

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2016/0235

BETWEEN:

**[1] PHILOMEN NIXON
[2] ANNETTE TURNEY**

Claimants

and

**[1] JOSEPH NIXON AKA PASWOE
[2] JASON NIXON**(In his personal capacity and as The
Personal Representative of the Estate of Giraud Nixon)
[3] STEVER NIXON (In her personal capacity as The
Personal Representative of the Estate of Gabriel Nixon)
[4] JOHNNIE NIXON

Defendants

Appearances:

Mr. Mark Douglas for the Claimant

Mrs. Singoalla Blomqvist Williams for the Defendants

2017: April 18

ON WRITTEN SUBMISSIONS

[1] Stephenson, J.: The subject matter of the issues in this matter has been long

outstanding and should be brought to a conclusion in a timely manner.

- [2] The Claimants are the daughters of Giraud Nixon who died Testate. In his will dated the 19th May 1969, the Giraud Nixon named his son, Joseph Nixon, as the Sole Executor of his will.
- [3] Joseph Nixon died on the 3rd April 1976 intestate without obtaining probate to his father's estate. On the 31st day of May 1976 the first named Claimant Philomen Nixon who is also known as Anelta Nixon,¹ obtained Letters of Administration to her father's estate with the will annexed.
- [4] On the 14th July 2010, the Letters of Administration with the Will annexed granted to the first named Claimant was revoked, and a new grant of Letters of Administration with the will Annexed was granted Gabriel Nixon, the late husband of the third named defendant and the second named Defendant Jason Nixon as Administrators of the estate of Joseph Nixon.
- [5] The first named Claimant appealed the order of Court unsuccessfully. Therefore it is understood by this Court, that Gabriel and Jason Nixon as Administrators of the Estate of Joseph Nixon became and remained the Administrators of the Estate of Giraud Nixon.
- [6] The Claimants are seeking the following relief from the Defendants:
- i. an order for them to give an account to them for the administration of the estate of Giraud Nixon;

¹ See Paragraph 11 of the Statement of Claim filed on the 22 July 2016 which referred to "Philomen Nixon (a/k/a Anelta Nixon)

- ii. a declaration that the second and third named Defendants were in breach of their fiduciary duty as Administrators of the estate of Giraud Nixon;
- iii. declarations that the properties identified in the statement of claim are the properties of the Claimants as beneficiaries of their father's estate ('the Land');
- iv. that the Certificates of Title in the names of the Defendants for the land were obtained by fraud;
- v. an order for the return of the duplicate Certificates of Title to the Registry of Lands for cancellation;
- vi. injunctions requiring the Defendants to pull down any structures that are on the land;
- vii. an injunction prohibiting the Defendants their servants or agents from entering onto the said land;
- viii. damages for trespass and misrepresentation including aggravated and exemplary damages.

[7] Prior to filing their defence, the Defendants filed an application for the claim to be struck on the ground that the matters claimed are *res judicata* and the matter was an abuse of the process of court. The Defendants also claim that the first named Defendant "**Philomen Nixon**" had no *locus standi* in the matter, as Giraud Nixon by his will bequeathed his property to his wife and his three children namely Joseph, Annette and Anelta Nixon.² This application was supported by the affidavit sworn to by the third named Defendant Stever Nixon.

[8] It must be immediately said that ,as is stated in the Statement of Claim and also as is clear from the many documents filed in this matter thus far, that Philomen Nixon and Anelta Nixon appear to be one and the same person and would therefore be a beneficiary of the estate of Giraud Nixon and would therefore have *locus Standi*, therefore the application in this regard would fail.

²Application filed on the 19th August 2016

[9] The Defendants subsequently filed a defence to the matter on the 26th August 2016. The Claimants filed their reply to the defence on the 16th September 2016.

[10] The Defendants' application to strike was opposed by the Claimants, who themselves filed an application to strike the defence which application was supported by an affidavit sworn to by the first named Claimant.

[11] Both parties filed submissions in support of their respective applications. The Court has reviewed the statement of claim, defence, reply, applications, affidavits and submissions with authorities filed in this matter.

The Defendants' Application

[12] In the case at bar the Defendants contend that the issues in which the Claimants seek to bring before the Court has been litigated and decided on by the Court, and in the circumstances they should not be allowed to continue with this action.

[13] The question to be decided is whether the matter that is before the Court is *res judicata* as claimed by the Defendants.

[14] The principle of *res judicata* was considered in the case of **Henderson v Henderson**.³ Wigham V.C. explained the principle as follows:

".....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

³(1843) 3 Hare 100 at page 115

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.”

[15] Halsbury’s Laws of England states:

“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”⁴.

[16] The reason the Courts enforce res judicata is to ensure the good administration of justice in public interest and to prevent abusive and duplicative litigation. It has been held that the Courts should not be clogged by re-determinations of the same disputes; and the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter.⁵

[17] It has also been held that the plea of res judicata applies not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

[18] The matter as pleaded before the Court on behalf of the first named Claimant is not res judicata. It is noted that there has been litigation involving the estate of Giraud Nixon, however there is no evidence that the matters which this Claimant is seeking to bring before the Court was litigated before the Court beforehand. Therefore the

⁴ Volume 11 (2015) at paragraph 1603

⁵Re: *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2013] UKSC 46, [2014] AC 160, [2013] 4 All ER 715.

application as it regards the first named Defendant to dismiss the action will fail and is therefore dismissed.

[19]As it regards the Defendants' claim that the second named Claimant attempted previously to litigate the identical issues in the case at bar. The Defendants have not placed anything before the Court that would support this claim. It is their application and the onus is on them to prove their claim albeit on a balance of convenience. The application would therefore fail in this regard.

[20]The Claimants sought to have the defence in the matter struck out and I decline to do so for these reasons. By a review of the matters filed by both parties, this Court has come to the conclusion that there have been a number of pieces of litigation involving the land forming the estate of Giraud Nixon.

[21]It has been accepted by the Court without more that there were specific bequests made to the Claimants in that will.

[22]It is clear that Gabriel and Jason Nixon as Administrators of the Estate was Joseph Nixon was granted letters of Administration with the will annexed to the Estate of Giraud Nixon.

[23]It is trite law that their duty as Administrators of the Estate of Giraud Nixon would be to administer the estate according to the terms of the Giraud Nixon's Will, ensuring that all the beneficiaries receive their various bequests.

[24]It is clear from the statement of Claim filed herein that the Claimants are seeking to ensure that the terms of the will are fulfilled.

[25]It is also clear from the documents filed before the Court that the parties are bent on making accusations against each other and they all seem willing to drag out this

matter before the Court, with a number of issues that are not necessary to bring a proper ending to the matter.

[26] Therefore, in furtherance of the Overriding Objective of the Civil Procedure Rules 2000, to ensure that this matter which is long outstanding is dealt with expeditiously and fairly, in a way that it is dealt with which is proportionate and to allot an

appropriate share of the Court's resources and saving expense to all, I have come to the view that this matter should be mediated after the following questions are answered:

- i. What is the status of the administration of the estate of Giraud Nixon?
- ii. What is the status of the bequests made in the will of Giraud Nixon?
- iii. What has to be done to ensure that the bequests made in the will of Giraud Nixon is carried out?

[27] The order of this Court is therefore that:

- i. The application to dismiss the matter brought by the Defendants is denied
- ii. The application to strike out the defence in this matter is denied
- iii. Both parties shall each file the following information in the form of an affidavit stating the following:
 - a. What is the status of the administration of the estate of Giraud Nixon;
 - b. What is the status of the bequests made in the will of Giraud Nixon;
 - c. What has to be done to ensure that the bequests made in the will of Giraud Nixon is carried out.

[28] Thereafter the Court will make a mediation order to settle the matter herein.

[29]As a short post script to this ruling, due to the unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, this Court apologises for the delay in delivering this ruling and for any errors which may appear herein. Further the original file was unfortunately destroyed in the passage of Hurricane Maria which ravaged Dominica in September 2017 hence there is uncertainty as to the date that the decision was reserved.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar