EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2012/0287

BETWEEN:

THE HEIRS OF THE ESTATE OF PLACIDE REGIS represented by
(1) JOSEPH PLACIDE
(2) PAUL RICHELIEU
(3) ST. TORENCE MERIUS
(4) EDWARD MERIUS

Claimants

and

ARNOLD BRUNO

Defendant

Appearances:
Mr. Andie George for the Claimants
Mr. Dexter Theodore for the Defendant

2018: July 25.

JUDGMENT

[1] WILKINSON J.: The Claimants filed their fixed date claim form and statement of claim on 27th March 2012. Therein they sought the following relief: (i) rectification of the Land Register for Block 1252B Parcel 196 (hereinafter "the Land") by removing the name Arnold Bruno in the Proprietorship section and inserting the name 'Heirs of Placide Regis', (ii) that the Defendant bears the costs of this claim, and (iii) any further relief which the Court deems fits.

[2] By their statement of claim the Claimants alleged that they were the heirs of the Estate of the late Placide Regis and were entitled to the Land, however, the Defendant was currently registered as the owner of the Land.

[3] The Claimants allege that historically on or about 2nd July 1859, Placide Regis purchased the Land which was a small estate situated in the Quarter of Gros Islet and known as the "Castegnet Estate." The Land was purchased from one Edward Lawrence who was at the time the rightful owner. The deed of sale was executed before a Mr. Charles Nicholas Robert de Rougemont, a Notary Royal practicing in Saint Lucia at the time.

[4] The Claimants allege that their right as heirs and entitlement to interest in the Land can be traced as follows:

(i) Mr. Placide Regis died on 28th June, 1915 in the Community of Piat in the Quarter of Gros Islet, and he left as his heirs Anthony Placide who died in 1915 and Biscette Placide who died on 30th October 1927;

(ii) Anthony Placide left as his lawful heirs Gonzague Anthony Placide or Florton Placide who died in 1993, and Placide Merius Placide who died in 1974;

(iii) Biscette Placide died without issue;

(iv) Gonzague Anthony Placide died leaving as his lawful heirs, Joseph Merius (now deceased), St. Torrence Merius and Edward Merius;

(v) Placide Regis Placid died leaving as his lawful heirs, Esther Placide and Joseph Placide who is the husband of Rita Placide;

(vi) Esther Placide is the mother of Paul Richelieu.

[5] The Claimants allege that during the land adjudication process in the 1980s, the Land was registered in the name of the Defendant. The adjudication record shows that the Defendant made a claim for the Land in his own right. The Defendant knew this claim not to be true because in an affidavit sworn by him on 22nd July 1997, he admitted that he was not the rightful owner of the Land but that the Land was owned by the heirs of Prospere Augustin. This statement of ownership was not correct.

[6] The Claimants allege that as a result of the aforesaid the Land was registered in the name of the Defendant by mistake and or on the basis of the fraudulent or false representations of the Defendant. They plead as particulars of the fraud or mistake (i) the Defendant falsely identified himself as the rightful owner of the Land, (ii) the Defendant failed to identify the Estate of Placid Regis as the true owner of the Land despite him having full knowledge of the same; (iii) the Defendant failed to identify the heirs of the late Placid Regis despite having full knowledge of their rights with respect to the Land, and (iv) the Defendant later articulated by way of sworn affidavit that he was not the rightful owner of the Land.

[7] The Claimants pleaded that in all the circumstances, they brought this action as is their right as the Heirs of Placide Regis and so are entitled to a share and benefit in the Land which is now registered in the name of the Defendant.

[8] On 18th May 2012, an acknowledgement of service was filed on behalf of the Defendant by Counsel for the Defendant.

[9] On 19th June 2012, Mr. Stephen Bruneau, son of Defendant filed an application supported by affidavit. He sought the following orders: (i) that the Court had no jurisdiction to hear the claim, and/or (ii) the Court should not exercise its jurisdiction to hear the claim and/or (iii) the statement of claim be struck out with costs to Mr. Bruneau in any event.

[10] The grounds of the application were: (i) the matter was res judicata following the striking out of claim SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno (filed 9th March 2010) and which was brought by the same Claimants against the Defendant for the rectification of title to the same Land and which Land is in the present claim for rectification of title; (ii) SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno having being struck out with costs to the Defendant in the sum of $8,250.00, the Claimants are barred from instituting these proceedings until they had paid the Defendant's costs and

which they had to date failed to pay; (iii) the claim was not properly served, the Defendant being deceased at the time of its filing, (iv) the statement of claim (a) discloses no reasonable ground for bringing the claim, and/or (b) is an abuse of the process of the Court, and/or (c) is likely to obstruct the just disposal of the proceedings.

[11] In his affidavit in support Mr. Bruneau deposed that the Defendant was his father, and he had been deceased for several years before the filing of the suit and so as such the claim had not been properly served and in fact he was the person served. Mr. Bruneau said that he was informed by his Counsel and believed that the Claimants required the permission of the Court to commence proceedings against a deceased person. He did not believe that such permission had been sought or granted.

[12] Mr. Bruno further deposed that the relief being claimed in the present suit before the Court, namely that of rectification of the Land Register for to the Land, was the same relief claimed in SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno by the Claimants herein and which suit was struck out by order of 17th October 2011. There was ordered prescribed costs to the Defendant of $8,250.00, and up to time of filing of his affidavit, the Claimants had not paid the costs.

[13] As to the substantive matter, Mr. Bruneau said that on the face of the statement of claim, the present claim the Claimants disclose, in effect, that the Land was adjudicated and registered in favour of his father, the Defendant during the land adjudication process and registration project. Having sat back and not challenged these rulings it was now too late for the Claimants to seek to do so, especially since the dismissal of SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno in which the Claimants should have raised all the points that needed to be raised in relation to rectification of the Land. They should not be

allowed to raise points now that they ought to have raised previously to support their request for rectification.

[14] The Court's records reflect that on the 21st November 2012, an order was made adding Mr. Michael Bruno, Mr. Stephen Bruno (Stephen Bruneau), Mr. Gabriel Bruno and Ms. Mireva Migella as joint Representatives of the Estate of Arnold Bruno.

[15] The Court's records also reflect that on 18th September 2013, when the matter came on before Carter J (ag.) that she was informed that the outstanding costs had been paid to the Defendant's Representatives.

The Law

[16] The first ground of the application states that the suit is res judicata. On the matter of when a suit is res judicata, the Court starts with **Halsbury's Laws of England.**[1] It is stated:

> "1527. Meanin**g of "res judicata**". The doctrine of res judicata is not a technical doctrine applicable only to records: it is a fundamental doctrine of all courts that there must be an end to litigation. It will therefore be convenient to follow the ordinary classification and treat it as a branch of law of estoppel.
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> Where res judicata is pleaded by way of estoppel to an entire cause of action, rather than to a single matter in issue, it amounts to an allegation that the whole legal rights and obligations of the parties are concluded by the earlier judgment, which may have involved the determination of questions of law as well as findings of facts.
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> 1528. Essentials of res judicata. In order that a defence of res judicata may succeed it is necessary to show not only that the cause of action was the same but also that the plaintiff has had an opportunity of recovering, and but for his own fault might have recovered in the first action that which he seeks to recover in the second. A plea of res judicata must show either an actual merger, or that the same point has been actually decided between the same parties. Where the former judgment has been for the defendant, the conditions necessary to conclude the plaintiff are not less stringent. It is not enough that the matter alleged to be concluded might

[1] Volume 16, 4th Edition

have been put in issue, or that the relief sought might have been claimed. It is necessary to show that it actually was so put in issue or claimed.

1529. Doctrine applicable wherever same cause of action determined on the merits. In all cases where the cause of action is really the same and has been determined on the merits, and not on some ground (such as the non-expiration of the term of credit) which has ceased to operate when the second action is brought, the plea of res judicata should succeed. The doctrine applies to all matters which existed at the time of the giving of the judgment and which the party had an opportunity of bringing before the court. If, however, there is matter subsequent which could not be brought before the court at the time, the party is not estopped from raising it." (My emphasis)

[17] The Claimants referred the Court to several cases on the doctrine of res judicata including Privy Council Appeal No.18 of 2005 Noellina Prospere v. Frederick Prospere and Jennifer Remy, Roberge v. Bolduc [1991] SCR 374. The principles from **Halsbury's** were confirmed.

[18] The matters of the second and third ground were addressed by the Claimants as noted prior.

[19] The Defendant raised as his fourth ground that the statement of claim discloses no reasonable ground for bringing the claim, it's an abuse of process, and it is likely to obstruct justice. This ground is based on CPR 2000 Rule 26.3 and which provides:

"26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

(a) There has been a failure to comply with a rule, practice direction, order or directions given by the court in the proceedings;
(b) The statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
(c) The statement of case or the part to be struck out is an abuse of process of the court or is likely to obstruct the just disposal of the proceedings; or
(d) The statement of case or part to be struck out is prolix or does not comply with the requirements of Part 8 or 10."

