

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

SLUHCV2002/0379

BETWEEN:

NICHOLAS LANSIQUOT

Claimant

and

IGNATIUS LEON
PAULA MARIUS
MERISE LANSIQUOT
JOAN FELIX
LLYN LANSIQUOT
JOHN LANSIQUOT

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Sueanna Frederick for the Claimant

Ms. Sherene Francis with Mr. Andie George for the 2nd and 4th Defendants

Present:

Ms. Bridgette Lansiquot on behalf of the Claimant

Ms. Paula Marius, 2nd Defendant

2021: September 21;
November 8.

DECISION

(Application for further directions after Order Subsequent to Mediation)

[1] **CENAC-PHULGENCE J:** This decision concerns a notice of application supported by an affidavit in support of the 2nd and 4th named defendants, Paula Marius and Joan Felix (“the defendants”) filed on 7th May 2021. By that application the defendants seek the following relief:

(a) that the matter be set for further hearing to give directions for assessment of defendant’s improvements on Block 0235B Parcel 3

("the Property") as per Order of the Court of Appeal in Appeal No. 29 of 2005 dated 2nd July 2007;

- (b) upon the completion of assessment, the claimant do pay the defendants for those improvements which were not contemplated by the Mediation Agreement dated 14th May 2013 ("the Mediation Agreement").
- (c) the claimant do employ a licensed land surveyor to execute a perimeter survey of the land registered as 0235B 3 at his cost as per paragraph 2 of the Mediation Agreement dated 14th May 2013;
- (d) costs; and
- (e) such further or other relief as the court deems fit

[2] The grounds of the defendants' application in summary are as follows: (a) the Court of Appeal in Appeal No. 29 of 2005 remitted the issue of assessment of the defendants' improvements on Block 0235B Parcel 3 to the High Court; (b) when the matter was remitted, the Court referred the parties to mediation and while the Mediation Agreement effectively dealt with the defendants' improvements on the portion of Property which they agreed to purchase, the value of improvements on the remainder of the Property was not dealt with and as such that aspect of the assessment remains incomplete; and (c) the interests of justice will be served if the application is granted.

[3] The claimant and defendants filed brief submissions in support of their respective positions on 3rd September 2021 and the matter was heard on 21st September 2021. Having considered the application and the submissions both oral and written of the parties, I have concluded that the application for further directions should be dismissed for the reasons which I set out below.

[4] As relates to the part of the application dealing with the claimant not having done the perimeter survey as agreed, the Court as part of its enforcement powers, by order dated 21st September 2021, ordered the claimant to comply with the relevant clause of the Mediation Agreement within a period of four months from that date.

Background Facts

- [5] In order to deal with the application and place the issues in proper context, I think it is important to have an appreciation of the background to this matter as gleaned from the court record.
- [6] By claim filed on 18th April 2002 against six defendants including the 2nd and 4th defendants to the present application, the claimant claimed possession of his land known as Block and Parcel No. 0235B 3 (“the Property”) and sought an order removing the defendants from the Property. The claimant’s claim was dismissed, and he appealed to the Court of Appeal. The Court of Appeal delivered its judgment on 2nd July 2007 allowing the appeal and setting aside the trial judge’s order and declaring that the appellant (the claimant) was entitled to have possession of the Property and that the respondents (defendants) were to give up possession by 1st May 2008. The Court also ordered that the claimant keep the improvements made by the defendants on the Property. The Court of Appeal ordered that unless the parties otherwise agree, the respondents (defendants) were to pay to the appellant (claimant) prescribed costs in the court below and two thirds of those costs in the appeal proceedings. In relation to the payment for the improvements, this was the order at paragraph 35 of the judgment of the Court of Appeal:
- (a) “Nicholas Lansiquot shall, on the day on which the respondents give up possession of the disputed land pay the respondents the actual value of those improvements as determined by an assessor or assessors appointed by agreement between the parties or upon the directions of a master of the High Court;
 - (b) For the purpose of the appointment of an assessor or assessors under paragraph 4 of this order and for consequential directions, solicitors for the appellant, Nicholas Lansiquot and the Registrar of the High Court shall take such steps as are necessary to have this case scheduled forthwith for directions.”
- [7] Thereafter, the matter came before the court on 29th October 2008 (only claimant counsel was present) and the court ordered the appointment of Herman Phillip, valuation surveyor to assess the value of the land and the value of the houses erected by the defendants and to state whether the houses are made of wood or concrete or partly of both. Mr. Phillip was to

report to the court by 3rd December 2008. The costs of the assessment were to be borne by the defendants in equal shares.

- [8] The matter came on for hearing on 21st January 2009 (only claimant counsel was present) and was adjourned to 4th March 2009 to receive the valuation report. On 4th March 2009 (both counsel were present), the court ordered that the surveyor provide a copy of the valuation report dated 23rd February 2009 to Mr. Colin Foster (then counsel for the defendants) and that the parties meet and report on 31st March 2009.
- [9] On 31st March 2009 (both counsel were present), the court adjourned the matter to 28th April 2009 for counsel to report to the court on the valuation report. On 28th April 2009 (both counsel were present), the matter was adjourned to 23rd June 2009 for the valuer's additional report and final order. When the matter next came up before the court on 19th January 2010 (both counsel were present) the court ordered the defendants to file and serve the second report of Coral Development Ltd and crop valuation on counsel for the claimant and the parties were to report to the court on 23rd February 2010 for further consideration of the matter.
- [10] On 4th February 2010, the defendants filed a List of Exhibits attaching (i) a second report of Coral Development Limited for valuation of residential building for Mrs. Paula Marius and (ii) Crop valuation from Eric Monroe S. P. C. The matter came up on 23rd February 2010 (both counsel were present) and the court ordered that 'the defendants provide Herman Phillip, Official Valuer with clear and precise instructions as to what they desire exactly on which he can work and then furnish a revised report to the Court so that matter can be finally reviewed on 20th April 2010'.
- [11] On 20th April 2010 (both counsel were present), the court ordered that Herman Phillip at the request of the defendants revisit the land and revalue the residential building of Paula Marius; and secondly, to value all improvements made on the said estate by the defendants with their own effort and materials. The matter was to be reviewed on 1st June 2010.

[12] On 1st June 2010 (both counsel were present), the matter was adjourned to 13th July 2010 pending an estimated cost of the surveyor's fees for work contemplated by the defendants. The next substantive order in the matter was made on 4th October 2011 on which date the matter was referred to mediation. After several extensions of the mediation order, a Mediation Agreement dated 14th May 2013 was arrived at, the terms of which are set out below:

1. "The parties agree that the Defendants will purchase 1 acre of land that they currently occupy from the Claimant at the cost of \$35,000.00.
2. The Claimant shall employ a licensed land surveyor to execute a perimeter survey of the land registered as 0235B 3. Cost of survey to be borne by the Claimant.
3. The Defendants shall employ a licensed land surveyor to dismember the 1 acre of land which they currently occupy within the Claimant's land, which shall include houses found to be within the Claimant's said land. Cost of survey to be borne by the Defendants.
4. The surveyor employed by the Defendants shall prepare a sketch plan of the proposed dismemberment for the approval of the parties prior to the execution of the said survey.
5. In the event that the Defendants' occupation exceeds 1 acre but is less than 1 $\frac{1}{4}$ acres the Defendants shall be at liberty to pay for the excess at the rate of \$35,000.00 per acre.
6. In the event that the Defendants' occupation exceeds 1 $\frac{1}{4}$ acres but is less than 1 $\frac{1}{2}$ acres the Defendants shall have the option to purchase the additional $\frac{1}{4}$ acre at the rate of \$5. 000 per square foot.
7. If the Defendants' occupation exceeds 1 $\frac{1}{2}$ acres they shall abandon the excess."

[13] On 11th June 2013(both counsel were present) the court's order was "Matter has been settled at mediation. The appropriate order will be placed on file in due course." On 23rd July 2013, the Mediation Agreement was made an order of the court and the proceedings were stayed except for the purposes of carrying the terms of the agreement into effect.' The matter next came up for hearing on an application to enforce the terms of the

Mediation Agreement filed on 22nd June 2018 (some five years later) and an order was made on that application on 15th April 2019.

- [14] The defendants contend that while the Mediation Agreement would have meant that the portions of the Property on which the defendants built their houses and were to be purchased included the crops planted by them on those portions of Property, nothing was resolved concerning the crops on the remainder of the Property. They therefore believe that the court's directions are still required concerning the value of the crops that would not have been caught by the terms of the Mediation Agreement. They say that since there was no agreement between the parties relating to the crops on the remainder of the Property, the court's directions are required for the determination of the value of the improvements on the remainder of the Property.
- [15] The main issue to be determined is whether the Court has jurisdiction to give further directions as applied for by the defendants. An ancillary issue is whether the doctrine of res judicata or issue estoppel applies in the circumstances of this case.

Submissions and Analysis

- [16] The defendants wish that the Court invoke its inherent jurisdiction to deal with an issue which they say remains unresolved and which was contemplated by the Court of Appeal judgment. They argue that by virtue of CPR 26(2)(1)(w) the court has as part of its case management powers, the power to take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective. It is the defendants' contention that even though the substantive elements of the case have been determined by the Court of Appeal (i.e., the rights of the parties have been established), the Court still has a duty to manage the case to completion so that proper effect may be given to that judgment - to bring an end to the litigation.
- [17] I understand the defendants' position to be that an issue remains unresolved between the parties; that the parties have partially resolved the issue of

partitioning the property by agreeing that the defendants would purchase the portions where their houses were built but they did not make any agreement for the payment of crops planted on the entire parcel of land. This issue the defendants say remains a live issue as it was not addressed and therefore, they are not seeking to re-litigate the issues and as such res judicata does not arise.

[18] The defendants refer to the case of **Noellina Maria Prospere v Frederick Prospere et al**,¹ where the Privy Council set out the conditions which must be exist for res judicata to apply, namely:

- (a) the first court must have had jurisdiction;
- (b) the first proceedings must have culminated in a definitive judgment;
- (c) the earlier judgment must have been given in a contentious matter;
- (d) the principle only prevents re-litigation of an issue by those who were parties to or represented in, and so bound by, the first judgment, and who act in the same capacity in the second proceedings.

[19] 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.² Counsel for the defendants makes reference to the fact that res judicata embraces 'issue estoppel' which as stated by **Halsbury's** is 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.

[20] The defendants submit that issue estoppel would prevent an issue that had already been litigated and decided on the merits from being re-litigated even when the parties are different.

¹ [2007] UKPC 2 (Privy Council Appeal No. 18 of 2005) at [16], per Lord Bingham of Cornhill.

² Halsbury's Laws of England, Vol. 11 (2020), para 1568.

- [21] However, the defendants submit that res judicata and issue estoppel cannot apply in the circumstances of this case as they are not seeking to re-litigate an issue which has already decided on its merits between the parties. They are seeking to have a full resolution of claim between the parties which they say ought to have dealt with compensation for the houses erected on the Property and the crops planted there.
- [22] The defendants mistakenly I believe at paragraph 12 of their submissions contend that the claimant was to have compensated the defendants for all the improvements on the Property and the defendants were to vacate the property by a certain date and/or pay for the land (1 acre) where their houses were located. This is not correct as the Court of Appeal's order of 2nd July 2007 simply ordered the defendants to vacate the Property and the claimant to keep the improvements and pay the defendants for the improvements on the Property, the value of which was to be quantified. It was the quantification of the value of the improvements which was remitted to the High Court. The Court of Appeal's order never spoke to the defendant's vacating the property by a certain date or paying for the portion where their houses were erected. That agreement for the defendants to pay for the part of the Property which they occupied was part of the Mediation Agreement.
- [23] I agree with the defendants that the doctrine of res judicata and issue estoppel do not arise in this case but for wholly different reasons. There was no judicial determination of the issue relating to compensation for the improvements on the Property on the merits. That issue was determined by a Mediation Agreement entered into by the parties to the claim. The substantive claim was decided on appeal, and it was the assessment in relation to compensation for the improvements which was remitted to the High Court.
- [24] The salient question therefore is whether the Court has jurisdiction to give further directions as applied for by the defendants. It is critical to note that when the matter was referred to mediation the issue before the court was the quantification of the value of the improvements. At the time of referral, there had been several hearings where various orders were made in relation to

different matters including, (i) the appointment of a valuation surveyor in the person of Herman Phillip;(ii) the time for the submission of the valuation surveyor's report;(iii) for re-valuation of the residential buildings on the Property and valuation of the crops and (iv) for the estimated costs of the valuation surveyor's services to be provided. I took the time at paragraphs6-13 to set out the chronology of this matter to assist in appreciating the stage the matter was at when the mediation referral order was made.

[25] At the date of the mediation referral, there was also on the court record a list of exhibits filed by the defendants exhibiting (i) a second report of Coral Development Limited for valuation of the residential building for Mrs. Paula Marius and (ii.) Crop valuation from Eric Monroe S. P. C. Therefore, when the parties went to mediation, the issue before the court was the valuation of the buildings and crops on the Property with a view to determining the sum to be paid to the defendants as compensation for the improvements as the Court of Appeal had ordered.

[26] The mediation referral resulted in the Mediation Agreement which the parties signed. The Notice of Outcome of Mediation dated 14th May 2013 and signed by the mediator stated that the parties settled as a result of the mediation. This suggests that the Mediation Agreement was the settlement of the matters between the parties. Were it as the defendants suggest that all the issues were not settled, then the mediator ought to have ticked off the box on the form which reads 'The parties settled some issues as a result of the mediation session.' That was not the case. Therefore, it is reasonable to presume that all issues were settled. This is also supported by the fact that when the matter returned to the Court after mediation, the judge noted in his order that the matter had been settled at mediation.

[27] That Mediation Agreement was made an order of the Court and by that Order the proceedings were stayed except for the purposes of enforcing the terms of the Mediation Agreement. The defendants assume that because the matter of the crop valuation did not find its way into the Mediation Agreement that they

are somehow entitled to further directions to resolve what they say is an outstanding issue.

[28] The claimant in submissions argues that the application for further directions at this stage of the proceedings is tantamount to an attempt to set aside the Mediation Agreement which has existed for eight (8) years, as it attempts to invite the Court to look beyond the Mediation Agreement and to consider whether there were alleged unresolved issues. I do not agree that the defendants are attempting to set aside the Mediation Agreement. I think it is more appropriate to say that the defendants are attempting to have the Court re-open the Mediation Agreement to pursue what they say are unresolved issues and the question is can the Court do so?

[29] The defendants in their submissions make reference to the claimant's submission that the Mediation Agreement finalises the entire dealings between the parties and reason that if that is so, then the claimant ought to be estopped from making claims to costs arising from the appeal. With respect, that submission is flawed as the issue of costs was never part of the issues remitted to the High Court and was not alive when the matter was referred to mediation. The issue of costs arose as a consequence of the Court of Appeal's order and not as part of the Mediation Agreement. The Court of Appeal's order as it relates to costs is clear.

[30] I believe it is important to address the nature of a Mediation Agreement. What therefore is the nature of a Mediation Agreement?

[31] It is trite law that a mediation agreement can only be set aside by reason of fraud, coercion, bad faith, mistake or exceptional circumstances at the time of making the agreement. However, the defendants have made it clear that they are not seeking to set aside the mediation agreement, which if they were, would have had to have been the subject of a new claim.

[32] The dicta of the Court of Appeal in **Anselm B. Clouden v Georges Cohen**³ is instructive in appreciating the nature of the Mediation Agreement. The Court of Appeal stated:

“Where parties mediate their differences and arrive at a settlement, and the settlement is reflected in a mediation agreement that is signed by the parties and filed as an order of the court, the resulting order is a consent order within the meaning of the Civil Procedure Rules 2000 and the court does not have jurisdiction to vary the terms of the order in the same proceedings. Any challenges to the order must be by filing separate proceedings.” (my emphasis)

[33] In **Greenbank Road Company Limited et al v David Clasen et al**⁴ Ellis J stated:

“[10] Generally, at the end of a successful mediation session, the parties will draw up an agreement that embodies all the main points of what has been agreed. Both parties will sign this agreement bringing the dispute to an end.

**...
[12] However, where the agreement results from a mediated process which is court connected, typically, the Parties would attend before a judge to have the agreement crystallized into an order of the court usually with some terms added in for enforcement purposes. The agreement is filed with the court as the court’s judgment and is made part of the court’s record. An appropriate order would normally dispose of the claim.”** (my emphasis)

The order subsequent to mediation was that ‘order of the court’ that is referred to in paragraph 12 of the judgment of Ellis J in **Greenbank Road Company**.

[34] The claimant submits that a mediation agreement is similar to a consent order in that both processes require the parties to consider the issues raised in their respective pleadings or any other order which may bind the parties, to compromise and arrive at a settlement that suits both parties prior to execution of the agreement/order.

³ GDAHCVAP2014/0039, (delivered 5th December 2016, unreported).

⁴BVIHCV2015/0112 delivered 27th September 2016, unreported).

[35] The claimant's position is supported by the case **Elston v King**⁵ where the court said:

"...Not only is there a public interest in the finality of litigation but, more importantly...the parties will be approaching the compromise not from a common perspective but actually from a divergent one. It is precisely this divergence which the compromise resolves, not by determining it (that is for the court), which ex hypothesi is not involved as an arbiter of the divergence, if there is a compromise) but by reaching an accommodation which both sides find acceptable." (my emphasis)

[36] Based on the dicta in the **Elston** case it is clear that where parties arrive at a compromise position by way of mediation, the court does not determine the issues between the parties, but the issues are resolved by way of agreement between the parties. Therefore, it is possible for parties to attend mediation and reach an agreement which may have nothing to do with the issues to be determined. For example, in a personal injury matter, the matter of assessment of damages may be remitted to the High Court after an appeal. The parties may agree to take the matter to mediation and will enter the mediation session with the issues of special and general damages on the table for discussion. They may come to an agreement which may totally forego the special damages claimed. In such circumstances, a party cannot years later, having signed the mediation agreement say that the fact that special damages was not included in the mediation agreement means that that issue was not resolved and seek to re-open the matter to address special damages. The defendants must accept that this is what mediation is-the parties arriving at an agreement which is satisfactory to them, and which brings finality to the issues between them unless otherwise stated.

[37] I agree with the claimant's submissions that despite the Court of Appeal's order which required the claimant to pay the value of the improvements to the defendants and for the High Court to facilitate this process, it was open to the parties on the matter being referred to mediation to agree on a mutually satisfactory position. Effectively, with the Mediation Agreement having been executed and made an order of the Court, this brought the matter to an end

⁵(2000) EWHC 55 (Ch.) at para 19.

and the court is functus except for matters relating to enforcement of the terms of the Mediation Agreement. The Mediation Agreement is in the nature of a consent order pursuant to CPR 42.7 which crystallizes into a judgment of the court by the mechanism of the Order subsequent to mediation.

- [38] As indicated earlier were it the case that the parties had not settled all their issues and wished to return to the court on specific issues, this would have been indicated on the Notice of Outcome of Mediation signed by the Mediator and submitted to the Court. The parties would also have had an opportunity to indicate this to the court on 11th June 2013 when both counsel were present and according to the order, representatives of the parties were also present.

Conclusion

- [39] Having examined the facts of this case, in particular the fact that the Mediation Agreement followed the Court of Appeal's order which had remitted the matter to the High Court for valuation of the improvements due to the defendants, the Mediation Agreement would have encapsulated the compromise settlement which the parties arrived at. The parties would have arrived at this compromise in the face of the various orders of the Court, the fact that the process of engagement of a valuation surveyor was ongoing and a valuation report filed by the defendants.
- [40] The defendants cannot 'have their cake and eat it'. If they claim that the Mediation Agreement did not deal with the issue of compensation for the crops as contemplated by the Court of Appeal order, it can also be argued that it did not deal with compensation by the claimant for the buildings either as what was agreed at mediation was payment by the defendants for the land occupied by them which is not at all what the Court of Appeal ordered. This alone demonstrates that this Mediation Agreement was the parties' compromise settlement. The defendants cannot now ask this Court eight (8) years later for further directions to address the matter of compensation for crops. The Court has no jurisdiction to do so. The mediation process which culminated in the Mediation Agreement subsequently made an order of the Court by the Order subsequent to mediation disposed of the matter and brought it to an end. The

Court only has jurisdiction on this claim to deal with enforcement of its order which incorporates the terms of the Mediation Agreement annexed to the said order.

Disposition

[41] In light of the foregoing discussion, I therefore dismiss the defendants' application for further directions with costs to the claimant in the sum of \$500.00 in relation to the entire application bearing in mind that the defendants were successful on one of the three reliefs sought on their application.⁶

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar

⁶In relation to the claimant's failure to undertake the perimeter survey.