

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2022/0019

BETWEEN:

SEA ISLAND TRADING LIMITED

Claimant

and

ANTIGUA AND BARBUDA AIRPORT AUTHORITY

Defendant

Appearances:

Dr. David Dorsett, Counsel for the Claimant

Ms. Kema Benjamin, Counsel for the Defendant

2025: June 27, 30;
July 4.

DECISION

- [1] **MICHEL, M.:** On 2nd February, 2022 the claimant, Sea Island Trading Limited ("**Sea Island**") commenced these proceedings against the defendant, the Antigua and Barbuda Airport Authority ("**the Airport Authority**"), seeking damages and other relief for the alleged conversion of its goods by the Airport Authority. Sea Island was the defendant to an earlier claim brought by the Airport Authority for possession and arrears of rent. The issue for determination is whether Sea Island's present claim is an abuse of process.

Background

- [2] By a lease agreement between the Parties, Sea Island operated a retail store and occupied retail space ("**the Retail Store**") at the V.C. Bird International Airport ("**the Airport**"). The Airport is managed and administered by the Airport Authority. After entering into occupation of the retail store, Sea Island accumulated significant arrears of rent and other payments. A dispute ensued between the Parties over the arrears and in January 2018 the Airport Authority sent a notice to quit to Sea Island. The notice to quit notified Sea Island that the Airport Authority required Sea Island to surrender and deliver up possession of the retail store on or before 1st March, 2018 or they would be denied access to the retail store as of 2nd March, 2018. Sea Island did not deliver up possession

of the retail store as of 1st March, 2018 and the Airport Authority subsequently denied Sea Island access to the premises.

- [3] As a result of the on-going dispute over arrears of rent and other payments, the Airport Authority initiated proceedings against Sea Island, namely, claim number ANUHCV2019/0113 **Antigua and Barbuda Airport Authority v Sea Island Trading Limited** (“the Previous Claim” or “the Landlord and Tenant Claim”). In the Previous Claim, the Airport Authority sought an order for vacant possession of the retail store, outstanding rent, concession payments, mense profit, and damages for breach of contract.
- [4] Sea Island did not file a defence to the Previous Claim and the claim was therefore undefended. After the filing of the Previous Claim, during a period where the Parties were to seek to settle the matter, Sea Island surrendered the keys to the retail store to the Airport Authority; however, Sea Island’s goods remained in the retail store. The matter was not settled and the Airport Authority subsequently obtained judgment against Sea Island in November 2019 for an amount to be decided by the Court.
- [5] Following the filing of the Previous Claim but before judgment was entered for Sea Island, by letter dated 10th July, 2019 Sea Island wrote to the Airport Authority making demand for the Airport Authority to return its goods left in the retail store. Despite the demand, the Airport Authority did not allow Sea Island access to the retail store. Following judgment on the Previous Claim, by letter dated 14th September, 2021 Sea Island made another demand for the return of its goods. The Airport Authority still did not provide access to the retail store.
- [6] Sea Island subsequently commenced the present proceedings against the Airport Authority by claim form and statement of claim filed on 2nd February, 2022 which was later amended (“the Present Claim”) alleging conversion. It contended in its claim that the Airport Authority did not return its goods notwithstanding its demand and averred that in the circumstances, the actions of the Airport Authority constituted the tort of conversion. Sea Island further averred that as a result of the Airport Authority’s actions, it had suffered loss and damage.
- [7] In its defence, the Airport Authority admitted that Sea Island made demand for the return of its goods. It further admitted that it had not allowed Sea Island to access the property. However, the Airport Authority averred that Sea Island voluntarily surrendered its key to the Airport Authority. It further denied that it had committed the tort of conversion.
- [8] The Airport Authority further contended that the Present Claim is an abuse of the process of the Court. It averred that Sea Island having voluntarily

surrendered its keys to the Defendant, had an opportunity in the Landlord and Tenant Claim by way of a counterclaim to claim for the return of its property and that having not filed a defence and/or counterclaim, Sea Island is estopped from raising the issue in these proceedings.

- [9] It should be noted that following mediation held in October 2023, the Parties agreed to Sea Island being provided access to the retail store to take inventory of its goods in the retail store and Sea Island has since retrieved all items from the retail store at the Airport. Sea Island's retrieval of the items has been pleaded at paragraph 4 of the Airport Authority's amended defence.
- [10] Following the filing of an application by Sea Island to strike out the Airport Authority's defence, it became necessary for the Court to determine whether Sea Island's bringing of the Present Claim against the Airport Authority is an abuse of process. The secondary consideration is that, if the Court finds that Sea Island's claim is an abuse of process, whether the claim ought to be struck out. The Parties were therefore given directions on the issue and evidence and submissions with authorities was filed by both Parties in response.

The Law on Abuse of Process

- [11] The Court is empowered by CPR 26.3(1)(c) to strike out a statement of case as an abuse of process. This has always been an inherent power of the Court. As explained by Lord Diplock in **Hunter v Chief Constable of the West Midlands Police**,¹ the power to strike a matter as an abuse of process is:

"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."

- [12] Thus, 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 court process, 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'.
- [13] In **St Kitts Nevis Anguilla National Bank Ltd v Caribbean 6/49 Ltd**,² Barrow JA described '[R]e-litigating a matter that has been decided and bringing a second action based on the same cause of action as formed the basis for the

¹ [1982] AC 529.

² Saint Christopher and Nevis Civil appeal No. 6 of 2002 (delivered 31st March 2003, unreported).

proceedings in existence at the time of the first action' as textbook examples of an abuse of process.

- [14] Based on the Airport Authority's defence, it is clear that an issue being raised by the Airport Authority is whether Sea Island, by bringing the Present Claim, is seeking to litigate an issue that ought to have been raised in the Landlord and Tenant claim by way of a counterclaim, thus rendering this claim an abuse of process.
- [15] In my view, the issue being raised by the Airport Authority squarely falls under the rule in **Henderson v Henderson**³ or what is sometimes referred to as 'Henderson v Henderson abuse of process'. In **Levi Maximea v The Chief of Police et al**,⁴ Webster JA [Ag.] described the distinction between the doctrine of res judicata in its strict sense and the wider **Hender v Henderson** abuse of process as follows:

"In its simplest form the principle of res judicata provides that where a decision is pronounced by a court or tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by the parties who are bound by the decision, except on appeal. 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 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."¹⁰[Ibid. at 115]"

³ (1843) 3 Haare 100.

⁴ DOMHCVAP2020/0009 (delivered 7th December 2023, unreported) at para. 29.

[16] Webster JA [Ag.] goes on to note the following in Levi Maximea that:⁵

“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.”⁶

[17] The public policy aspect of the rule in Henderson v Henderson was examined in greater detail in Johnson v Gore Woods & Co (a firm).⁷ 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**

⁵ DOMHCVAP2020/0009 (delivered 7th December 2023, unreported).

⁶ At para 31.

⁷ [2002] 2 AC at p. 30.

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).

- [18] What the authorities confirm is that the raising of an issue in a subsequent claim which could have been raised in earlier proceedings will not automatically mean that a subsequent action is an abuse of the court's process and should be struck out. The court will undertake a broad merits-based evaluation, taking account of the public and private interests involved and all the facts of the case. The onus is on the party alleging abuse of process to demonstrate that in all the circumstances the other party's conduct in bringing the subsequent action is an abuse.

