

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

COMMONWEALTH OF DOMINICA



In the matter of the Estate of SAMUEL A. WALDRON

CIVIL NO. DOMHCV 2018/0029

BETWEEN: NOXI ARTHUR WALDRON formerly known as LENNOX AUGUSTINE WALDRON
Applicant/Claimant

and

**STAFFORD WALDRON a.k.a. STARFORD WALDRON (Surviving Personal Representative of the
Estate of Samuel Arthur Waldron)**
Respondent/Defendant

DOMINICA CO-OPERATIVE SOCIETIES LEAGUE LTD
Intervener/Applicant

CIVIL NO. DOMHCV 2020/0033

BETWEEN: NOXI ARTHUR WALDRON formerly known as LENNOX AUGUSTINE WALDRON
Applicant/Claimant

and

**STAFFORD WALDRON a.k.a. STARFORD WALDRON (Surviving Personal Representative of the
Estate of Samuel Arthur Waldron)**
Respondent/Defendant

DOMINICA CO-OPERATIVE SOCIETIES LEAGUE LTD
Intervener/Applicant

CIVIL NO. DOMHCV 2020/0152

IN THE MATTER OF THE TITLES BY REGISTRATION ACT CHAPTER 56:50 SECTIONS 114, 119 AND 120

AND IN

IN THE MATTER OF CERTIFICATE OF TITLE REGISTERED IN BOOKS OF TITLE F8 FOLIO 36 CONTAINING 7.577 ACRES, E9 FOLIO 76 CONTAINING 10347 SQUARE FEET OR 0.240 ACRES AND F8 FOLIO 35 CONTAINING 7 ACRES OR 2P

AND

IN THE MATTER OF THE APPLICATION OF NOXI AURTHURWALDRON FOR AN ORDER TO SUSTAIN CAVEATS AND TO ORDER THEIR CONTINUANCE ON THE REGISTER UNTIL SUCH TIME AS MAY BE ORDERED BY THE COURT

BETWEEN: NOXI ARTHUR WALDRON formerly known as LENNOX AUGUSTINE WALDRON
Applicant/Claimant

and

STAFFORD WALDRON a.k.a. STARFORD WALDRON (Surviving Personal Representative of the Estate of Samuel Arthur Waldron)
Respondent/Defendant

DOMINICA CO-OPERATIVE SOCIETIES LEAGUE LTD
Intervener/Applicant

Appearances:

Jodi J Luke of Platinum Law Chambers for Noxi Arthur Waldron

Hazel Johnson of de Freitas, de Freitas & Johnson for Stafford Arthur Waldron

Dawn Yearwood Stewart of Dawn Yearwood Chambers for The Dominica Co-operative Societies League Ltd

2021: September 30th

RULING

(With written reasons)

1. **Stephenson J.:** Before the court are a number of applications for consideration. Firstly, there is an application filed on the **12th November 2020 by the defendant** to strike out the action **DOMCHV152 of 2020** and secondly, a similar application filed on the **24th March 2021 by the Dominica Co-Operative Societies League Ltd ("The intervener")** to strike out the claims brought by Noxi Arthur Waldron ("the claimant") against Stafford Waldron ("the defendant") which affects the interveners.
2. To appreciate the applications currently before the court it is necessary to briefly state a history of the litigation involving the property in issue.
3. The substantive case before the court arises out of a dispute between the claimant and the respondent as it regards the estate of Samuel Arthur Waldron. This dispute was first brought before the court in DOMHCV2018/0029. That case was settled at mediation and a consent order based on the terms of the duly signed mediation agreement was entered on the 21st January 2019, the relevant terms of the order are:
 - 1) *"The estate consists of six properties with accumulated value of \$596,374.00;*
 - 2) *The estate owed the Roseau City Council rates in the amount of \$6,388.35;*
 - 3) *There are five beneficiaries of the estate and each beneficiary is entitled to share of \$117,997.13, let's say \$118,000.00;*

- 4) *The property at Cross lane Certificate of title F8 folio 37 with building there on valued at \$242,800.00 to be transferred to Noxi Waldron the claimant and Joseph Waldron as tenants in common;*

