

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2010/0302

BETWEEN:

Maurice Dantes

Claimant

Cecile Bibiana Joseph

Defendant

Appearances: Marius Wilson for the Claimant

Esther Greene-Ernest for the Defendant

25th October 2011

- [1] **Master Taylor-Alexander:** This is a hearing to determine the application of res judicata pleaded by the defendant to these proceedings at paragraph 3 of her defence.
- [2] At Case Management Conference the court is required to deal with all outstanding applications and issues that affect the matter proceeding to trial. The issue of res judicata was one such outstanding issue.

- [3] The defendant pleads that by Judgment of Matthew J dated the 1st June 1994, involving the same parties, the court refused a claim in suit 628 of 1992 brought by the claimant for rectification of the Land Register in respect of Block 1872C Parcel 595.
- [4] The instant claim is again between the identical parties and is for the rectification of the land register in respect of Block 1872C Parcels 595 and 596. This time however the claimant pleads for rectification based on mistake or fraud.
- [5] The case was listed for case management, and by order of the court dated the 9th June 2011, the parties were directed to file and serve submissions by the 27th June 2011 on the issue of *res judicata*. None of the parties complied. The claimant has not filed and served any submissionsⁱ and the defendant filed by the 27th but only served submissions on the 30th June 2011.
- [6] The issue for determination on this application is whether a party is precluded from re litigating on an issue that could have been pleaded or argued in earlier proceedings founded on the same facts and between the same parties, but was not.

The principle of *Res Judicata*

- [7] *Res judicata* is governed by Article 1171 of the Civil Code 1879 of Saint Lucia which provides:-
- "The authority of a final judgment (res judicata) supplies a presumption incapable of contradiction in respect of that which has been the object of the judgment, when the demand is founded on the same cause, is between the same parties acting in the same qualities, and is for the same thing as in the action adjudged upon."*
- [8] I am satisfied that for the interpretation of provisions of the Civil Code, guidance must be sought from the Civil Codes of Quebec and France. In that regard reference to the authority of *res judicata* in Halsbury's Laws of England is unhelpful.
- [9] In ***Polinere v Felicien* (Privy Council, 26 January 2000, unreported)**, the Privy Council clarified that anyone attempting to interpret the Civil Code must bear in mind that it is derived from the Quebec Civil Code of 1865, which in turn was derived from the Code Civil of France. They concluded that:-
- " In adopting the St Lucia Civil Code, the legislature must in their Lordships' view have intended that its terms should be construed with due regard to what they had been understood to mean in Quebec and France. The jurisprudence which has been attached to the provisions of the Code by the courts and legal writers of those countries must at the very least have considerable persuasive authority."*

[10] I am satisfied therefore that it is to the Civil Codes of Quebec and France and in particular to the Civil Code of Lower Canada and decisions of the Supreme Court of Canada interpreting those provisions that I must refer.

Application to the facts of the Case

[11] In order to satisfy the court of the authority of *res judicata*, the defendant is challenged to show that the object of the judgement was the same; that it was founded on the same cause; it is between the parties acting in the same qualities and is for the same thing as the earlier judgment.

[12] **Roberge v Bolduc [1991] 1 S.C.R. 374**, continues to be the often referred to authority to elucidate the provisions of Art.1241 of the Civil Code of Lower Canada, a provision identical in its wording to Art 1171 of the Civil Code of Saint Lucia.

[13] There is no doubt that the identity of the parties attained the requirements as identified by that authority. The issue of whether there is *res judicata* will therefore ultimately rest on the assessment of whether there is identity of object, and cause.

Identity of Object

[14] **Pesant v. Langevin (1926), 41 Que. K.B. 412**, the leading Canadian Supreme Court authority on identity of object, identified the object of a claim as the immediate legal benefit in bringing the claim.

[15] I am satisfied that it is necessary to look both at the nature of the right sought and at the remedy or the purpose for which it is sought. There will however be identity of object once the object of the second action is implicitly included in the object of the first or if the second action claims something which is similar or is a necessary consequence of the first action.

[16] The instant proceedings is a claim for fraud in the registration process, on the part of the defendant, and a further request that there be a declaration in favour of the claimant that he is entitled to be registered as owner. The legal benefit is ultimately the de registration of the title of the defendant due to fraud in the registration process, and the registration as owner of the claimant.

[17] The judgment of Matthew J at page two (2) states that the basis of the claim of Maurice Dantes as plaintiff as he then was, was for rectification of the register on the basis of a procedural irregularity, namely that the affidavit used to support title was not properly executed.

[18] I note further the allegation of the defendant at page 7 of the judgment that the Plaintiff's only recourse for rectification of the land register can only arise as a result of fraud or mistake, by virtue of Section 98 (1) of the Land Registration Act, which the defendant argued had not been pleaded.

- [19] I am satisfied however that in the earlier proceedings, the implication of fraud was pervasive, and in fact that Matthew J's conclusions were to discount fraud on the part of the defendant.
- [20] I am fortified in my view when I consider that under section 98 of the Land Registration Act the court can only rectify the land register where there has been fraud or mistake. The earlier filed proceedings therefore could only have been pursuant to section 98 of the Land Registration Act.
- [21] I find that the object of the second action was implicitly included in the object of the first action.

Identity of Cause

- [22] Identity of cause speaks to the legal characterisation of the proceedings. When the essence of the legal characterization of the facts alleged is identical under both proceedings, there is identity of cause. See **Rocois Construction Inc. v. Québec Ready Mix Inc.**, [1990] 2 S.C.R. 440.
- [23] I am satisfied that the cause in the earlier and in the instant proceedings was to nullify the first registration for fraud, and to substitute instead the claimant. I therefore find that there is identity of cause.

Conclusion

- [24] On the basis of the above I find that the defendant's challenge is justified and that the instant proceedings are dismissed on the authority of *res judicata*.

Costs

- [25] I award costs to the Defendant in the sum of \$1000.00, to be paid on or before the 30th November 2011.

Post script

My sister Master had directed the parties to both provide submissions to guide the court in the determination of the issue of *res judicata*. As previously recounted, the claimant chose not to provide submissions.

Part 1 of the CPR on the overriding objective is often used as a crutch for counsel when through inadvertence or inefficiency counsel has failed to comply with the provisions of the rules and is in the precarious position of the court making an order detrimental to his or her case.

I am satisfied that this is an unfortunate interpretation of Part 1 in particular rule 1.1 which is a provision designed to ensure and to place an obligation both on the court and on counsel to further the objectives of the rules and to try matters efficiently and expeditiously.

In that regard counsel for the claimant in deciding not to provide submissions, chose to not provide the court with assistance on the determination of this issue and therefore failed in his obligation to assist the court in furthering the overriding objective. I was forced to do my own research.

¹ At a further Case Management hearing on the 23rd September 2011, the court inquired of Counsel for the claimant, whether he intended to file submissions to which he replied that he did not.