

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court

Common Law and Equity

Action No. 2017/CLE/gen/01388

BETWEEN

RICARDO F. PRATT

(In his capacity as Administrator of the Estate of Ruel Pratt)

Plaintiff

AND

GINN-LA WEST END, LIMITED

1st Defendant

AND

RESORTS HOLDINGS (BAHAMAS), LIMITED

(Formerly known as G-LA Resorts Holdings (Bahamas) Limited)

2nd Defendant

AND

GRAHAM, THOMPSON & CO. (A Firm)

3rd Defendant

Before: Deputy Registrar Carol Misiewicz

Appearances: The Plaintiff Ricardo F. Pratt appears pro se

Robert Adams with Tacarra Wright for the Defendant

Date of Hearing: 29th November, 2018

RULING

1. This is my ruling on the application by the Defendants to strike out the statement of claim and to dismiss the action, or alternatively for a stay of proceedings, pursuant to Order 18 rule 19 (1) of the Rules of the Supreme Court (“RSC”). The application is founded on the principles of *res judicata*, and abuse of the Court’s process.
2. For the reasons set forth, I dismiss the Plaintiff’s Statement of Claim in its entirety having determined that the issues it raises are *res judicata* and an abuse of the courts process.

Background

3. By specially endorsed Writ of Summons filed on 28 November 2017 the Plaintiff claims, inter alia:

“an order that Ginn-LA West End, Limited; and G-LA Resorts Holdings (Bahamas), Limited; and Graham, Thompson Co. (A Firm) and Willie A. M. Moss (in her capacity as a Partner in GTC) and Tacarra L. Wright (as an employee servant or agent of GTC) obtained the Judgment of the Hon. Mrs. Justice Estelle Gray-Evans and the Order of the Court that was issued in Supreme Court Equity Action No 2011/CLE/gen/FP/00118, by perjury; by unlawful means conspiracy; and or collusion, and the Judgment and the Order is hereby set aside;

An Order, that Graham, Thompson & Co. (A Firm) forged a document of title for various portions of the tract of land granted to John Bootle his heirs and assigns, by using or lodging the purported Conveyance of the Equity of Redemption dated the 28th October, 2011 and made between Ginn-LA West End, Limited and G-LA Resorts Holdings (Bahamas), Limited for recording in the Registry of Records in Volume 11515 at pages 302 to 351, and the purported conveyance is a forged document of title for land.”

4. The facts supporting the Defendants case are set out in the Affidavit of John Minns filed on 27 February 2018, which states in part as follows:

“8. By the 2017 action, the Plaintiff seeks to re-assert his claim that he has an interest in the properties described at paragraph 5 and 7 herein being a portion of the land the subject of the Crown Grant made to John Bootle, notwithstanding that on 26 January, 2017 Honourable Justice Estelle Gray-Evans delivered Judgment in the 2011 action dismissing the Plaintiff’s claims to an interest in the said portions of the land described as being a portion of the land that was the subject of the Crown Grant to John Bootle...

“9. On 2 March, 2017 the Plaintiff filed before the Bahamas Court of Appeal a Notice of Appeal Motion in Civil Appeal No. SCCivApp No. 58 of 2017 (“the Appeal Motion”) against the said Judgment of Gray-Evans J. Thereafter, however, on 23 June, 2017, the Plaintiff filed a Notice of Withdrawal of Appeal...

“10. *By this Action, the Plaintiff is seeking to re-litigate the fundamental question of whether he and/or the estate which he claims to represent, has any interest in the land which is subject of the said Grant of the Crown to John Bootle.*” (My emphasis.)

5. The Plaintiff’s contention is ventilated in his Statement of Claim where he alleges that the Defendants obtained a Judgment and Order of the Court issued in Supreme Court Action 2011/CLE/gen/FP/00118, by perjury. The Plaintiff purportedly sets out the particulars of the alleged perjury and collusion and makes a claim of “new evidence” to establish documentary title to the 810.8 acres portion of the tract of land granted to John Bootle.

6. To oppose the Defendant’s application, the Plaintiff swore multiple affidavits. He relies in particular on the 1st, 2nd and 3rd Affidavits of Ricardo F. Pratt that were all filed on the same day, namely, 26 November, 2018. These were very thick affidavits that exhibited voluminous documents, filed a mere three days before the court hearing, in an attempt to place before the Court evidence on the substantive claim. This was the Plaintiff’s expressed intention as recited in paragraphs 2 and 3 of those affidavits. The Plaintiff contends

that this action is not an abuse of process and argues that the claims in the present matter are distinct from the claims adjudicated in the 2011 action.

The Principle of *Res Judicata*

7. The Court has an inherent jurisdiction to prevent an abuse of its process and may stay or dismiss any proceedings in order to do so. That inherent power is outlined in Order 18 rule 19 of the Rules of the Supreme Court (“RSC”). The material part of Order 18 rule 19 of the RSC provides that the Court may at any stage of proceedings order to be struck out or amended, any pleading, on the ground that:

- a) it discloses no reasonable cause of action or defence, as the case may be; or
- b) it is scandalous, frivolous or vexatious; or
- c) It may prejudice, embarrass or delay the fair trial of the action; or
- d) It is otherwise an abuse of the process.”

8. Guidance on the meaning of sub-rule (a) can be found in the 1985 White Book at paragraph 18/19/7 which explains a reasonable cause of action means “a cause of action with some chance of success when only the allegations in the pleading are considered.”

9. It is important to understand the principle of *res judicata*. The common law doctrines preclude a person who has obtained a decision from one court or tribunal from bringing a claim before another court or tribunal for the same complaint. These rules are referred to as *res judicata*: **Clark v In Focus Asset Management** [2014] 1 WLR 2502.

10. In essence, *res judicata* means that a court or tribunal has already adjudicated on the matter and disqualifies a party from bringing another set of proceedings on the same subject matter.

11. The Plaintiff contends that since no claim of perjury was made in Supreme Court Action 2011/CLE/gen/0118 (the “First Action”), then the 1st and 2nd Defendants in this action are not being twice vexed, nor unjustly harassed, taking the case outside of the **Henderson v Henderson** principle. He further submits that it would be wrong to penalize a litigant because an issue could have been raised in earlier proceedings but was not.

12. To put this argument in context it is helpful to explain the First Action. There, the Plaintiff sought an order that he was the legal and beneficial owner of a tract of land containing 179.81 acres “being a portion of the Crown Grant to John Bootle his heirs and assigns...” and –

“An Order that the Plaintiff is the legal and beneficial owner of [a tract of tract] of land granted to John Bootle his heirs and assigns by a Crown Grant dated 15th December, 1818 and containing 960 acres...”

13. In her very extensive Judgment dated 26th January 2017 in Action No.2011/CLE/GEN/FP/00118, Gray Evans J. (at paragraph 201) determined that the Plaintiff did not have standing to challenge the validity of the 2006 Certificate of Title and or the order of Justice Jeannie Thompson. in the 2005 Quieting Action. Furthermore, the learned Justice determined at sub-paragraph (13) of paragraph 227 of her Judgement that the Estate of Ruel Pratt did not have any interest in the John Bootle Tract or the Property. If the Plaintiff sought to challenge the decision of Gray Evans, J. the appropriate remedy was by way of Appeal.

14. It is clear from the documents filed that the Plaintiff has done his best to abuse the Court’s process. It appears from paragraph 9 of the Affidavit of John Minns and the exhibits at Tab 3 that the Plaintiff had filed and then withdrawn his appeal against the Judgment of Justice Gray Evans, mentioned above. As mentioned this was the appropriate course if he did not accept the decision of Justice Gray Evans.

15. Secondly, the Plaintiff appears to have thought that by throwing voluminous documents at the Court something must be bound to stick, in an attempt to force the Court around to his way of thinking. Plaintiff filed six affidavits in this matter, three of which were all filed on the same day. This was without leave and in any event entirely unnecessary. This appears to be typical of his method of operating, as can be seen from the content of paragraph 2 of the Evans Judgment of 26 January 2017.

16. The principle of *res judicata* applies to litigation in and of adjudication by a court of competent jurisdiction. It requires that parties to the litigation bring forward their whole case, and the court will not permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward because of negligence inadvertence or even accident. Further the plea of *res judicata* applies not only to points on 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 the litigation and which might have been brought forward at the time: **Henderson v Henderson** (1843) 3 Hare 100; [1843-60] All E.R. Rep. 378.

17. Accordingly, I cannot accept the Plaintiff's argument given the facts of this case. The parties to this action are identical to the previous action, and the subject matter is also the same. The Plaintiff is seeking to re-litigate the same issue through trying to put a different spin on the case. This is a classic example of a vexatious claim and an abuse of the court's machinery. **Sir Nicholas Browne-Wilkinson V-C in Arnold v National Westminster Bank plc** [1989] Ch. 63, 69, held "it is unjust for a man to be vexed twice with litigation on the same subject matter".

18. The Court is not to be clogged by repetitious re-hearings and redeterminations of the same disputes. Once judgment has been given, the

cause of action is extinguished, save for the right to appeal, which the evidence shows Plaintiff elected not to pursue.

19. In **New Brunswick Rly Co v British and French Trust Corporation Ltd** [\[1938\] 4 All ER 747 at 754](#), [\[1939\] AC 1 at 19-20](#) the Court held:

If an issue has been distinctly raised in an action in which the parties are represented, it is unjust and unreasonable to permit the same issue to be litigated afresh in another matter between the same parties, or persons claiming under them."

Conclusion

20. I find that there is nothing new in the Plaintiff's Statement of Claim which forms the basis of a new action distinct from the First Supreme Court Action. The decision of **Gray Evans, J.** determined that the Certificate of Title to Ginn-LA West End Limited in Supreme Court Action 2005/CLE/gen/00511 is not a forged document and was not obtained by fraud or falsehood. This is fundamentally the same issue that the Plaintiff is seeking to litigate here. Thus he has failed to demonstrate a new cause of action that would make this matter distinct from the First Action.

21. In all the circumstances, I find that the matter is *res judicata*. To allow this new action to proceed would be unjust and unreasonable, and therefore an abuse of the Court's process. The Plaintiff's Writ of Summons and Statement of Claim are hereby struck out and the action is dismissed. The Defendants shall have their costs, to be taxed if not agreed.

Dated the 10th day of March A.D. 2020

Carol Misiewicz
Deputy Registrar