



[2025] JMCC Comm 23

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO.SU2022CD00395

BETWEEN LAURISTON STEWART CLAIMANT

AND DELTA INVESTMENT COMPANY LIMITED DEFENDANT

Mrs Symone Mayhew KC, instructed by Mayhew Law for the claimant

Mr Stuart Stimpson instructed by Hart Muirhead Fatta for the defendant

Heard: June 18 and 25, 2025

*Civil Procedure - Application to strike out claim for abuse of process
– Whether claim barred by issue estoppel, res judicata or a collateral
attack on an earlier decision – the effect of the filing of an appeal
against the earlier decision – Civil Procedure Rules 26.3(1)(b),
26.1(2)(e)*

ORAL JUDGMENT

CORAM: JARRETT, J

Introduction

1. On January 17, 2025, Beckford Brown J in **Dalma James (Trustee for the Bankrupt for the Estate of Jennifer Messado in Bankruptcy) v Lauriston Stewart and Tanique Stewart [2025] JMCC Comm 06**, (a claim brought by the Trustee of the Estate of the bankrupt, Jennifer Messado, against Lauriston Stewart and his daughter Tanique Stewart); determined that loan transactions involving 10 promissory notes, contravened section 7(1) of the **Money Lending Act** and are accordingly void and illegal by virtue of section 7(3) of the said Act. Of these 10 promissory notes, two (the Delta Notes), were issued by the current defendant, Delta Investment Company Limited (Delta). In the current claim, Lauriston Stewart claims against Delta in relation to these Delta Notes. The application presently before the court is Delta's, to strike out the claim as an abuse of process, pursuant to **CPR 26.3(1)(b)**.

The application

2. Delta's application was filed on April 30, 2025. It asks that the claimant's statement of case be struck out, that costs be awarded to it and be assessed summarily pursuant to CPR 65.9. The application is said to be grounded in CPR 1.1 (the court's overriding objective); CPR 26.1(the court's general case management powers); CPR 26.3 (the powers of the court on striking out statements of case) and CPR 65 (the quantification of costs).
3. In relation to the order seeking to strike out the claimant's statement of case, the application expressly states that it is relying on **CPR 26.3(1)(b)** as the claimant's statement of case is an abuse of the process of the court. It is said that the claim is barred by the doctrines of *res judicata*, and /or issue estoppel and /or the rule in **Henderson v Henderson (1843) 3 Hare 100**. Brown Beckford J having found that the Delta Notes, which underpin the claim, are illegal, void and unenforceable, ostensible authority cannot validate them (**Mahmoud v Ispahani [1921] 2 KB 716**). It is further stated that the continuation of the current claim would undermine public policy objectives contained in the Moneylending Act, contravene the principles of finality in litigation and result in an oppressive and unjust re-litigation

of matters already adjudicated, and /or be a collateral attack on the judgment of Brown Beckford J.

The claim

4. In his amended claim filed on September 20, 2022, the claimant claims to recover from Delta; a) \$ 2,200,000.00 plus interest of 10% per month from March 1, 2018 until judgment, or alternatively \$2,200,000.00 plus interest at a commercial rate, pursuant to the Law Reform (Miscellaneous Provisions) Act, for such period as the court determines ; b) \$1,800,000.00 plus interest at 10% per month from March 1, 2018 until judgment or alternatively \$1,800,000.00 plus interest at a commercial rate pursuant to the Law Reform (Miscellaneous Provisions) Act for such period as the court determines. He also seeks to charge land registered at Volume 1217 Folio 543, of the Register Book of Titles (the land).
5. The particulars of the claim are that Delta held out Mrs Jennifer Messado, who was his attorney - at-law for over 3 decades, and a shareholder and director of Delta, as having the authority to borrow on its behalf. He therefore loaned Delta \$4,000,000.00 to do infrastructure work on the land. \$2,200,000.00 was disbursed on April 8, 2015, and \$1,800,000.00 on May 13, 2015. These sums were secured by the Delta Notes dated May 8, 2015, and May 13, 2015, respectively, as well as by the professional undertaking of Mrs Jennifer Messado.
6. The claimant pleads that he will rely at trial on the Delta Notes for their full effect. He says further that Delta refused to pay any of the principal and ceased paying the interest in February 2018.

The submissions

7. It was revealed during the hearing that there has been an appeal of the decision of Brown Beckford J in **Dalma James**, and although a stay of execution of the decision was not granted, the single judge of appeal ordered an expedited hearing

of the appeal. In his affidavit filed on June 9, 2025, in response to the application to strike out the claim, the claimant refers to the appeal and exhibits a copy of the Notice and Grounds of Appeal filed on February 28, 2025.

8. Delta relies on issue estoppel, *res judicata*, the rule in **Henderson v Henderson** and/or a collateral attack on an earlier decision of the court, as the grounds on which it seeks to have the claim struck out as an abuse of process of the court. In summary, Delta's primary arguments are that; a) the claimant is seeking to relitigate an issue that the court has already determined (**Sebol Ltd v Tomlinson [2022] JMCA Civ 6**); b) he should have brought his whole case in earlier proceedings and is now estopped from bringing the claim (**Henderson v Henderson** ; and **Finzi v Jamaica Redevelopment Foundation Inc. [2024] 1 WLR 541**); c) it is a collateral attack on an earlier decision of the court (**Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd. [2014]AC 160**), and allowing the claim to proceed would undermine public policy and the integrity of the judicial process .
9. The claimant's submissions in response are that the rule in **Henderson v Henderson**, issue estoppel and *res judicata* only apply where the parties or their privies, to the original action and the subsequent action are the same. (**Hon Gordon Stewart OJ & Ors v Independent Radio Company Limited and Wilmot Perkins [2012] JMCA Civ 2**; Halsbury's Laws of England 2020 Ed. Vol 12a para 1568; **Henderson v Henderson [1843-60] ALL ER Rep378**, and **Virgin Atlantic Airways Ltd. v Zodiac Seats UK Ltd. [2013] UKSC 46**). It is argued that in the case at Bar, the parties are different and therefore these principles can provide no assistance to Delta.
10. King's Counsel Mrs Mayhew, further argued that the present claim is not a collateral attack on the decision of Brown Beckford J, in **Dalma James** as:

