

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

GRENADA

Claim No: GDAHCV2020/0064

BETWEEN:

- 1. JULIEN LEWIS**
- 2. ANTHONY GEORGE**

Claimant

and

- 1. GRENADA UNION OF TEACHERS CO-OPERATIVE CREDIT UNION LIMITED**
- 2. THE GRENADA AUTHORITY FOR THE REGULATION OF FINANCIAL INSTITUTIONS**

Defendants

APPEARANCES:

Claudette Joseph for the Claimants
Hazel Hopkin for the 1st Defendant
Lisa Taylor for the 2nd Defendant

2022; May 5
December 1

DECISION

- [1] **GARDNER HIPPOLYTE, M:** This is an application by the first defendant on a preliminary point to determine whether this claim is Res Judicata and therefore be struck out as an abuse of the process of the court.

BACKGROUND

- [2] The instant claim GDAHCV2020/0064 was filed on the 13th February, 2020, but the claimants had previously filed a claim in 2012 - GDAHCV2012/0372 in which the 1st defendant in this claim was then the 2nd defendant.
- [3] In **GDAHCV2012/0372** (hereinafter referred to as the First Claim) – **Anthony George & Julien Lewis v Seamen and Waterfront Workers Union & Grenada Union of Teachers Co-**

operative Credit Union Limited, the claimants pursued an action for the sum of \$70,928.00 which were monies due and owing to the Claimants by way of unpaid union contributions/salary deductions. The claimants highlighted in the First claim and in this instant claim GDAHCV2020/0064 (hereinafter referred to as the Second Claim) that the debt was because of the merger between the Seamen and Waterfront Workers Union and the Grenada Union of Teachers Co-operative Credit Union. The material facts pleaded in the First Claim are very similar to the material facts pleaded in Second Claim.

- [4] It has always been the defence of the Grenada Union of Teachers Co-operative Credit Union (hereinafter referred to as 1st Defendant) that prior to the merger all accounting reconciliation (between 1st Defendant and the Seamen Waterfront Workers Union), was controlled by The Grenada Authority for the Regulation of Financial Institutions (hereinafter referred to as GARFIN). That GARFIN was not a party in the First Claim. The financial statements of the Seamen and Waterfront Workers Union as at 31st December, 2010 as well as the statement of members and loans to such members of said union, was produced by GARFIN to the 1st Defendant.
- [5] In the First Claim the claimants admitted that their names were omitted from the statements of members submitted by GARFIN to 1st Defendant. In the First Claim the claimants alleged breach of contract, and this was struck out by the Master for not disclosing a cause of action against 1st Defendant. Further that there was no reasonable ground for bringing the claim against them. This order by the Master was not appealed.
- [6] The Second Claim now seeks Declaratory reliefs, but the same amount of money pleaded in the First Claim is pleaded in the Second Claim. The First and Second claims are similar in the pleadings as to the background facts but the Second Claim now states that GARFIN was responsible to provide the 1st Defendant with a list of all existing members including the claimants and that they failed or neglected to do so.¹

¹ Paragraphs 10 and 11 of the Statement of Claim filed 13th February 2020

[7] The claimants go on to state in the Second Claim that the claimants were not registered as members of the 1st Defendant even though all their savings held with the Seamen and Waterfront Workers Union were paid into the 1st Defendant under the merger.²

[8] The 1st Defendant indicated in both their defences similar pleadings but in the second defence they go on to plead reliance on issue estoppel. The 1st Defendant argues that the First Claim was struck out, was not appealed and the facts have not changed. The only difference now is that the claimants seek declaratory reliefs in the form that the claimants are members of the 1st Defendant and that they have a right to the said monies. The 1st Defendant argues that this could have been raised in the first claim. Therefore, the matter is now *res judicata*.

[9] I will now go on to substance of the application.

RES JUDICATA

[10] The 1st Defendant in their submissions have referred the court to **Henderson v Henderson** 67 ER 313 as follows:

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of 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 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. “

[11] The 1st Defendant has suggested that since the material facts are the same, the claimants had the opportunity when the First Claim was brought to plead the breach of contract and the declaratory reliefs now requested in the second claim. That having failed to do so in the First Claim means that they are now estopped.

² Paragraph 12 of the Statement of Claim filed 13th February 2020

[12] The claimants in the alternative have argued that the claims are different because of the relief sought. Counsel for the claimants refers the court to the case of **Johnson v Gore Wood & Co** [2001] 2 WLR 72 in the judgment of Lord Bingham of Cornhill, which highlights that

“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 early proceedings it should have been, so as to render the raising of it in a later proceedings necessarily abusive. That is to adopt too dogmatic 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.”

[13] The 1st Defendant countered and highlighted that there is no information in the claimants’ affidavit as to why they did not argue the reliefs in the First Claim. Further they do not explain why they did not join GARFIN in the first claim, and why they did not seek to amend the register in the First.

[14] I find favour with the arguments of the 1st Defendant since there is nothing materially different in the facts pleaded between the two claims. As per the case law in **Henderson**, I agree, and I can find no special circumstance shown or adduced by the claimants in their affidavit for the court to consider as to why this Second Claim should not be estopped on the principle of res judicata.

[15] I however also turn to the case law provided by the claimants of **Johnson v Gore**. I disagree with their analysis and refer to the quote *“That is to adopt too dogmatic 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...". Therefore, in seeking to apply the broad, merits-based judgement, taking account the public and private interests involved, I have considered the facts carefully and state as follows:

- (a) The 1st Defendant entered a merger and relied on the financials as provided by GARFIN. It is undisputed that the 1st Defendant does not have on their "books" the information or accounts of the claimants.
- (b) That the cause of action in the First and Second claim are the same and that the reliefs sought in the Second Claim **should have been brought in the First Claim**, it was a logical step when trying to connect a nexus with the parties.
- (c) The First Claim was struck out as disclosing no reasonable ground for bringing the claim against the 1st Defendant herein and there being no appeal that decision still stands. Again turning to the Second Claim the facts pleaded are not materially different to the first one and all that has substantially changed is the relief sought against the First Defendant.

[16] Therefore, I agree with the arguments of the 1st Defendant and find that the claim is res judicata and should be estopped. I now turn to whether the application should be struck out for not disclosing any reasonable ground for bringing a claim and as an abuse of the process of the court.

STRIKING OUT FOR NOT DISCLOSING ANY REASONABLE GROUND FOR BRINGING OR DEFENDING THE CLAIM AND AN ABUSE OF THE PROCESS OF THE COURT

In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

- (a) there has been a failure

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(c) the statement of case or the part to be struck out is an abuse of the process of the court

[17] The 1st Defendant has argued that since GARFIN was the one handling the process the court will not find any allegation against them. That the only references made against the 1st defendant disclose that they were part of the merger but not responsible for the list. The 1st Defendant received a confirmed list of existing members and GARFIN it is the one referred who failed or neglected to supply the 1st Defendant with the information.

[18] I agree with these submissions of the 1st Defendant that there is no reasonable ground for bringing the claim against them.

[19] Further having considered the learning in Henderson, I am of the view that

- (a) the issue could have been brought in the first claim;
- (b) the first claim ought to have had all the parties; and
- (c) the 1st Defendant ought not to be vexed twice with the same issue.

Therefore since the claim is Res Judicata, it has given rise to an abuse of the process of the court³ and accordingly, I will dismiss the claim against the 1st Defendant. The claim still however still stands against GARFIN the 2nd Defendants.

[20] I have noted the other submissions in relation to the application but having made the above findings I deem it unnecessary to address the other areas.

CONCLUSION

[21] For the abovementioned reasons the order of the court is as follows:

³ **Kotonou v National Westminster Bank plc** [2011] 1 All ER (Comm) 1164, where Morgan J stated ... (b) cases where the litigant in the second claim wishes to make a claim which was not made in the earlier proceedings, but which the court finds he could and should have made in the earlier proceedings.

1. The application is granted and the claim against the 1st defendant is struck out;
2. The claimant having been unsuccessful in the application shall pay costs to the 1st defendant, such costs to be assessed if not agreed;
3. The 1st defendant to draw file and serve this order.

CHARON GARDNER-HIPPOLYTE
HIGH COURT MASTER

BY THE COURT

REGISTRAR