11. All transactions to be perfected within no more than 6 months"

4. Noxi Waldron did not comply with the terms of the consent order and on the 3rd March 2019 he filed an ex parte application with a certificate of urgency for an extension of time to comply with his obligations under the order of court dated 16th October 2018 and for an interim injunction to prevent the sale of property located on Cross Lane more particularly described as a portion of land known as a residential lot in Roseau containing 1,114 square feet registered in Book of Titles F8 Folio 37 ("the property") and for a declaration that the sale of this property is null and void and in breach of the consent order dated 16th October 2018.
5. The portion of land registered in Book of Titles F8 Folio 47 comprising 1,114 square feet and registered in the name of Muriel S Waldron and Starford Waldron as Personal Representatives of Samuel A. Waldron was purchased by the Dominica Co-operative Credit Union League Ltd from the defendant who is the sole surviving personal representative of the Estate of Samuel Arthur Waldron deceased for the sum of \$242, 800.00 ("the property"). Starford A Waldron the defendant signed a memorandum of transfer to the intervener as purchaser on the **4th February 2019.**¹
6. That application was granted ex parte on the **12th March 2019**. On the 27th March 2019 the defendant applied for the ex parte order made on the 12th March 2019 to be set aside on the grounds that there was no urgency, that there was material non-disclosure on the part of the applicant/claimant Noxi Waldron, that there was no return date for the injunction entitling the respondent to be heard on the application for injunctive relief and that the granting of a final declarative order on an exparte application was irregular and the order did not comply with CPR 11.6 (3).

¹ The Memorandum of Transfer duly stamped and signed was exhibited to the affidavit in support of the application of Phoenix Belfield ("the Belfield affidavit") and marked PB1.

7. On the **21st October 2019** on an interpartes hearing the application of the 12th March 2019 was wholly set aside and an order was made as to costs. A date for further interpartes hearing was fixed for 16th December 2019. On the **17th December 2019** following an interpartes hearing and due consideration of authorities the application was refused by Madam Justice Wynante Adrien Roberts and costs awarded to the Starford Waldron².
8. On the **11th August 2020** Noxi Waldron the claimant filed **DOMHCV2020/0152** seeking an order to sustain caveats placed on the properties concerning the litigation and for an order for the continuance of same until such time as may be ordered by the claimant. The fixed date claim was accompanied by an exparte application to sustain the said caveats along with a notice of urgency. An exparte order sustaining the caveats was granted by the court as currently constituted on the **25th August 2020**.
9. The order of **25th August 2020** made pursuant to the exparte application sustaining caveats placed on five parcels of land associated with the estate of Samuel A Waldron by the claimant Noxi Arthur Waldron in DOMHCV152 of 2020. It is to be noted that this application was accompanied by a certificate of extreme urgency filed by the claimant.
10. Applications³ were filed by the defendant on the said **12th November 2020** by the defendant to strike out and set aside order of court dated 25th August 2020 on the grounds that the action is frivolous, vexatious and/or abuse of process and it has no real prospect of success and that Suit no DOMHCV2018/0029 is *res judicata* having been subject to a final order of the Court which was not appealed. The defendant also applied for an order of costs against the claimant.
11. The defendant averred that:
 - 1) There was a mediation agreement in DOMHCV2019/0029 which agreement was made a consent order of court⁴;
 - 2) The claimant failed to purchase the property as agreed and subsequently ordered and therefore he had no duty to transfer the property to the claimant as claimed;

² That order was perfected on the 8th July 2020

³ In DOMHCV152 of 2020 and in DOMHCV33 of 2020

⁴ The Order of court was exhibited and marked SW 1

- 3) The claimant acknowledged his default and that he through his solicitors wrote on the 28th January 2019 seeking an additional six months to comply with the agreement and applied an order of court which was not acceded to by the defendant⁵;
 - 4) That on the 4th February 2019 he sold and transferred the property to a third party and that third party was a genuine *bona fide* purchaser;
 - 5) That the claimant lodged caveats against all the properties comprising the estate of Samuel W Waldron in March 2019 and later applied to the court to vary the consent order and this application was eventually dismissed in his presence on the 17th December 2019. The claimant never appealed this order dismissing his application.
 - 6) On 11th January 2020 the defendant lodged orders to dismiss the caveats lodged by the claimant;
 - 7) The caveat orders were not sustained within the 21 days as stipulated by law. That the orders obtained by the claimant on the 11th of February 2021 was never served on him until July 2020;
 - 8) That the consent order entered in DOMHCV29 of 2018 was a final order and that there were no pending enforcement proceedings and that the said action is no longer alive or an active suit to justify sustaining the caveats;
12. The claimant filed a notice of opposition to the defendant's application to strike out and set aside the order of court dated 11th February 2020 on the **19th November 2020**.
13. The claimant contended that the application brought by the defendant is misconceived that the application is emanating under the Title by Registration Act⁶ for an order to sustain a caveat and cannot be an abuse of process further that the defendant's application is erroneous as there has been no final order of court and the order was in respect of an interlocutory application which was not determinative of the issues which arose on the claim.

⁵ The letters between the claimant's and the defendant's solicitors were exhibited and marked SW2 and SW3

⁶ Chapter 56:50 of the Laws of the Commonwealth of Dominica

14. On the **21st January 2021** the claimant applied for an order to sustain the caveat in DOMHCV152 of 2020 with an accompanying affidavit setting forth the claimant's case. This affidavit was sworn to by Vernice Adams the claimant's duly appointed agent. ("Ms. Adams")
15. As it regards the intervener Ms Adams averred that the intervener was not a bona fide purchaser for value and exhibited a letter dated the **26th March 2019** and relied on the contents of the said letter.⁷The letter from Mrs Laurina Vidal Telemaque of the law office of Laurina A Vidal was addressed to Ms Mary A Roberts of Prevost and Roberts chambers indicating to them that the intervener purchased the property from the administrators of the estate of Samuel A Waldron and made reference to an order obtained by the claimant declaring the sale null and void. The letter also informed Ms Roberts of the interveners continued interest in acquiring the property in order to locate their offices on the lot and inquiring whether or not the claimant would be willing to consider an alternative purchase price to inform them of such. The intervener also sought to emphasize to the claimant their urgent need for the parcel to construct their office.
16. I pause here to say that I do not agree with the claimant's submission that this letter evidences the interveners knowledge of the legal issues before they bought the property as this letter is dated after the sale and receipt of the memorandum of transfer, it is therefore understood that they became aware of the proceedings subsequent to the purchase.
17. The matter came up before the court as currently constituted on the 22nd January 2021 and the Dominica Co-operative Credit Union League Ltd (the intervener) was added as a party to the proceedings. The matters were also ordered to be brought up together and all the files along with the parties, the claimant, defendant and intervener all represented by Counsel appeared before the court on the 25th August 2020, 18th September 2020.
18. On the **24th March 2021** the intervener filed an application to strike out the claims brought by the claimant in DOMHCV33 of 2020 and DOMHCV152 of 2020. This application was accompanied by an affidavit of Phoenix Belfield the General Manager of the League ("Mr Belfield").

⁷ Letter dated 26th March 2019 exhibited and marked VA6

19. Mr. Belfield averred that upon purchase of the property a sum of money was expended in repairing the roof and doing other incidentals to the building and in July 2020 having obtained planning permission the intervener demolished the building with the intention of building on the said lot.
20. It was further averred on behalf of the intervener that they received a letter dated the 7th August 2020 from the Solicitors acting on behalf of the claimant demanding that they cease and desist from their activity on the property also informing them that the property was the subject matter of court proceedings and that a caveat was placed on the said property.⁸
21. That upon obtaining leave of and permission from the court the interveners searched and found the following pertinent facts:
- 1) DOMHCV29 of 2018 was filed by the claimant against the defendant regarding the claimant's interest in the estate of Samuel A Waldron;
 - 2) That there was a successful mediation with a mediation agreement dated the 26th July 2018 which was made an order of court dated 16th October 2018⁹;
 - 3) That it was a term of the mediation agreement that the property was to be transferred to the claimant and Joseph Waldron as tenants in common;
 - 4) That pursuant to the Order of court dated 16th October 2018 the claimant had to pay monies to the Estate of Samuel A Waldron and all transactions were to be perfected on or before 26th January 2019 (within 6 months) of the mediation agreement;
 - 5) That there appeared to be no compliance by the claimant to make the payments as ordered and the defendant in the circumstances went ahead and sold the property to the interveners;
 - 6) The intervener purchased the land on the 4th February 2019 more than one week after the claimant was required to make payments as ordered;
 - 7) That there was no application for extension of time by the claimant and therefore in the circumstances the intervener was not put on notice of any continuing dispute between the claimant and the defendant;

⁸ The letter was exhibited as PB2 of the Belfield affidavit

⁹ The Mediation Order was exhibited as PB3 to the Belfield Affidavit

- 8) The intervener in the circumstances was a purchaser for value without notice of the ongoing dispute between the parties (the claimant and the defendant). In any event that the dispute between the parties was resolved at mediation which agreement was made an order of court with certain stipulations which the claimant failed to meet and in the circumstances of the case based on the claimant's noncompliance with the order the defendant was at all material times free to sell the property to the intervener which he did;
- 9) That on the 28th January 2019 after the time for compliance with the agreement and order the claimant through his solicitor sought to obtain an extension of time from the defendant through his solicitor of six months for compliance with the order of court. This request was denied by the defendant¹⁰;
- 10) On the 8th March 2019 upon an ex parte application made by the claimant the time to extend the claimant's compliance with the order was granted by the court (as currently constituted) for a period of six months.¹¹ This was after the sale to the interveners by the defendant was closed;
- 11) The defendant applied by way of ex parte application on the 27th March 2019 to set aside the ex parte extension obtained by the claimant which order was granted and an inter partes hearing of the application was fixed by the judge for the 17th December 2019 and on that date, it came up before Justice Roberts in Chambers and the application was duly refused with agreed costs;¹²
- 12) That the claimant did not appeal the order of Justice Roberts instead filed a new claim in an attempt to circumvent the order of Justice Roberts.

22. Mr. Belfield on behalf of the intervener averred that he has been advised by his solicitor on record Ms Dawn Yearwood Stewart as follows:

- i. that there was nothing preventing the defendant from selling the property to the interveners as at the time of sale the claimant failed to comply with the terms of the mediation agreement which was converted to an order of court;
- ii. that the claimant made an attempt to extend the life of the order after the time for his compliance with the order lapsed which application should have been made before the order lapsed and that the application was refused by Justice Roberts without more;

¹⁰ The Letters were exhibited at PB4(a) and (b) of the Belfield Affidavit

¹¹ A copy of the order of Justice Roberts was exhibited as PB5 of the Belfield affidavit

¹² A copy of the order of Justice Roberts was exhibited as PB6 of the Belfield affidavit

- iii. that the option which was available to the claimant was to appeal the learned judge's refusal and having not done so he would be deemed to have accepted her decision and to now engage the court by way of caveat proceedings amounts to a abuse of process and that the claims should be struck out with costs.

23. Mr. Belfield further averred that the fact that the matters were consolidated by the court is indicative of the fact that the pleading as are being duplicated and filed in all three proceedings and that in the circumstances it is clear that there is only a single claim before the court¹³.

24. Mr. Belfield further averred that he has been advised by his solicitor that the attempts by the claimant to circumvent the order of Madam Justice Roberts and not to appeal the said order is wrong in law and should not be allowed and in the circumstances the caveat which has been placed on the property should be removed and that the interveners be allowed to proceed obtain their title with an order of costs to be made in favour of the interveners to be paid by the claimant.

Discussion and finding

25. This ruling concerns whether or not to strike out the action and the caveats as stated. The law on striking out cases is well settled in our jurisdiction and this court quotes from the **Tawney case**¹⁴ one of the leading cases on the issues as follows:

"The striking out of a party's statement of case, or most of it, is a drastic step which should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial"

¹³ See Order of Court dated 18th March 2021

¹⁴ HCVAP 2012/007 Tawney Asset Limited –V- East Pine Management Limited and Others

26. It is in this court's view necessary to consider the legal status of an order made after a mediation agreement. In the case at bar, it is the defendant's and intervener's contention that the order brought the proceedings to an end and that the claimant failed to comply with the order thereby allowing the defendant to enter into a transaction with the intervener to purchase the property thereby denying the claimant ownership of the said parcel of land.
27. The defendant contends that the claimant sought to extend the time to comply with the terms of the order that he pay a sum of money to the estate within six months of the agreement which he failed to do and which upon request being made to the defendant that the defendant refused to extend the time as requested.
28. That the defendant thereafter sold the parcel of land to the intervener and signed a memorandum of transfer to complete the sale. The claimant sought to place a caveat on the parcel of land in the new proceedings after his application for an extension to comply with the order of court was ultimately dismissed by the court.
29. The claimant has taken the position that the order made pursuant to the mediation agreement was interlocutory in nature and upon failure by him to comply with the order therein meant that the substantive matter should take its natural course before the court. I do not agree with this submission.
30. **What is the status of an order entered into as a result of a mediation agreement?** The defendant cited and relied on the decision of the Court of Appeal in the matter of **Donald Halstead -v- The Attorney General**.¹⁵ The head note reads as follows:
- "A consent order drawn up between the appellant on the one hand and the Attorney-General, the Director of Public Prosecutions and the Commissioner of Police on the other hand brought to an end criminal proceeding against the appellant and, on the true construction of the consent order, precluded the appellant from instituting civil proceedings in private law against the other parties in connection with or arising out of the criminal proceedings. The appellant, assuming that the consent order only precluded the institution of criminal proceedings or constitutional proceedings, instituted proceedings against the other parties

¹⁵ 50 WIR 98

(the respondents) for damages arising out of the criminal proceedings formerly brought against him. Georges J dismissed the claim for damages and the appellant appealed to the Court of Appeal.

Held: dismissing the appeal, that the institution of the claim after obtaining the consent order was an abuse of process even if the appellant might not strictly have been estopped *per rem judicatam* from instituting it; further, the appellant's rights of action and causes of action (arising from the former criminal proceedings against him) had been merged in the consent order ('*transit in rem judicatam*') and had ceased to exist; the claim was also an abuse of process as being a breach of an order of the court and as the consent order had created a promissory estoppel."

31. Mediation is a form of alternative dispute resolution in which a mediator follows a structured process to facilitate an agreed settlement between the parties to a dispute. In the case at bar the agreement reached at mediation has pursuant to the terms of the CPR 2000 been made an order of court. The position as this court understands it is that where there is such an order it takes the form of an agreement between the parties and that it can only be set aside for reason that are available to set aside a contract. That is if there is common fundamental mistake, fraud, misrepresentation or frustration.
Re: **Huddersfield Banking Co Ltd v Henry Lister & Son Ltd** ¹⁶

32. Moise J in **Applewaite Lake v Barbara Hardtman and another**¹⁷
had this to say

"The balance which the court seeks to create in such an instance is to firstly appreciate that there must be finality to litigation. The court is obligated to give no more of its time and resources to the parties in any case than what is reasonably necessary to resolve the substance of the dispute between them. In the case of a consent order, it is an order of the court and insofar as it brings an end to proceedings, the parties are bound by its terms. On the other hand, it is appreciated that consent orders are of the nature of a contract mutually entered into by the parties. Insofar as that is the case, it is not an order which was made after the court had considered the substance of the case. The prevailing principle therefore

¹⁶ [1895] 2 Ch 273, [1895-9] All ER Rep 868

¹⁷ Claim Number: NEVHCv2014/0031 Eastern Caribbean Supreme Court St Christopher & Nevis Circuit

is that the court is able to set aside a consent order for the same reasons it may invalidate a contract. This principle was highlighted by Byron JA in the case of *Cecilia Francis v Louis Borie*¹ where he stated the following:

"The legal principles to be applied are not in dispute as this branch of law has been settled for a long time. A consent order is binding on the parties to it but is no less than a contract, because there is added to it the command of the court, and as such it is subject to the incidents of a contract including the liability to be set aside. The point is succinctly stated in *Huddersfield Banking Company, Limited v Henry Lister & Son, Limited* (1895) 2 C,273 by Lindley L, J, at 280: "In a consent order, I agree, is an order and so as it stands, I think it is as good as an estoppel an any order. I have not the slightest doubt on that: nor have I the slightest doubt that a consent order can be impeached, not only on the ground of fraud, but upon any grounds which invalidate the agreement it expresses in a more formal way than usual. ..."

I could do no better but whole heartedly adopt those words.

33. It is this court's view that the mediation agreement the terms of which were subsequently made an order of court puts this to the level of or is evidence of a binding contract between the parties. In this case the court could only interfere with the order on the same terms that it would a binding contract as stated earlier.
34. In the case at bar the facts are that the parties the claimant and the defendant that is, had a dispute in the estate of Samuel A Waldron. A law suit was filed the parties and their respective attorneys attended mediation and a mediation agreement was arrived at. The terms of that agreement were made an order of court. It is clear that the bite of the order entered into by the parties was that it was totally based on the terms of the mediation agreement
35. The claimant failed to adhere to the terms of the agreement the defendant went ahead after the claimant failed to adhere to the terms of the agreement and sold the property to the intervener. There is no evidence upon which this court can seek to vitiate that agreement, neither is there any evidence before the court that the intervener was not a bon a fide purchaser for value.

36. Having considered the law and the evidence adduced by the claimant who at all times bore the burden of proof albeit on the balance of probabilities, there is no evidence of misrepresentation, mistake or fraud which would enable this court to consider setting aside the agreement. The mediation agreement and the subsequent order was meant to bring an end to the dispute between the parties. Each party was obliged and meant to abide by their agreement and obligations. The claimant is not at liberty to relitigate the matter and it is most certainly not a function of the court in the absence of demonstrable causes of actions to permit such actions to proceed in the hope that a cause of action or some evidence may come up or be uncovered as the case proceeds.
37. It is this court's view that the claimant has no probable cause of action before the court the matters between himself and the defendant having being litigated before and concluded in a mediation agreement and order. This matter is therefore dismissed with costs to the defendant and the intervener to be taxed if not agreed.
38. It is to be noted that failure to make specific mention of any point of submission does not mean that it has been ignored or there has been a failure to take it into account. Similarly, many good issues and points have been raised by both counsel which in the court's view is not necessary to discuss in order to resolve or to decide the main issue in the case at bar. I wish to thank Counsel for their helpful submissions and their understanding in the length of time it has taken the court to render this ruling.

M E Birnie Stephenson
High Court Judge

BY THE COURT

REGISTRAR