Discussion

- [19] Having examined the Present Claim, the evidence filed and considering all the circumstances of the case, I do not consider that the Present Claim is an abuse of process for the reasons which follow.
- [20] Firstly, I would reiterate the dicta of Lord Bingham in **Johnson v Gore Woods & Co.** that it would be wrong to conclude that because a matter could have been raised in earlier proceedings it should have been, rendering the raising of it in later proceedings necessarily abusive. That is too narrow of an approach in considering the issue. Rather, the Court has to consider all the circumstances of the case to determine whether a party's conduct in bringing a claim is abusive.
- [21] This was further explained by Lord Neuberger in **Henley v Bloom**⁸ where he stated:

⁸ [2010] EWCA Civ 202.

“However desirable it may be for a party to bring all his claims forward in one go, the abuse principle, as the judgments in the Stuart case [2008] 1 WLR 823 underline, does not bar a claim simply because someone fails to raise a claim when he could have done so. **The facts must be such that the second action amounts to an abuse of process before it can be struck out.**” (Emphasis added).

- [22] On Sea Island’s evidence, it considered that it had no defence to the Previous Landlord and Tenant Claim and the claim was therefore undefended. As was stated by Barbara Meyer in her affidavit filed on behalf of Sea Island on the issue of abuse of process, Sea Island had no substantive defence to the Previous Claim and it was not resisted.
- [23] The Airport Authority’s evidence is that after the first hearing of the Previous Claim, the parties agreed to meet on a mutually convenient date for inventory to be taken; however, Sea Island surrendered the keys before this was done. Mrs. Meyer further set out in her affidavit the reasons for Sea Island’s surrender of the keys, being to give a clear signal to the Airport Authority that Sea Island was no longer exercising any act of possession with respect to the leased premises. After the surrender of the keys, the Airport Authority subsequently wrote to Sea Island to provide a settlement proposal by 10th July, 2019.
- [24] On 10th July, 2019 Sea Island wrote to the Airport Authority and made demand for the return of its goods. The Airport Authority has admitted that no access was provided to Sea Island after this demand. This, in my view would be when the issue of the failure to return goods would have properly arisen.
- [25] The Airport Authority subsequently wrote to Sea Island in October 2019 to indicate that if Sea Island did not file a defence by 23rd October, 2019 it would be seeking judgment. There is no dispute that no defence was filed and as I have already stated, Sea Island has conceded in its filed evidence that it had no substantive defence to the Airport Authority’s Previous Claim. The Airport Authority subsequently obtained judgment on its claim in November 2019 for an amount to be decided by the Court. That judgment was never challenged by Sea Island.
- [26] It is unclear to this Court however what became of the Airport Authority’s claim for vacant possession as the judgment obtained was only for an amount to be decided by the Court. The only conclusion I can draw is that the possession claim was no longer pursued presumably because Sea Island no longer had access to the retail store and had surrendered the keys for the store. This however remains unclear from the Court’s file, but based on the judgment obtained, the possession aspect of the Previous Claim could no longer have been a live issue at the time.

[27] Sea Island again sought to demand the return of goods again in 2021 after the Airport Authority had obtained judgment and the Airport Authority has admitted that Sea Island's access to the store remained restricted. The present claim was filed in 2022.

[28] The learned authors of Halsbury's Laws of England⁹ explain the issue of detention of chattel as follows:-

“A defendant who has possession of a claimant's chattel, and without lawful authority prevents the claimant from retaking possession, then the defendant can be liable in conversion. A typical example of this is where a defendant is lawfully in possession of the claimant's chattel, but subsequently refuses to hand it over when requested. This sometimes happens when, for instance, the defendant mistakenly believes that he has a valid security interest such as a pledge or lien. **The conversion consists not in the failure to redeliver the chattel, but in the refusal to allow the claimant to take it away.**

[29] In my view, although the Present Claim is related to the Airport Authority's previous Landlord and Tenant Claim, the considerations on the Present Claim are based on a distinct substratum of facts from that of the Previous Claim. The factual matters the Court would have been considering in relation to arrears of rent and other payments and possession, were not the same as to whether there was a refusal by the Airport Authority to allow Sea Island to take its goods away from the retail premises. The two claims thus involved different issues. The separate factual considerations of the two claims would thus make it more difficult to consider the bringing of the Present Claim abusive.

[30] A further factor pointing away from a finding of abuse of process is that the present claim does not in any meaningful way affect the integrity of the Airport Authority's judgment on the Landlord and Tenant Claim and is certainly not a collateral attack on any matter concluded on the Previous Claim. I would also point out as noted above that the Airport Authority seemed to have pursued a money judgment and not its claim for vacant possession. Sea Island's goods however remained in the retail store and Sea Island did not have access to the retail store.

[31] Importantly, apart from its complaint that Sea Island ought to have raised the issue of the return of its goods in the Previous Claim, the Airport Authority has not demonstrated how Sea Island's conduct in bringing the Present Claim is abusive. The Airport Authority cannot argue that it is vexed twice or that Sea

⁹ Volume 97A (2021)) at para. 211.

Island is bringing successive litigation against it. In the Previous Claim, Sea Island was a defendant to a claim brought against it by the Airport Authority as claimant. Further, Sea Island's claim for return of its goods would have been no defence to the Airport Authority's previous Landlord and Tenant claim.

- [32] These factors were highlighted by Lord Neuberger MR in Henley v Bloom.¹⁰ In that case, the claimant, Mr. Henley brought an action against his landlady, the defendant, Mrs. Bloom alleging breach of statutory duty to keep the rented premises in good repair, in circumstances where the landlady had previously brought possession proceedings against Mr. Henley. Mrs. Bloom's earlier claim had been settled by the parties. Mrs. Bloom sought to argue that the issues on Mr. Henley's subsequent claim could have been raised in her previous claim and that Mr. Henley's subsequent claim was an abuse of process. At paragraph 33 of the English Court of Appeal's judgment, Lord Neuberger MR stated:-

"In addition, the possession claim had been brought by Mrs Bloom, and Mr Henley had brought no counterclaim, whereas the disrepair claim is of course brought by Mr Henley against Mrs Bloom. So this is not a case of Mr Henley bringing a second claim against Mrs Bloom, or even raising a claim which could have been invoked as a defence in the earlier possession claim. I am not suggesting that this would prevent the disrepair claim being an abuse as a matter of principle. However, it seems to me that, where an action is brought by a claimant who was simply a defendant in an earlier action involving the same parties, it is more difficult to argue that the later action is an abuse than where the same person was claimant in both actions."

- [33] Thus, whilst the circumstances pointed out above are not conclusive on the issue of abuse, they certainly tip in favour of a finding that subsequent proceedings by a defendant in earlier proceedings is not abusive especially when one considers these together with the other circumstances that feature in the proceedings, such as those highlighted earlier in relation to the Present Claim.
- [34] As was highlighted by Carrington JA [Ag.] in Myrna Norde v Jacqueline Mannix,¹¹ a contention that a claim is an abuse of process is: '**an extremely serious allegation in light of the general right to access to justice.**' (Emphasis added). Thus, following a broad, merits-based approach and considering all the circumstances of this case, and balancing the public interests of finality to litigation and not having a party unduly harassed, against Sea Island's private interests in bringing its claim before the Court for determination,

¹⁰ [2010] EWCA Civ 202.

¹¹ ANUHCVP2015/0035 (delivered 16th February 2017, unreported) at para. 5.

it is difficult to conclude that Sea Island, in bringing the Present Claim for the return of its goods is abusing the Court's process. The Airport Authority has not demonstrated that Sea Island's conduct in bringing the Present Claim is harassing or oppressive or somehow a collateral attack on the matters concluded in the Previous Proceedings or that considering all the circumstances the bringing of the Present Claim is abusive.

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

1. The Present Claim is not an abuse of process and accordingly the Court declines striking it out on this basis.
2. There shall be no order as to costs.
3. The matter shall be listed for further case management on 17th September, 2025.
4. Sea Island shall have carriage of this Order.

[36] 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