- a) it was not filed after the learned judge's decision but was instead filed prior to it, and was put 'in abeyance' pending the outcome of that decision; it therefore cannot be said to be a collateral attack on a prior decision of the court;
- b) there is currently an appeal of the decision of Brown Beckford J filed by the claimant in **Dalma James**.

Analysis

11. I agree with King's Counsel Mrs Mayhew, that the claimant's application cannot succeed on the basis of *res judicata*, issue estoppel or the rule in **Henderson v Henderson**, as the parties in the current claim are not the same as those in **Dalma James**.

12. It is settled, that where issues decided in an earlier claim are raised again in a subsequent claim, issue estoppel is a bar to the subsequent claim where the parties to the two claims are the same. It is likewise settled law that the doctrine of *res judicata* prevents a dispute between the same parties from being re-litigated once there has been a determination of it by the court. Simply put, the parties are bound by the court's prior decision. It is also settled that a party to litigation must bring forward his whole case, and *res judicata*, in its widest sense will apply to prevent a party from raising new proceedings he could have raised in earlier proceedings. (See **Hon Gordon Stewart**)

13. Where the court in a prior claim, addresses and definitively determines the core issues that arise in a subsequent claim, to proceed with the latter, is a collateral attack on the prior decision and an abuse of the process of the court. In such a scenario, the parties to both claims, need not be the same. The authorities demonstrate that there is a marked distinction between estoppel and a collateral attack on a final decision of a competent court. The distinction was comprehensively addressed by the House of Lords in **Hunter v Chief Constable**

of **West Midlands and another [1981] 3 All ER 727** and referred to extensively by F Williams JA in **The Minister of Housing v New Falmouth Resorts Ltd [2016] JMCA Civ20**.

14. In the present case, had there not been an appeal of the decision of Brown Beckford J in **Dalma James**, I would have no hesitation in finding that to pursue the current claim in light of that decision, would amount to a collateral attack on it. I recognise that the current claim was filed first, but as observed earlier, it was put in abeyance pending the decision in **Dalma James**. It therefore seems to me that to pursue it in the absence of an appeal, would be a collateral attack on the learned judge's decision. I observe that no reference to the appeal was made by Delta in its application or the evidence filed in support of it, despite the appeal being made prior to the application. I take this observation no further however, as I cannot assume that Delta was aware of the appeal prior to filing its own application, it not being a party to **Dalma James**.
15. After hearing the parties' submissions, I expressed the view that, considering the appeal, the appropriate course may well be to stay the current claim. Both Mrs Mayhew and Mr Stimpson were initially in agreement with such a course, with Mr Stimpson reminding the court that it can grant a stay in the exercise of its case management powers. Mr Stimpson however subsequently withdrew his agreement and submitted that a stay would only benefit the claimant. He asked the court to recall that the Court of Appeal did not grant a stay of execution in **Dalma James**. He then orally applied to amend Delta's application to include **CPR 26. 3(1) (c)**.
16. **CPR 26. 3(1) (c)** is the rule by which a statement of case is struck out for not disclosing any reasonable grounds to bring it. Although the written submissions in support of the application refer to this rule, it is not one of the grounds relied on in the notice of application. The oral application was objected to by Mrs Mayhew and refused by the court. It came after both parties had concluded their oral submissions. To grant it, would mean adjourning the hearing part heard to another

date to allow the claimant to prepare and consider its response to the amendment, with the attendant costs and delays associated with that. Delta ought to have recognised, before it closed oral its submissions, that **CPR 26. 3(1) (c)** was not one of the grounds relied on in its application. In fact, at the start of Mr Stimpson's oral submissions, I pointed out to him, that the application was premised solely on **CPR 26.3(1)(b)**. He did not at that time, apply to amend the application.

17. This court was not made aware of the reasons why the Court of Appeal did not grant a stay of execution in **Dalma James**. However, in the circumstances of the present application, I am of the clear view that it is in the interest of justice that this claim be stayed pending the outcome of the **Dalma James** appeal. Mr Stimpson is right that **CPR 26.1(2) (e)**, gives the court the power, to stay the whole or part of any proceedings generally or until a specified date or event. I therefore will stay this claim until the appeal in **Dalma James** is heard and determined.

Costs

18. Delta failed on its application to have the claim struck out as an abuse of the process of the court. It therefore is not the successful party. The claimant succeeded in resisting the application. I can see no basis on which he should be denied his costs.

Orders

19. In the result, I make the following orders: -

- a) The application for court orders to strike out the claim filed on April 30, 2025, is refused.
- b) Claim No SU2022CD00395 Lauriston Stewart v Delta Investment Company Limited is stayed pending the outcome of the appeal in **Dalma James (Trustee for the Bankrupt for the Estate of Jennifer Messado**

**in Bankruptcy) v Lauriston Stewart and Tanique Stewart [2025]
JMCC Comm 06**

- c) Costs to the claimant to be taxed if not agreed.
- d) Leave to appeal is refused.

**A Jarrett
Puisne Judge**