

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO. DOMHCV2002/0257

BETWEEN:

ROYAL GEORGE

Claimant

and

DOMINICA AID BANK

Defendant

Appearances:

The Claimant in person

Mr. Stephen Isidore, Counsel for the Defendant

2025: October 6

RULING

The Application

[1] **JAWARA-ALAMI, J.:** By an Application dated 7th February 2025 supported by an Affidavit sworn to on 7th February 2025 by one Ruby Xavier, the defendant seeks reliefs as follows:

- (1) An order striking out the Claim in suit No. 237/2000 filed by the Claimant on July 8, 2002, pursuant to CPR 26.3 (1) (c) on the grounds that the claim is an abuse of process, under the established principle of the doctrine of res judicata.
- (2) Costs of this application be borne by the Claimant.
- (3) Any further or other relief that the Court deems just and equitable.

Claimant's Facts

- [2] The Claimant states that on 24th November 1993, he entered into a contract with the Defendant who advanced to him the sum of \$146,000, for the purpose of developing the Claimant's business and in 1995, the Claimant was sued by the Defendant for defaulting on the loan.
- [3] By a court order dated 30th November 2000, the Claimant was allowed to inspect the Defendant's documents listed as exhibits by the Defendant in Suit No. 282 of 1995, and states that he noticed a document headed "Appraisal Report", which had been prepared by the Defendant to assess the viability of the Claimant's project to determine the provisions of the loan. The Claimant states that the document falsely indicated that he had 25 gilts, which he denied, claiming that he never represented such to the defendant.
- [4] The Claimant contends that as a result of this misrepresentation, the cash flow projections of his project were distorted. He asserts that each gilt was expected to produce approximately 14 piglets per annum, amounting to 350 piglets annually. This, he claims, could have generated an annual income of \$105,000.00 which had been factored into his capacity to service the loan of \$146,000.00 advanced to him.
- [5] The Claimant further avers that the Defendant did not rely solely on information provided by him in the preparation of the Appraisal Report, but conducted its own survey of the project and its officers visited the project site. He states that the Defendants, by their neglect in accurately assessing the true position of the Claimant's project, approved a loan of \$146,000.00, which was inflated, and based on an exaggerated appraisal of the Claimant's project, and his capacity to repay the loan. The repayment schedule provided for a term of 72 months, with monthly instalments of \$3,050.00, as determined by the terms of the Appraisal Report.
- [6] The Claimant states that he relied on the Defendants to produce an accurate appraisal report, and, it was a condition of their services that he accept the report as a basis for the granting of the loan, which was intended to reflect his ability to repay.
- [7] He asserts that the Defendants represented the value of his 40,011 square foot property, including the piggery unit and stock, as \$900,000.00, without obtaining a valuation from a qualified professional. In another clause, the same 40,011 square feet property with buildings

was valued at \$195,041.00, again without a professional valuation. Additionally, he claims that the Report erroneously included a road, which ought not to have been part of the valuation.

Defendant's Facts

- [8] The Defendant admits that the Claimant submitted a loan application to the bank on 10th August 1993 for the purpose of closing an existing NCB loan, constructing a road and a septic tank, completing a piggery unit, purchasing feed and paying for labour.
- [9] The Defendant states that it subsequently conducted an appraisal of the application, and a loan appraisal report dated 3rd September 1993 was prepared, recommending that the loan be granted.
- [10] On 24th November 1993, the Defendant issued an Advice of Loan Approval to the Claimant, which the Claimant signed on the 26th November 1993. The Defendant also provided the Claimant with an Offer of Finance, setting out the terms and conditions under which the loan would be made available to him. The Claimant signed this document on 11th December 1993.
- [11] The Defendant contends that the Appraisal Report is an internal report prepared solely for the bank's use. The Defendant further contends that the mortgage claim filed against the Claimant in Suit No. 282 of 1995 was due to the Claimant's failure to fulfil his contractual obligation to repay the mortgage loan granted to him by contract in 1993.
- [12] The Defendant asserts that the Claimant filed a response and counterclaim to the mortgage claim but in 2000, the Claimant initiated a separate action for breach of contract against the defendant, being claim no. 361 of 2000. Subsequently, the matters were consolidated by the Court, on the basis that they involved the same parties, and arose out of the same facts. The consolidated matter was heard by the court on 19th July 2002.
- [13] The Defendant denies that it owed the Claimant a duty of care or skill or expertise in the advancement of the loan. In the alternative, if such a duty was found to exist, the Defendant denies that it was breached. The Defendant also denies that the Claimant relied on its skill and expertise in relation to the granting of the loan.

Claimant's Submissions

- [14] The Claimant, who is a Pro se Litigant, filed written submissions in which he contends that the inventory of his business as of 25th October 1993, did not reflect the ownership of any gilt pigs. However, the Appraisal Report, which the Defendant relied upon in offering finance to the claimant indicated that he possessed 25 gilt pigs. Accordingly, the Claimant submits that the Appraisal Report projected a performance that exceeded the actual capacity of his business, based on the Inventory dated 25th October 1993.
- [15] The Claimant submits further that the facts and evidence adduced in support need to be heard, and the principle of res judicata does not apply. The Claimant provided no cases or statutes, however he exhibited the following documents: i. Inventory dated 25th October 1993; ii. Loan Appraisal Report; and iii. Revenue Estimates.

Submissions of the Defendant

- [16] The Defendant submits that the Claimant's statement of case should be struck out pursuant to Rule 26.3 (1) (c) of the Eastern Caribbean Civil Procedure Rules, Revised Edition 2023 (CPR), as it discloses no reasonable ground for bringing the claim, it constitutes an abuse of the court's process, it runs counter to the principle of res judicata, and it lacks coherence and legal merit.
- [17] On the issue of res judicata, the Defendant submits that the Claimant's case should be struck out as he seeks to re-litigate matters that have already been determined, and such re-litigation of these matters is an abuse of process, which, if allowed to proceed, would waste judicial resources and unfairly subject the defendant to duplicative litigation.
- [18] The Defendant further submits that the Claimant's pleadings do not specify key fraudulent and negligent misrepresentation elements.

The Issue

- [19] The issue to determine this application instant is simply;
Whether claim No 361/2000 is caught by the doctrine of Res Judicata.

The Law and Discussions

[20] According to Halsbury's Laws of England¹:

“The doctrine of res judicata provides that where a decision is pronounced by a judicial or other tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal. It is most closely associated with the legal principle of 'cause of action estoppel', which operates to prevent a cause of action being raised or challenged by either party in subsequent proceedings where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties (or their privies), and having involved the same subject matter³. However, res judicata also embraces 'issue estoppel', a term that is used to describe a defence which may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, but, 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.”

[21] 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**². 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 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.”

[22] In **Desert Sun Loan Corporation v Hill**³ Evans LJ stated:

¹ Volume 11 (2020), paras 1–496

² [1843] 3 Hare 100 at p 115

³ [1962] 2 All ER 847 at p 854

“For there to be such an issue estoppel, three requirements must be satisfied: first, the judgment of the foreign court must be (a) of a court of competent jurisdiction, (b) final and conclusive and (c) on the merits; secondly, the parties to the English litigation must be the same parties (or their privies) as in the foreign litigation; and thirdly, the issues raised must be identical. A decision on the issue must have been necessary for the decision of the foreign court and not merely collateral”.

[23] Before delving into the determination of the issue at hand, it is necessary to set out the chronology of events in order to ascertain whether the foregoing elements are present in this case, as follows:

- (1) The Applicant/Defendant Bank filed a Mortgage Claim, Suit No. 282/1995 against the Claimant for breach of a mortgage loan contract granted to the Claimant in 1993 to which the Claimant failed to satisfy his repayment obligations under the mortgage loan.
- (2) In Suit No. 282/1995 the Claimant bank claimed the sum of \$155,541.22, being the balance of the principal and interest at the rate of 10.5% per annum due to them since 30th of June 1995 on a loan that the Defendant refused to pay. To this claim, the Defendant filed a Defence and Counterclaim grounded on breach of the loan contract.
- (3) In response, the Claimant filed a Reply and a Counterclaim to the mortgage claim. The Claimant's response was grounded in breach of contract.
- (4) In 2000, the Claimant filed an action grounded in breach of contract against the Applicant/Defendant Bank, Suit No. 361/2000. The Claimant in Suit No. 361/2000 was Mr. Royal George, who claimed breach of loan cost and other reliefs.
- (5) The Court being of the view that the issues in both matters are similar arising out of the same facts with the same parties made an Order consolidating the matter.
- (6) The consolidated matter was heard by the court on July 19th 2002. In Suit 282/1995, the court granted judgment in favour of the Applicant/ Claimant Bank in the said proceedings and dismissed the Respondent/Claimant's claim, Suit No.361/2000.
- (7) The Respondent/Claimant being dissatisfied with the court decision filed an appeal, Appeal No. 9/2002, and on November 12th , 2003, the Court of Appeal dismissed the appeal.

(8) Before the Court delivery of judgment in the consolidated matter, the Respondent/Claimant on July 8th 2002 filed these present proceedings in suit No 257 of 2002.

[24] Returning to the principles outlined in the *Desert Sun* case, those principles are applicable even before courts within the same country or within concurrent jurisdiction. I will therefore consider each element in turn, having regard to the facts and the evidence presented in this case. The Court notes that the decision relied upon, whether domestic or foreign, must be judicial in the relevant sense; it must have been duly pronounced; the parties must be the same or their privies; or the earlier decision must have been one made *in rem*.

(a)The decision, whether domestic or foreign, was judicial in the relevant sense;(b) it was in fact pronounced; (c)the parties are the same or their privies, or the earlier decision was in rem.

[25] The subject matter in this case concerns the mortgage loan between the Claimant, AID Bank, and the Defendant, Royal George, which was previously adjudicated by Cenac J., sitting in the High Court of Dominica. Judgment was delivered on 19th July 2002, in Suit No. 282/1995, against the Claimant in the sum of \$155,541.22, with costs of \$25,000.00, for breach of contract. The Claimant's separate claim in Suit No. 361/2000, in which the Claimant was Royal George and the Defendant was AID Bank, was dismissed. The Defendant claims that on 20th August 2002, the Claimant, being the Defendant in Suit No. 282/1995, filed an appeal (Appeal No. 9 of 2002) against the decision of 19th July 2002, and also claims that on 12th November 2002, the Court of Appeal dismissed the appeal. The Defendant has not provided the Court with a copy of the Court of Appeal's decision. In any event, this is immaterial, as the issue before the Court concerns the determination of the cases adjudicated upon by this court. Based on the foregoing, It is, therefore, apparent that the decision of 19th July 2002 was rendered by a competent court and pronounced in open court in the presence of counsel for the parties.

(d) The decision was—(a) final; (b) on the merits;

[26] As mentioned previously, the judgement of CenacJ was delivered on 19th July 2002 and concluded as follows;

“Accordingly, I can find no breach of any term of the contract by the Claimant Bank. Even if the Claimant bank was in breach of contract to pay the meagre sum of \$1,050.00 to the Defendant, the amount recoverable would be limited to the amount of the debt with interest from the time when it became due (see Halsbury's Laws of England 4th Edition Volume 12 para 1179) and not to absolve the Defendant of his responsibility of repaying the debt under the contract.

Accordingly I will enter judgment for the Claimant in Suit No. 282 of 1995 in the sum of \$155,541.22 being the balance of the principal sum and interest at the rate of 10.5% per annum from the 30th June 1995 and costs of \$25,000.00 in accordance with CPR 2000 65.6(2)(b)(1). The Defendant cannot hide under the term "breach of contract" in order not to fulfil his obligation under the contract. The Claimant's claim in Suit No. 361 of 2000 against the Defendant Bank is hereby dismissed”

[27] From the above, I can only conclude that the trial judge carefully evaluated the evidence and the facts of the case in order to determine whether the Claimant had established his claim. It is also significant that a counterclaim to claim 282/1995 was filed and likewise failed. Accordingly, the judgement was rendered on the merits.

[28] According to BLACK'S LAW DICTIONARY, 4th Edition, a Judgement on the Merits is, **“One rendered after argument and investigation, and when it is determined which party is in the right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial.”**

[29] It is therefore safe to hold that the decision of the court was final and was on the merits. It is trite that while judicial decisions might be questionable or wrong, they remain binding unless and until set aside (See Taylor v Lawrence⁴). This element is accordingly established

(e) It determined a question raised in the later litigation;

[30] The Claimant instituted further proceedings in Claim No. 257/2002 against the Defendant Bank on 8TH July, 2002 and claimed reliefs:

⁴ [2003] QB 528.

"For damages in respect of fraudulent and or negligent misrepresentation by the development bank in assessing the Claimant's business for purpose of an advancement of a loan \$ 146,000.00 dated 24th November 1993, and the terms for repayment of the aforementioned loan. Further or alternatively, the Claimant claims damages in respect of Breach of Contract by the Defendant, that the Defendant entered into a contract with the Claimant for provision of specialist advice and help on Claimants business and the Defendant failed to provide any suitable advice."

[31] The Defendant in response pleaded in its statement of Defence that it owed no duty of care to the Claimant in advancing the loan or in respect of the matters particularized in the claim. Further, or in the alternative, the Defendant denied that the Claimant relied on it in respect of these matters. Further, or in the alternative of the Defendant said that if such duty was owed it was not breached.

[32] This is the current claim pending before the court for resolution, and it is apparent that the Claimant has raised the very same issues of breach of contract by the Defendant bank in Suit Nos. 124/1995, 282/1995, and 361/2000, which have all been determined by the court.

[33] What is noteworthy, however, is that the Claimant has added a new relief in the alternative, alleging fraud on the part of the Defendant bank. The courts have recognized a *fraud exception* to the doctrine of *res judicata*. Where a judgment has been obtained by fraud, it may be impeached notwithstanding the application of *res judicata*. However, the fraud relied upon must be newly discovered, material, **and** not something which could, with reasonable diligence, have been raised in the earlier proceedings. See ***Hip Foong Hong v. H. Neotia & Co.***⁵; and ***Owens Bank Ltd v. Bracco***⁶

[34]] According to Halsbury's Laws of England, the doctrine of *res judicata* also embraces the concept of "issue estoppel." This defence arises where a particular issue, forming a necessary ingredient in a cause of action, has already been litigated and determined. In subsequent proceedings between the same parties, involving a different cause of action to which that same issue is relevant, one of the parties is thereby precluded from reopening that issue

⁵ [1918] AC 888

⁶ [1992] 2 AC 443).

[35] In **Arnold and Others v. National Westminster Bank Plc**⁷, Lord Keith explained the limited exception to this principle, stating:

“...There may be an exception to issue estoppel in the special circumstance that there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised or decided, being material which could not by reasonable diligence have been adduced in those proceedings.”

[36] Furthermore, the law is such that the doctrine applies to all matters which existed at the time of the giving of the judgment, and which the party had an opportunity of bringing before the court. If, however, there is matter subsequent, which could not be brought before the court at the time, the party is not estopped from raising it.

[37] The Claimant contends that he discovered the appraisal report which is the subject of the alleged fraud in July 2000 when, through a court order dated 30th November 2000, he was allowed to inspect the Defendant's documents listed as exhibits by the Defendant in Suit No. 282/ 1995. The claims filed by the Claimant in 2000 were founded on breach of contract based on the same appraisal report, which is the subject matter of the alleged fraud.

[38] The court is therefore satisfied that the Claimant would have had ample opportunity, with reasonable diligence, to discover and raise the information now alleged as fraud in the earlier proceedings. The principles articulated by Lord Keith are clearly applicable in this case instant, in that the Claimant had a full and fair opportunity to present all matters relating to the mortgage loan and alleged breach of contract in Suit Nos. 124/1995, 282/1995, and 361/2000. The Claimant is precluded from reopening those issues in the current proceedings and cannot rely on the fraud exception to defeat the application of res judicata. Accordingly, the doctrine operates to bar the present claim.

[39] Further, in **Owens Bank Ltd v Bracco**⁸, the Privy Council confirmed that the fraud exception to res judicata is narrowly construed and applies only where the fraud relied upon could not, with reasonable diligence, have been discovered and raised in the original proceedings. On the facts of the present case, no such exception is available to the Claimant.

⁷ [1991] 2 A.C. 93 at p 109

⁸ [1992] 2 AC 443

[40] This conclusion is consistent with the principle set out in the authorities where the House of Lords emphasized that parties must bring forward their whole case when given the opportunity, and are precluded from raising in later proceedings matters which could and should have been litigated earlier. Similarly, in **Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd**⁹, the Supreme Court reaffirmed that the public interest in the finality of litigation underpins the strict application of *res judicata* and issue estoppel.

[41] In light of the foregoing, the Court finds that the Claimant's present claims are barred by the doctrines of *res judicata* and issue estoppel. The matters raised in this claim were fully considered and determined in the earlier proceedings, including Suit Nos. 124/1995, 282/1995, and 361/2000. The Claimant has not demonstrated the existence of any fraud that could not, with reasonable diligence, have been discovered and raised in those proceedings. Accordingly, the Court concludes that the Claimant's current claim cannot succeed and is dismissed.

Disposition

[42] In conclusion therefore, I find as follows:

- (1) The Claim in suit No. 237/2000 filed by the Claimant on July 8, 2002 is *Res Judicata* and an abuse of process;
- (2) The claim is dismissed; and
- (3) Each party to bear its costs in light of the delay in this matter.

Zainab Jawara-Alami
High Court Judge



BY THE COURT
REGISTRAR

⁹ [2013] UKSC 46