

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2017/0552

BETWEEN:

THERESA PLUMMER

Claimant

and

**[1] DENNIS MANGAL
[2] IRMINA LENA EDWIN
[3] TARCISUS ROBINSON STANISLAUS
[4] VIRGINIA EVARISTE
[5] ANTHONY FELICIEN**

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Wauneen Louis-Harris, Counsel for the Claimant

Ms. Mtonya Deterville with Ms. Cleopatra Mc Donald, Counsel for the 1st to 3rd
Defendants

4th Defendant in person

2021: March 18;
May 10.

JUDGMENT

[1] **CENAC-PHULGENCE J:** On 12th September 2017, the claimant, Mrs. Theresa Plummer (Mrs. Plummer”) filed this claim against the defendants, Mr. Dennis Mangal, Ms. Irmira Lena Stanislaus, Mr. Tarsisus Robinson Stanislaus, Mrs. Virginia Evariste and Mr. Anthony Felicien seeking an order setting aside a consent order dated 15th October 2014 (“the Consent Order”), damages, interest and costs.

[2] The Consent Order is in the following terms:

“(1) That the Defendant Theresa Plummer shall pay costs of \$17,000.00 to the First Claimant, the Second Claimant, the Third Claimant and the First Ancillary Defendant.

(2) That the Defendant shall pay to the First Claimant, the Second Defendant, the Third Claimant and the First Ancillary Defendant the further sum of \$6,767.00 representing re-imbursement of the fee paid to the surveyor.

(3) All sums to be paid within months.

(4) Penal Notice to Attach.

I agree

(sgd) Dexter Theodore

I agree

(sgd) Alvin St. Clair

Solicitor for the 1st Ancillary Defendant

I agree

(sgd) Winston Hinkson

Solicitor for the Defendant”

The order stated that all counsel were present, and it was signed by counsel for the respective parties. The preamble stated, “UPON HEARING Counsel for the parties”.

[3] The Consent Order was made in previous proceedings, claim no. SLUHCV2011/0555 which had been brought by the first to third defendants against the claimant, Mrs. Plummer. It is important to provide a short background to the previous proceedings to better understand and appreciate this claim.

[4] Claim no. SLUHCV2011/055 culminated in a mediation agreement dated 9th January and 12th June 2012 (“the first mediation agreement”).¹ Paragraphs 4, 5 and 6 of the first mediation agreement which are relevant to this claim were in the following terms:

“4. Mr. Baptiste, the Surveyor be employed to replace the pegs in order to establish the position of the right of way in accordance with his plan of survey of June 2004.

5. The costs of the survey to be borne by the parties in equal shares in the first instance. In the event it is found that the survey was unnecessary, then Mrs. Plummer will bear the full cost thereof.

6. That the court should determine whether or not the defendant should be made to pay costs and if so what quantum.”

¹ Order subsequent to mediation dated 18th June 2012 attaching mediation order of 12th June 2012.

The first mediation agreement was said to be in full and final settlement of the claim.

- [5] Mr. Baptiste filed a report on 14th May 2013 confirming his compliance with paragraphs 1, 3 and 4 of the first mediation agreement. The parties returned to mediation and entered into a second mediation agreement dated 21st January 2013² (“the second mediation agreement”) which states at paragraph 4 that, ‘Mr. Baptiste confirmed that he had consulted his 2004 plan to re-establish the position of the right of way’.
- [6] Subsequent to this second mediation agreement, Mr. Mangal and the other defendants filed an application on 2nd June 2014 for an order enforcing the first mediation agreement and for costs of the claim. Mrs. Plummer filed ‘an affidavit in aid of implementing the mediation agreement of 21st January 2014’ (the second mediation agreement) in which she stated that she was in agreement with it but urged the court to enforce the mediation agreements in the manner which she set out.
- [7] The Consent Order was made in relation to the June 2014 application.
- [8] As pleaded by Mrs. Plummer, on 14th January 2015, she made an application for stay of execution of the Consent Order and on 7th July 2015 she filed another application, this time, seeking enforcement of the two mediation agreements.
- [9] By order dated 15th June 2016, on consideration of Mrs. Plummer’s two pending applications, the court ordered that the surveyor replace all missing pegs noted by him within 14 days and proposed a site visit to ascertain the state of compliance with the mediation agreements. It will be recalled that Mrs. Plummer had two applications pending, one for a stay of execution of the Consent Order and the other for enforcement of the mediation agreements on the part of Mr. Mangal and the other defendants, the claimants in the previous claim. The court by order dated 9th November 2016 adjourned the matter for the sole purpose of the court fixing a visit to the locus. The claimants and the surveyor were given time to respond to an affidavit which had been filed by Mrs. Plummer the day before the hearing.

² The date of the second mediation agreement is incorrectly stated as 21st January 2013 and should have been 21st January 2014.

The Pleadings in the Instant Proceedings

The Claim

- [10] In the statement of claim, the claimant, Mrs. Plummer alleges that the Consent Order was prepared by legal practitioners for the first, second and third defendants and presented to her and the fourth defendant's legal practitioners for signature. Her allegation is that the content of the Consent Order was not communicated to her and it did not embody any agreement made by her and that she did not accede or in any manner agree with the terms of the Consent Order nor did she sign the Consent Order agreeing to its terms.
- [11] Mrs. Plummer's allegation is that the Consent Order was signed under a mistake of fact in that she did not agree to its terms. She also alleges that the terms of the Consent Order are manifestly disadvantageous and oppressive to her in requiring her to pay costs for which she ought not to be liable. She further alleges that she would not have agreed to the terms of the Consent Order in light of the terms of the first mediation agreement, specifically paragraphs 4, 5 and 6 thereof. She alleges that the surveyor failed to comply with any of the orders of the court and she maintains that he did not replace all missing pegs. She contends that the survey was necessary, and it would be unconscionable, inequitable and unjust for her to pay the costs of the survey and the costs which the defendants continue to claim in the face of there being no evidence that the survey was unnecessary. She alleges that the Consent Order is null and void and of no effect and is not binding or enforceable against her.

Defences

Virginia Evariste

- [12] Ms. Evariste avers that from the tenor of the first mediation agreement, it was for the surveyor to determine whether there was a need to replace any pegs and that costs of the survey would have been met initially by all parties equally. She says further that it is a fact that the surveyor had no reason to replace pegs as he determined that not only were all pegs in place but that they were properly placed. Mrs. Evariste says Mrs. Plummer was present at the time the Consent Order of 15th June 2014 was made. She alleges that the subsequent order of 15th June 2016 was simply to ascertain that there was no need to have replaced any pegs and that all pegs were properly in place. Mrs. Evariste avers that the claim is an abuse of process in that it is an attempt to circumvent

the rules of court. She avers that the proper course of action would have been to appeal the Consent Order which Mrs. Plummer failed to do and she cannot now seek to set aside the Consent Order by filing this claim three years later.

First to Third Defendants

- [13] The first and second defendants filed their defence on 27th October 2017 and the third defendant on 17th January 2018. These defendants aver that the claim should be struck out as disclosing no reasonable grounds for bringing the claim. They aver that the issues raised in the affidavit in response to the application were fully and finally disposed of in the Consent Order and therefore these issues are no longer justiciable on this claim. They also aver that the issue of whether Mrs. Plummer signed or agreed to the terms of the Consent Order is embarrassing to them, the Consent Order having been properly signed and issued out of the High Court. The defendants further aver that the pleadings do not amount to a mistake of fact. They maintain that Mrs. Plummer was fully aware, from the documents which she relies on at paragraphs 4 to 7 of the statement of claim, that if the engagement of the surveyor was found to be unnecessary, she would have had to bear the entire surveyor's cost. The defendants say that they are not in a position to determine what Mrs. Plummer would have or could have agreed to, and that no basis has been set out for the claim for damages. They therefore ask that the claim be dismissed.

- [14] By order dated 23rd October 2018, the claim against the fifth defendant, Anthony Felicien was dismissed as he was not served within the time stipulated in the **Civil Procedure Rules 2000** ("CPR").