[20] As to how the Court ought to proceed on an application to strike out a claim pursuant to rule 26.3(1), the Court is guided by Rawlins JA in Caribe (Realties) Canada Limited/Immeubles Caribe Ltee et al v. Wycliffe Baird.[2] There His Lordship said:

> "[12] …rule 26.3(1) (b) of CPR 2000 provides a summary procedure under which striking out should only be done in cases in which there is a total absence of a proper cause of action.
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> [13] The learned Master correctly stated the principle on which a court would dismiss a claim against a defendant because it discloses no or no reasonable cause of action against them. She extracted it from the statement of Sir Denis Byron, CJ, in the case of Baldwin Spencer v. The Attorney General of Antigua and Barbuda et al[3] where it was stated that this summary procedure should only be used in clear and obvious cases, when it can be clearly seen on the face of the statement of claim that it is obviously unsustainable or is in some other way an abuse of the process of the court.
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> [14] The Master rationalized and explained the principle. She stated that the court has to caution itself against conducting a preliminary trial of a case without discovery, oral examination, or cross-examination. This, she stated, the court must balance against giving effect to the overriding objective of the Rules which is to deal with cases justly by ensuring the most efficient use of the resources of the court and to save the parties unnecessary expense through the case management process by preventing a claimant who does not have a reasonable sustainable case from proceeding to trial." (My emphasis)

[21] In the later case of Citco Global Custody NV v. Y2K Finance Inc.[4] Edwards JA once again set out the principles governing an application made pursuant to rule 26.3 (1) (b). She said:

> "[12] Striking out under the English CPR r 3.4 (2) (a) which is the equivalent of our CPR 26. .3(1) (b), is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about or if it is incoherent and makes no sense, or if the

[2] St. Christopher & Nevis Civil Appeal No.10/2005.
[3] Antigua & Barbuda Civil Appeal No.20A of 1997.
[4] Territory of the Virgin Islands HCVAP 2008/022.

facts its states, even if true, do not disclose a legally recognizable claim against the defendant.

[13] On hearing an application made pursuant to CPR 26.3(1) (b) the trial judge should assume that the facts alleged in the statement of case are true. "Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inference from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny."

[14] Among the governing principles stated in **Blackstone's Civil** Practice 2009 the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as request for information, and the examination and cross-examination of witnesses often change the complexion of a case. Also, before using CPR 26.3 (1) to dispose of "side issues", care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly."

[22] The Claimants' claim requires consideration of both the Land Registration Act Cap. 5.01 and the Land Adjudication Act Cap. 5.06.

[23] The Land Adjudication Act, provides for the adjudication of rights and interest in land throughout Saint Lucia and for connected purposes. Public records reveal that subsequent to the passage of and pursuant to the Act, all land at Saint Lucia went thru the adjudication process and which involved pursuant to section 8 the making of claims followed by demarcation of all land. By section 9 there is provision for safeguarding the rights of absent persons. By section 20, there was

provision for appeals against the adjudication record. At the end of the adjudication process all land at Saint Lucia was supposed to be part of adjudication records in preparation for first registration. The records inclusive of demarcation maps were to be delivered to the Registrar of Lands for processing pursuant to the Land Registration Act i.e. the registration of land.

[24] The Land went thru the adjudication and registration process. The Claimants seek a change of the first registration. In that regard the relevant section of the Land Registration Act for consideration is:

> "98. RECTIFICATION BY COURT
> (1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
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> (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents and acquired the land, lease or hypothec for consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or cause such omission, fraud or mistake or substantially contributed to it by his or her act, neglect or default."

[25] The Court has found instructive the cases of Saint Lucia Civil Appeal No. 2 of 1992 Loopsome Portland et al v. Sidonia Joseph on the issue of first registration pursuant to the Land Registration Act, and Privy Council Appeal No. 93 of 2007 Sylvia Louisien v. Joachim Rodney Jacob on section 98 of the Land Registration Act.

[26] In Privy Council Appeal No. 93 of 2007 Sylvia Louisien v. Joachim Rodney Jacob the Privy Council had this to say about rectification of the register by the Court: -

> "*Rectification of the Register by the Court*
> 39. The LAA and the LRA were intended to operate as two interlocking elements of the process of first registration. The LAA was concerned as its name indicates, with the adjudication of claims to land ownership. If there were competing claims the adjudication officer was

to decide them in a quasi-judicial capacity, weighing up the evidence and applying principles of land law. Even if there was no contest between claims, the recording officer still had to subject the claim to scrutiny (section 14 refers to 'such investigation as he or she considers necessary") before completing and signing the adjudication record for certification by the adjudication officer. Once it became final the certified record was to be passed to the Registrar (as provided in section 10 of LRA) for first registration. If the confirmed adjudication record appeared to be in order there would be no reason for the Registrar to seek to go behind it.

40. It is clear that rectification of the register under section 98 if the LRA can sometimes be ordered in respect of first registration. That is clear from the words "subject to the provisions of the Land Registration Act" in section 23 of the LAA, and from the references to first registration in section 98(1) and 99(1)(b) of the LRA. But it is also clear from the authorities that rectification is not intended to be an alternative remedy for a claimant under the LAA who, having failed in a contested claim before the adjudication officer, omitted to use the avenues of review and appeal provided for by sections 20 and 24 of the LAA. This conclusion does not depend on res judicata or estoppel properly so called; it follows simply from a correct understanding of the statutory machinery (see Byron JA in Portland v. Joseph, 25 January 19993, Civ App No. 2 1992).

41. There is a line of jurisprudence on section 98 of the LRA and similar enactments in force in other Caribbean countries, indicating that rectification of the register is available only if the mistake in question (or, no doubt, the fraud, when fraud is in question) occurred in the process of registration. See Skelton v. Skelton (1986) 36 WIR 177, 181-182; Portland v. Joseph; and Webster v. Fleming. Their Lordships consider that this principle is correct and useful statement of the law, but would add two footnotes by way of explanation or amplification.

42. A mistake in the process of registration" is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of the facts of the particular case. Moreover the fact that there has been a mistake in the course of adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.

43. Several different situations can be imagined. First, an entirely correct adjudication record, confirmed by the adjudication officer, is passed to the Land Registry, where one of the staff makes a mistake in transcribing the contents of the record into the Register. In that case there is plainly a mistake in the process of registration (there has been no mistake in the process of adjudication). Rectification is available. Secondly, suppose there has been a mistake in the process of adjudication, such as a recording officer acting beyond his statutory authority by altering the record after its confirmation by the adjudication officer. In a case of that sort there is a serious mistake (probably amounting to a nullity) in the process of adjudication. The mistake gets carried forward to the registration process since the staff of the Land Registry is presented with a record which does not correctly embody the adjudication officer's final decision. Again, rectification is available. That is Webster v. Fleming.

44. In their Lordships' opinion the same principle may extend to a case in which the adjudication record, although not a nullity, contains on its face an obvious error or inconsistency such as to put the staff of the Land Registry on enquiry as to the correctness of the record. If they were to omit to make such enquiries, and proceed on the basis of a defective adjudication record, that may amount to repeating the original mistake so that it becomes part of the process of registration. In a case of that sort, again, rectification would be available."

Findings and Analysis

[27] The Court looks at the first ground of the Defendant's application, that the matter was res judicata because of the Court's order in SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno. On review of the order in the first suit one finds that there is recorded that on 12th May 2011, the Court had ordered the Parties to file submissions and when the matter came on for hearing, the Claimants had not filed their submissions and neither had their Counsel appeared. The suit was struck out for the reason of non-compliance with the Court's order by the Claimants to file submissions. There was no decision on the merits of the suit between the Parties at that time.

[28] On the authority of **Halsbury's** paras. 1528 and 1529 and Privy Council Appeal No.18 of 2005 Noellina Prospere v. Frederick Prospere and Jennifer Remy, Roberge v. Bolduc [1991] SCR 374 , there being no decision on the merits in SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno, Court finds that the present suit before the Court is not res judicata.

[29] As to the second ground, as noted prior, the ordered fees SLUHCV2010/0192 The Heirs of the Estate of Placide Regis v. Arnold Bruno were paid and is no longer an issue.

[30] In relation to the third ground of the Defendant's application, as also noted prior, with the appointment of Representatives, inclusive of Mr. Stephen Bruneau, for the purposes of this suit, the third ground is no longer an issue.

[31] In regard to the fourth ground, relying on Caribe (Realties) Canada Limited/Immeubles Caribe Ltee et al v. Wycliffe Baird[5] the Court cannot say on the facts before it that there is total absence of a proper cause of action. There is a challenge to registration of ownership of the Land. The history of ownership and descendants who would have accrued an interest has been set out. Further, the Land Registration Act itself provides for instances where the registrations of a particular owner can be changes where a mistake or fraud allegation is successful before a Court – see Privy Council Appeal No. 93 of 2007 Sylvia Louisien v. Joachim Rodney Jacob. Such is the pleading of the Claimants.

[32] The Court based on its analysis of the pleadings before it and the authorities cited, is of the view that the Claimants ought to be given an opportunity to pursue their claim. The application by Mr. Stephen Bruneau will be dismissed.

[5] St. Christopher & Nevis Civil Appeal No.10/2005.

[33] **Court's** Order

1. Mr. Stephen Bruneau's application is dismissed.
2. The Registrar is to fix the suit for case management.
3. Mr. Stephen Bruneau is to pay the Claimants costs in the sum of $1,000.00 within 21 days.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar