THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 415 OF 2006

BETWEEN:

ROSALIND WILLIAMS

Claimant

V

LENNOX CREESE

Defendant

Appearances:
Mr. E. Robertson for Claimant
Ms. N. Sylvester for Defendant

2006: November 30

DECISION

[1] The Claimant filed this claim on the 5th October 2006 seeking to have a consent order in an earlier claim 455(a) of 1997 set aside. The grounds are alleged to be "misrepresentation and/or mistake and/or lack of consent and/or that the order is ambiguous."

[2] Ms. N. Sylvester for the Defendant has applied to have the claim form and statement of claim struck out as an abuse of process and as disclosing no reasonable grounds.

THE FACTS:

[3] The parties were involved in an earlier claim (455(a) of 1997) which involved the possession and ownership of a parcel of land. On 17th December 1999 a consent

order was entered into in the following terms according to the endorsement on the Court file; "Before Adams J, in Chambers, By consent it is ordered that the Plaintiff (Lennox Creese) pay the Defendant $2,500.00 for the building on the land the subject of the dispute and that the defendant (Roslyn Williams) deliver up possession on or before 31st January 2000. No order as to cost."

[4] On 28th January 2000 the Parties again appeared before Adams J. Upon the undertaking of counsel for the Plaintiff that the execution of the judgment would be stayed, the matter was adjourned to 4th February 2000.

[5] On the adjourned date Counsel for the Plaintiff was released from the undertaking. The Claimant in the present matter brought a claim 62 of 2000 seeking to have the consent order in 455(1) of 1997 set aside. That action was begun by writ under the former Rules of the Supreme Court. The Claimant failed to file and serve a statement of claim within the prescribed time or at all. Upon application by the Defendant that claim was struck out in July 2006 for the failure to serve the statement of claim. Costs of $500.00 were awarded to the defendant. These costs have not been paid. Despite this the Claimant has now brought the present claim, again seeking to have the consent order in Suit 455(a) of 1997 set aside.

[6] Mr. Robertson resists the application to strike out. He argues that the earlier suit was not heard on its merits. Thus the Claimant should be permitted to have the validity of the impugned consent order tested.

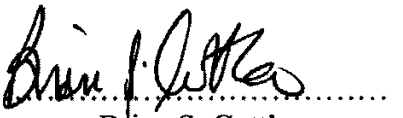
[7] Counsel for the Defendant cites the ancient rule in **Henderson v Henderson** (1888). She says the Claimant ought not to be permitted to relitigate issues which could have been raised in the earlier proceedings.

[8] The instant case provides an extreme example. The Claimant had his day in Court. The issues of possession and ownership of the disputed land were resolved

by the consent order entered into by the legal representatives for the parties before the learned trial judge. The present Claimant had a second bite of the cherry when he instituted claim 62 of 2000. He failed to prosecute his claim. Now he once more seeks to move the court to set aside the consent order which ended the 1997 suit.

[9] Quite simply, there must be an end to litigation. I find that the institution of the present claim is barred on the grounds of res judicata. Even if it were not a case of res judicata, the conduct of the Claimant at the very least amounts to an abuse of the process of this Court so that it would be unjust to permit this litigation to continue.

[10] I accede to the Defendant's application. The statement of claim is hereby struck out for the reasons I have given. I award costs to the Defendants in the sum of $1,000.00. The costs would have been in a larger amount had not the Defendant promptly made the present application thereby avoiding the filing of a defence and the fixing of a Case Management Conference.



Brian S. Cottle
MASTER