Evidence

- [15] The only evidence in the case was given by Mrs. Plummer, the first to fourth defendants electing not to file any evidence in the matter.

Mrs. Theresa Plummer

- [16] Mrs. Plummer provided the procedural history of the previous claim in which the Consent Order was made and which I have outlined above.

- [17] It is Mrs. Plummer's evidence that at no time did she agree to pay any costs whatsoever to the defendants. She says that on 15th October 2014, a Consent Order was signed by her previous lawyer, Mr. Winston Hinkson ("Mr. Hinkson") although she did not agree to the terms or give any consent. She did not authorise the signing of the Consent Order or sign it. Mrs. Plummer says she appeared in court on 15th October 2014 at the Fisheries Complex and the defendants asked the court to charge her a sum of money. It is not clear what this means.
- [18] She states that the judge asked "them" to go out and stood down the matter. It is not clear to who "them" refers. They went outside and discussed the matter, and the defendants were adamant that she should pay them. Therefore, I take "them" to be the defendants. She says she asked the defendants for time to consider because she needed to find out the grounds upon which they were asking the court to order her to pay as her first lawyer was out of the country and she needed to consult with him. Mr. Hinkson had filed a notice of acting on 30th September 2014. They asked how much time she wanted, and she said three months. She said when they returned to court, she saw a paper being passed (she does not say by whom) to the lawyers in the case for them to sign and she did not know what a consent order was at the time.
- [19] Mrs. Plummer says she did not see the paper and thought it was to give her the 3 months to consider her case properly. She was most surprised to find out the contents of the Consent Order when her present lawyer, Mrs. Wauneen Louis-Harris ("Mrs. Harris") explained it to her after she was retained.
- [20] Mrs. Plummer's evidence is that the Consent Order was prepared by the legal practitioner for the first to third defendants and presented to her lawyer and the lawyer for the fourth defendant for signature. The contents of the Consent Order she says was not communicated to her and it did not embody any agreement made by her, she did not agree to its terms and did not sign it. Mrs. Plummer says the Consent Order was signed under a mistake of fact in that she did not agree to its terms.

Claimant's Legal Contentions

- [21] Mrs. Plummer contends that the Consent Order was entered on the basis that she agreed with its terms and she did not so agree and further that the terms of the Consent Order are inconsistent with the terms of the mediation agreement.

First to Third Defendants Legal Contentions

- [22] The first to third defendants contend that Mrs. Plummer having signed the Consent Order through her duly authorised legal practitioner, Mr. Hinkson and the said order having been entered by the court, all claims arising out of the Consent Order are res judicata and no longer justiciable. Mr. Hinkson was properly on record representing the claimant. The CPR provides that a Consent Order may be signed by counsel. They contend that Mrs. Plummer's recourse is not against them and that the Consent Order was properly entered in accordance with CPR 42.7. Mrs. Plummer relied on and acted upon the Consent Order and she has disclosed no facts to support any finding that she made an error of fact when the Consent Order was signed, sealed and acted upon.

Analysis and Discussion

General Legal Principles

- [23] Public policy demands that there is finality to litigation. Therefore, orders are not set aside unless there are compelling reasons to do so. In practice, it is relatively rare for an application to set aside a consent order to succeed. As a general rule, an order obtained by consent of the parties is binding. It remains valid and subsisting until set aside by fresh proceedings brought for that purpose.³ This is a well settled legal principle which requires no further elucidation. The bringing of fresh proceedings is normally grounded in the obtaining of the consent order by fraud, mistake or misrepresentation.⁴
- [24] There are two distinct stages involved in an application to set aside a consent order; firstly, determining as a fact whether there has been fraud, mistake or material non-disclosure, and secondly, if so, determining whether the original order should be set aside.

³ Kinch v Walcott and others [1929] AC 842.

⁴ See paragraph 15 of Davidson Ferguson v Sarah Anita Ferguson, SLUHCv2012/0387, (delivered 22nd October 2015, unreported).

Mistake or Not?

- [25] There are three types of mistake known to law: (a) common mistake – where the mistake is shared by both parties, is fundamental and directly affects the basic definition of what the parties are contracting for; (b) mutual mistake – where the parties are at cross-purposes with one another; and (c) unilateral mistake – where one party is mistaken and the other knows or ought to have known of the mistake. The question therefore is whether on the evidence provided, there was a mistake which renders the Consent Order liable to be set aside.
- [26] It is my view from the onset that the allegations made do not show a mistake. Rather the claimant is attempting to find a way around paying the sums ordered on 15th October 2014. Some three years after the Consent Order, the claimant seeks to set it aside having filed an application seeking a stay of the very Consent Order, and in the alternative an order that the sum which was to be paid be set off against the cost of maintenance of the road to which the defendants were to contribute, or that she be allowed to use that money towards undertaking the maintenance of the road and putting in the drains. That application was filed in January 2015.
- [27] Nowhere in that application did Mrs. Plummer challenge the contents of the Consent Order or intimate that she did not agree to its terms. In fact, the reason given for seeking the stay was that she feared that if the order were not stayed, the claimants would apply to commit her to prison for contempt which she said would be unfair since they were in breach of the mediation agreement.
- [28] Mrs. Plummer states in her witness statement that she thought the paper which was signed at court on 15th October 2014 was to give her three months to consider the matter in keeping with what she says she asked for in discussions with the defendants. However, this is the same order that she sought to stay and never mentioned this. Mrs. Plummer in her evidence says that she only understood the terms of the Consent Order when her counsel explained it to her after she was retained.
- [29] It is the case that Mrs. Plummer's lawyer at the time of the application for the stay of execution in 2015 was Mrs. Harris who is still her lawyer to date. Therefore, if it is that Mrs. Harris explained the order to her after she was retained, it must have been that

when the application for stay was filed, Mrs. Plummer knew the nature and contents of the Consent Order and would have known then that she did not agree with its terms as she now alleges. To my mind, that would have been a critical reason for seeking a stay.

[30] This claim is an attempt to re-open a matter which was settled at mediation resulting in a mediation agreement in full and final settlement of the claim. Anything which followed could only have been with a view to enforcing the mediation order/s. This is an attempt by Mrs. Plummer to take this Court on a journey to determine whether the survey was necessary when that is not a matter of a mistake. In any event, that was the very issue which resulted in the Consent Order and which flowed from the first mediation agreement at its paragraph 5 that 'the costs of the survey to be borne by the parties in equal shares in the first instance. In the event it is found that the survey was unnecessary then Mrs. Plummer will bear the full cost thereof'.

[31] Mrs. Harris in her submissions took the court through the length and breadth of the previous claim to prove that Mrs. Plummer could not have agreed to the Consent Order because she has always maintained that the surveyor did not replace all the missing pegs and therefore the survey was unnecessary. She now wishes for this court to make such a pronouncement when that issue was clearly live on 15th June 2014 when the Consent Order was signed by counsel for all the parties including Mrs. Plummer's then legal practitioner and therefore must be taken to have died with the Consent Order despite the fact that the claimant sought to raise it again in subsequent applications. Mrs. Harris also asks this court to consider that the legal costs awarded of \$17,000.00 is exorbitant and Mrs. Plummer would never have agreed to this given her contention about the necessity for the survey.

[32] It must be remembered that where parties arrive at a Consent Order, it is not necessarily indicative of a resolution of the issues in dispute but rather a compromise or agreed position reached by the parties. It is the parties and not the court who agree the terms. Therefore, at the time when the Consent Order was made, the court was not concerned about whether in fact the survey was necessary. and made no such determination as the parties presented the court with their agreed position given the pending application before the court.

[33] In the case of **Elston v King**,⁵ the court made the following statement in relation to compromise agreements which are akin to consent orders where an existing dispute or matter is settled by agreement resulting in a contract between the parties like any other, and I align myself with this statement:

“... 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.”

[34] What I extract from this case is that the pre-existing issue is settled by agreement by the parties and is therefore taken as resolved and no longer an issue. The Court cannot embark on this journey to determine the necessity or otherwise of the survey at this point. Further, the issue of costs would have been a matter settled by agreement and it is not for the Court to determine whether it is exorbitant in this claim. The parameters within which the court is to operate on a claim like this are clear.

[35] The claimant's allegations in the statement of claim seem to suggest that the Consent Order was signed by Mrs. Plummer's then lawyer, Mr. Hinkson but mistakenly as she did not agree to its terms. It could only be that Mrs. Plummer is saying that her lawyer made the mistake in signing the Consent Order as she did not agree with the contents. The defendants' response in their defences suggest that this was their understanding of Mrs. Plummer's case when they essentially say that the matters raised by Mrs. Plummer are between she and her then lawyer and they cannot speak to them.

[36] In her evidence in chief, Mrs. Plummer gives evidence of what she says transpired at court on the day the Consent Order was signed. Her evidence seems to now suggest that there were discussions between the parties and she was mistaken, as what she thought had been agreed was not what was in the signed Consent Order. That, to my mind, is manifestly different to what was pleaded. On the one hand, the pleadings suggest that it is her lawyer who made the error as he signed the Consent Order, but she never agreed to its contents and on the other hand, it now appears that the mistake

⁵ (2020) EWHC 55 (Ch) at paragraph 19.

was on the part of both the claimant and the defendants as the Consent Order did not reflect the agreement of the parties. In my view, that is a fundamental difference and is not simply particulars or evidence in support of the allegations made in the statement of claim. Counsel, Mrs. Harris quotes the dicta in **Carlton Smith et al v Esther Oakley**⁶ where the court addressed the importance and purpose of pleadings and the purpose of witness statements and quoted the well-known authority on the issue of **East Caribbean Flour Mills Ltd. v Ormiston Ken Boyea**.⁷ That counsel found it necessary to address this is quite interesting.

[37] Mrs. Plummer's witness statement introduced elements which went beyond supporting the allegations in the statement of claim. It introduced new matters which perhaps the defendants would have addressed had they been put on notice that these were the claimant's allegations. It must be prejudicial for a party to litigate in that fashion. Mrs. Harris also suggested in submissions that the mistake was a unilateral mistake or a mutual mistake. That was never pleaded and even if not specifically named (which is not necessary if the essential elements on which to base this claim are pleaded), there is no allegation or evidence to suggest that the defendants were aware of the mistake which Mrs. Plummer alleges (unilateral mistake) or that the parties were at cross-purposes (mutual mistake). The Court cannot allow the claimant to pursue matters which were never raised in her pleadings simply because it was raised in her evidence in chief and not challenged. The point was made in **Carlton** that 'the claimant must still plead "a statement of all the facts on which the claimant relies"'. It is the fine details or particulars that a claimant ought to give in the witness statements and not introduce new facts altogether.

[38] In **Matilda Nelson v Alexis Alcide**⁸ the learned Justice of Appeal concluded that the statement of case must make it sufficiently clear to the other party what are the matters in dispute between them, and importantly what are the salient facts and important documents upon which a party intends to rely in support of their claim or defence.

⁶ BVIHCV2009/0201, (delivered 28th June 2010, unreported).

⁷ SVGHCVAP2006/0012, (delivered 16th July 2007, unreported).

⁸ SLUHCVP2018/0002, (delivered 8th April 2020, unreported).

- [39] It is correct that the court must look to a combination of the pleadings and witness statements to see what the issues are, but it cannot be the case that evidence can simply be provided in witness statements on allegations that were never raised on the pleadings.
- [40] In submissions, Mrs. Harris also submitted that the Consent Order was approved by the court but that the court was misled. Counsel did not elaborate but I presume this submission to be premised on the fact that one party, Mrs. Plummer who was said to have agreed to the terms of the Consent Order, actually did not agree. There is no basis for this submission.
- [41] There is no mistake which the claimant has shown on the evidence presented which would render the Consent Order null and void. As far as I can glean, what Mrs. Plummer appears to be saying is that the Consent Order was signed by her then attorney without her instruction and mistakenly. It is clear from the case of **Waugh v HB Clifford & Sons Ltd.**⁹ that counsel has ostensible authority to agree a matter on behalf of a client and in circumstances where this is done the other party may rely on the representation made by counsel on behalf of his client. This is not a case where Mrs. Plummer was unrepresented in which event different considerations would apply.
- [42] Further, Ramdhani J [Ag.] in **Development Bank of St. Kitts and Nevis v Michael Hanley et al**¹⁰ discussed the issue of the authority of a solicitor to act and compromise a claim. At paragraphs 21-22 and 24 the learned judge relying on **Waugh** said thus:
- “[21] The law is clear that an attorney at law retained in a matter by a client even without express authority, has an implied authority as between himself and his client to compromise the suit without reference to the client, provided that the compromise does not involve matter[s] collateral to the action; that a matter was not collateral to the action unless it involved extraneous subject matter.’
- [22] Further, the attorney at law has ostensible authority as between himself and the opposing counsel to compromise the suit without actual proof of authority, subject again to the same limitation, namely that the compromise should not involve matters which are collateral to the action. There is no need for opposing counsel to seek to confirm that the claimant’s attorney at law has authority to settle the matter. **‘The**

⁹ [1982] Ch 374.

¹⁰ SKBHCV2012/0273, (delivered 8th April 2014, unreported).

magnitude of the compromise or the burden which its terms impose on the other party is irrelevant.

...

[24] An attorney seeking to settle or compromise a matter may, depending on the nature of what he proposes to do, may do well to seek the express authority from his client, but that is a matter between his own client and himself and has nothing to do with the ostensible authority to settle or compromise the matter.” (my emphasis)

[43] Mrs. Harris refers to the case of **Rock Jean v 1st National Bank of Saint Lucia formerly known as Saint Lucia Co-Operative Bank**¹¹ where the learned Master accepted the principle as enunciated in **Waugh**. However, she seeks to draw a distinction, firstly because Mrs. Plummer refers to a number of factual events which fall outside of the authority of her lawyer to act on her behalf and secondly, because the surveyor has admitted that the survey was necessary by seeking time to replace the pegs. Respectfully, I cannot accept counsel’s submissions. Mrs. Harris seems to be suggesting that Mrs. Plummer’s lawyer was not properly instructed when he acted for her in relation to the Consent Order but that is not a mistake in the sense required. The reference to the 2016 letter of the surveyor is subsequent to the making of the Consent Order and therefore does not suggest or support a contention that there was no agreement or that there was a mistake at the date of its making. Considering the dicta of Ramdhani J [Ag.] in **Development Bank of St. Kitts and Nevis v Michael Hanley et al**, none of these matters raised by Mrs. Harris could be said to have been collateral to the action; there was no extraneous subject matter involved.

[44] Mrs. Harris in her submissions in answer to Ms. Mytona Deterville (“Ms. Deterville”), counsel for the first to third defendants’ contention that the Consent Order was in accordance with CPR 42.7 and is therefore a valid order, sought to take issue with the fact that the Consent Order was not expressed as being ‘By Consent’ as required by CPR 42.7(1)(b). She sought to make a distinction between the Consent Order in this case and that which was the subject matter of the case in **Applewaite Lake v Barbara Hardtman et al**¹² where the preamble to the consent order stated that the parties had discussed the matter and came to an agreement on the terms as set out in the order and the evidence was that the claimant had authorised his counsel to enter into the

¹¹ SLUHCv2010/0934, (delivered 31st July 2012, unreported) at paragraph 20.

¹² NEVHCv2014/0031, (delivered 27th November 2020, unreported).

agreement. In that case, the court did not set aside the consent order. Ms. Deterville also relies on the **Applewaite Lake** case and says that it is on all fours with the instant case.

[45] However, non-compliance with CPR 42.7(1)(b) was never a contention of the claimant. The short response is that this is an argument of form and what must be looked at is the substance of the order. The Consent Order clearly expresses on its face that the counsel for the parties agreed and signed the order even if the words 'By Consent' do not appear. That, to my mind, satisfies what is contemplated by CPR 42.7. No doubt the Consent Order could have been more elegantly drafted but that does not detract from its substance and effect.

[46] It is very clear from CPR 42.7(1)(c) that a consent order must be signed by the legal practitioner acting for each party to whom the order relates. There is no requirement that the litigants must sign as well, and it is not the case that the order not having been signed by the litigant as well renders the order of any less effect. The case of **Waugh** supports this. If Mrs. Plummer is challenging the actions of her then counsel, that is not a matter for this claim. In the case of **Harris v Manahan**¹³ the court thought that it would not be right to add bad legal advice (or perhaps negligent actions) to the list of considerations which can justify setting aside a consent order.

[47] It is of note that the claimant in her witness statement stops at the order of 17th May 2017 and never speaks to the fact that the Court of Appeal dismissed her appeal on 17th May 2018 against the said order effectively agreeing that there was no need to stay the Consent Order. The order of 17th May 2017 clearly states that this Court was of the view that the survey commissioned by the court to establish the access road should be lodged so that a legal right of way could be created to allow the parties to have access to their properties. There was no determination of the necessity or otherwise of the survey noted in that order. It therefore cannot be said that that remained an issue for the Court. It remains Mrs. Plummer's contention but is not a matter for the Court. It will be noted that the 17th May 2017 order did not grant the stay but gave directions for the lodging of the

¹³ [1997] 4 AER 454.

survey plan dated 10th May 2013 by Mr. Baptiste towards the creation of a legal right of way.

[48] I therefore do not accept Mrs. Harris' submission that the supervening events of the court orders of 15th June 2016, 9th November 2016 and the letter from Mr. Baptiste dated 13th July 2016 all operate to invalidate the whole basis of the Consent Order and therefore the justice of the case requires that the order be set aside. As discussed above, counsel omitted any discussion about the contents of the order of 17th May 2017 which clearly addressed the survey plan from 10th May 2013 and gave specific directions to facilitate it being lodged.

[49] Mrs. Harris further submits that the court has an inherent jurisdiction to set aside a consent order if the justice of the case so requires. She relies on dicta in the case of **Applewaite Lake** in support where the learned judge stated at paragraph 17 that "the court also has an inherent jurisdiction to protect its process. This may well be invoked to set aside a consent order if the justice of the situation so requires." Whilst this may be the case, this would be in very exceptional circumstances and the particular facts of the case would be extremely relevant. I make no further comment as I am aware that **Applewaite Lake** is on appeal. In any event, I am of the view that this case is not such a situation.

Conclusion

[50] There must be finality to litigation and parties cannot just simply try to get out of complying with court orders by constantly filing application after application and in this case attempting to set aside a consent order which was three years old at the time of filing of the claim. Mrs. Plummer wishes this Court to accept that this is an order to which she was vehemently opposed. Yet, she did not appeal the order nor did she before the expiration of three years seek to set it aside or even allude to her alleged disagreement with its contents as early as January 2015 when she filed her application for a stay of the said order. I therefore find that no basis has been shown upon which this Court should set aside the Consent Order dated 15th October 2014.

Order

- [51] The claim is therefore dismissed. The first, second and third defendants jointly are entitled to prescribed costs in accordance with CPR 65.5. The fourth defendant is entitled to prescribed costs in accordance with CPR 65.5.

Postscript

- [52] Counsel for the claimant at the conclusion of the delivery of the judgment raised the question of whether the fourth defendant is entitled to the same costs level as the other defendants given that she appeared in person and did not file any evidence or submissions. The Court having heard from the other counsel and from the fourth defendant who was present at the delivery of the judgment is not minded to adjust the order made as to costs in relation to the fourth defendant, who was represented for part of the proceedings by counsel and who has been present at every court hearing, even when she indicated that she did not require the services of her lawyer anymore. I see no basis for making a reduction in the costs awarded to the fourth as opposed to the other defendants as requested by counsel for the claimant.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar