sum of Four Thousand Dollars (\$4,000.00) to be divided as Two Thousand Dollars (\$2,000.00) towards the correct principal amount and Two Thousand Dollars (\$2,000.00) towards the correct arrears.

¹² (1984) 153 CLR 491.

¹³ [1987] Ch. 335.

[66] In respect to the latter matter of an order allowing the Claimant to pay the outstanding balance as she proposes, the Claimant has not provided the Court with any legal basis for the Court to make such an order.¹⁴

[67] As it relates to Claimant's claim seeking a declaration as to incorrect principal and interest, learned Counsel for the Defendant in his written submissions, pointed out to the Court the judgment of the Court of Appeal in **Antigua Aggregates v The Attorney General of Antigua and Barbuda et al**,¹⁵ where George-Creque JA, who delivered the judgment of the Court, noted the request for an injunction restraining a power of sale until an account of the monies due were provided. George-Creque JA noted that matters such as these did not amount to serious issues to be tried in a factual context of outstanding debt, and a resultant power of sale.

[68] In his oral submissions, learned Counsel for the Defendant conceded that this aspect of the Claimant's claim does disclose a triable issue. Learned Counsel for the Defendant submitted however, that whilst there is some factual dispute, this is a matter that does not warrant litigation and that the difference in figures of principal and interest based on the Claimant's pleaded case amounts to roughly \$15,000.00 and the Claimant simply has to seek clarification from the Defendant about the calculations.

[69] In my view, this appears to be the only aspect of the Claimant's claim that is sustainable and as learned Counsel for the Claimant submitted, in accordance with section 143 of the **Supreme Court Act**,¹⁶ the fact that the Claimant seeks these declarations is not objectionable.

[70] Notwithstanding, I have already concluded that the bringing of this claim is an abuse of process and the claim ought to be struck out.

Costs

[71] The Defendant having succeeded on its application is entitled to costs. Learned Counsel for the Defendant indicated to the Court that the Defendant would be seeking no more than \$2,500.00 in costs in respect of this matter. Learned Counsel for the Claimant's submission to the Court on costs was that he would leave it in the hands of the Court. Having heard Counsel for the

¹⁴ See: Bank of Baroda v Panessar [1987] Ch. 335.

¹⁵ Antigua and Barbuda HCVAP 2009/003 (delivered 19th October 2009, unreported).

¹⁶ Cap. 143, Laws of Antigua and Barbuda.

Parties on the issue of costs, I would summarily assess costs in the sum of \$2,500.00 to be paid by the Claimant to the Defendant on or before 6th March, 2026.

Disposition

[72] In light of the foregoing, I make the following orders:-

1. The Claimant's claim filed herein on 30th July, 2025 is struck out as an abuse of process.
2. The Claimant shall pay costs to the Defendant in the sum of \$2,500.00 on or before 6th March, 2026.
3. The Defendant shall have carriage of this Order.

[73] I wish to thank learned Counsel on both sides for their helpful oral and written submissions.

Carlos Cameron Michel
High Court Master

By the Court

Registrar