

**IN THE SUPREME COURT OF BELIZE, A.D. 2020**

**CLAIM NO. 528 OF 2020**

<b>BETWEEN</b>	<b>(GLENDA ROSE YOUNG</b>	<b>1<sup>st</sup> CLAIMANT</b>
	<b>(GARY YOUNG</b>	<b>2<sup>nd</sup> CLAIMANT</b>
	<b>( AND</b>	
	<b>(MINISTRY OF NATURAL</b>	<b>1<sup>st</sup> DEFENDANT</b>
	<b>(RESOURCES AND THE ENVIRONMENT</b>	<b>2<sup>nd</sup> DEFENDANT</b>
	<b>(ATTORNEY GENERAL OF BELIZE</b>	<b>3<sup>rd</sup> DEFENDANT</b>
	<b>(BELIZE BANK LIMITED</b>	<b>4<sup>th</sup> DEFENDANT</b>
	<b>(CHALLETE LIMITED</b>	

**BEFORE THE HONORABLE JUSTICE LISA M SHOMAN**

HEARING : January 28, 2021

APPEARANCES: Mr. Andrew Marshalleck SC for the 3<sup>rd</sup> and 4<sup>th</sup> Defendant/Applicants  
Mrs. Nazira Myles for the Claimants/Respondents  
Ms. Samantha Matute Tucker for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

**RULING**

**THE APPLICATION**

1. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants have applied pursuant to Rule 26. 3 (1)(b) and/or (c) of the Supreme Court (Civil Procedure) Rules 2005 for orders that :
  - a. The Claimants' Claim Form and Statement of Claim filed herein be struck out and the Claim dismissed as frivolous and vexatious and /or an abuse of process of the Court because the claims presented therein have already been effectively decided and/or ought to have been litigated in Claim No 102 of 2018 in which the Court ordered against the Claimants possession of the property in dispute in favour of the 4<sup>th</sup> Defendant on the basis of title secured on a sale and transfer under charge

by the 3<sup>rd</sup> Defendant which charge and transfer were then already registered by the 1<sup>st</sup> Defendant;

- b. The Claimants shall not without the permission of the Court first having been obtained commence a new claim against any of the Defendants affecting possession of Parcel 673 Block 23 Santa Elena Cayo Registration Section or arising out of acts which are the same or substantially the same as those to the claim or Claim No. 102 of 2018 : **Chalette Limited v Garry Young, Glenda Young and Charles Young.**
  - c. The Claimants shall pay the 3<sup>rd</sup> and 4<sup>th</sup> Defendant's costs of this application and of the claim.
2. In response the Claimant submits that the Respondent's application should be dismissed for the following reasons:
- a. While Claim No. 102 of 2018 and Claim No. 528 of 2020 name similar parties and circumstances; the claims concern distinct cause of action and reliefs sought;
  - b. The decision of Madam Justice Young in Claim No 102 of 2020 does not address or make a determination of the issues to be determined in Claim No 528 of 2020;
  - c. The issues to be determined in Claim No 528 of 2020 are not frivolous or vexatious but in fact deal with serious allegations of fraud and mistake by the Defendants;
  - d. The fact that Claim No 528 of 2020 raise an issue/issues that may have been raised in Claim No 102 of 2018 does not preclude the Claimant from commencing a new action.

## GROUNDS

3. The grounds of the Applicants' application are as follows :

- a. The Claimants' Claim Form and Statement of Claim dated 20<sup>th</sup> August 2020 seek to re-litigate issues touching and concerning the validity of title of the 4<sup>th</sup> Defendant to land and/or the right of the First Defendant to register the charge/and or transfer (and by extension the 4<sup>th</sup> Defendant's right to possession of that land) which issues have been effectively determined or ought to have been raised and are determined in Claim No. 108 of 2018 in which final judgement in favour of the 4<sup>th</sup> Defendant for possession of the land as already issued.
  - b. The broad issue raised in this claim has therefore already been effectively decided by the Court so that all claims which touch and concern that broad issue are now frivolous or vexatious.
  - c. Further or in the alternative the Claimants are estopped as a matter of law from seeking to re-litigate these issues so that the instant claim is an abuse of process of the Court.
  - d. The Court is empowered by Rule 26. 3 (1)(b) and (c) of the Supreme Court (Procedure) Rules 2005 to strike out a statement of case if it appears that the statement of case is an abuse of or if it discloses no reasonable grounds for bringing the claim.
4. The Application is supported by the First Affidavit of Fitzgerald Joseph sworn on the 27<sup>th</sup> November 2020. That Affidavit exhibits as **FJ1** and **FJ2** respectively, the Judgement of Madam Justice Sonia Young in **Chalette Limited v. Garry Young, Glenda Rose Young and Charles Young Sr.** Claim 102 of 2018 and the the perfected order in respect thereof.
5. The Claimants/Respondents have not filed any affidavit in reply to the Application and therefore rely on the written submissions of Mrs. Nazira Uc Myles.



6. Mr. Marshalleck SC for the Applicants contends that the Rule in the Chancery case of **Henderson v Henderson** (1843) 3 Hare 100, 67 ER 313 is clear : a party may not raise any claim in subsequent litigation which that party ought properly to have raised in a previous action; and that applying that rule in the instant case is simple and straightforward.
7. Senior Counsel argued that the Claimant took no steps to raise the issues brought in this case and that the Claimants in this case seek to recover possession of property which was lost under the decision in Claim 102 of 2018.
8. Sir James Wigram VC in the **Henderson** case, in an oft cited passage framed the matter thusly at page 114 where he said:  
  
*"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) 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, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon 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 litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."* (Emphasis added)
9. In the UK case of **Johnson v. Gore Wood & Co.** [2000] UKHL 65, Lord Justice Bingham cites this passage and the **Henderson** case then goes on to say:

*“Thus the abuse in question need not involve the reopening of a matter already decided in proceedings between the same parties, as where a party is estopped in law from seeking to re-litigate a cause of action or an issue already decided in earlier proceedings, but (as Somervell L.J. put it in Greenhalgh v. Mallard [1947] 2 All E.R. 255 at 257) may cover*

*“issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.”*

10. Mr. Marshalleck SC also relies on the Court of Appeal case of Vico Ltd. & Ors. V. Bank of Ireland & Ors. [2016] IECA 273. At Paragraph 28 of her judgement, Justice Finlay Geoghegan in reliance of the Gore case above, cites with approval the decision of Lord Bingham in the **Gore Wood** case in a long but important excerpt as follows :

*“The restatement of the abuse of process rule from Henderson v. Henderson by Lord Bingham in Johnson v. Gore Wood & Co. [2002] 2 AC 1 at 31, has been approved of by the Supreme Court in this jurisdiction in a number of cases including Re. Vantive Holdings [2010] 2 I.R. 118. There he stated:-*

*“. . . But Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the*



*later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. Thus while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of funds has been caused by the party against whom it is sought to claim. While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances. Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice.”. (EMPHASIS ADDED)*

11. A careful perusal of the orders sought in the Fixed Date Claim filed by the Claimants in the instant case is instructive. The Claimants seek the following:
  1. *A declaration that all dealings with and transaction carried out by the 1<sup>st</sup> Defendant in respect of property more particularly described as Parcel 673 are ultra vires and the same is void and a nullity.*
  2. *A declaration that Chalette Limited is not the Proprietor of any or all of the above-mentioned property, its title has been registered by fraud and/or mistake and not having been registered in accordance with the Registered Land Act Cap 194*

3. *a declaration that Land Certificates issued by the 1<sup>st</sup> Defendant which the Registrar of Lands vested the said property in Chalette Limited's name is void and nullity.*
  4. *In the alternative a declaration that Belize Bank Limited and Chalette Limited having obtained title to the said property by fraud with the 1<sup>st</sup> Defendant.*
  5. *Further or in the alternative a declaration that in the very least the 1<sup>st</sup> Defendant, registered the title in the name of Chalette Limited by mistake.*
  6. *An order directing the the 1<sup>st</sup> Defendant, to cancel all Land Register in respect of the said property showing Chalette Limited, as proprietor.*
  7. *In the alternative an order directing the Registrar of Lands of the 1<sup>st</sup> Defendant to rectify the Land Registers in accordance with the provisions of Section 143 (1) of the Registered Land Act 194 by cancelling or deleting the transfer in favor of the Belize Bank Limited and Chalette Limited*
  8. *Damages*
  9. *Interest on any amount of damages found to be due to the Claimant in accordance with Section 66 of the Supreme Court of Judicature Act, Cap 91.*
  10. *Costs against the Defendants*
  11. *In the alternative, a declaration that the 1<sup>st</sup> Defendant and/or staff of the Land Registry did not act or omitted to act in good faith in the purported exercise of their powers under the Registered Land Act, Cap 194.*
  12. *In addition or in the alternative the appropriate declarations and orders as would secure or enforce the rights of the Claimants.*
12. Other than the Claim at paragraph 11 above (which seems to be a request for judicial review), it is clear that in this current claim, the Claimants are trying, in essence, to assert their claim over the very same property which was the subject matter of Claim 102 of 2018.

13. A careful review of the thorough judgment of Madam Justice Sonya Young in that case proves to be quite enlightening in that regard. It is Justice Young that points out to the Defendants in that claim (two of which are the Claimants in this claim) that they had “no issue” with the Bank or with the Registrar of Lands.
14. Also in that decision, the learned Trial Judge pointed out at paragraph 24 that the 2<sup>nd</sup> Defendant Glenda Rose Young attempted *“to raise the issue of whether the caution was properly removed”*.
15. The Judge goes on to say that *“...the Registrar is the only one who could give useful evidence in this regard. Whether the power has been correctly exercised is not an issue on which in the present circumstances the Court can make a finding because the Registrar is not a party to this action.”*
16. At Paragraph 43 of the same decision, Justice Young says that *“The Defendants seek to impugn the sale of the land by the Bank by taking issue with the purchaser. They ask the Court to consider the Bank’s conduct. They speak to the charge being on parcel 673/1 while the parcel sold by the Bank was 673. They ask the Court to make a finding that the Bank had no power of sale in relation to parcel 673. I will not be so encouraged.”*. At Paragraphs 45 and 46, the learned Judge continues to elaborate on matters that could have been raised by Garry Young against the Bank
17. I point out all of this because the contention by Mrs. Uc Myles on behalf of her clients in written submissions is that: *“the claims are different in their nature (cause of action and reliefs), a closer look at the decision in Claim No 102 of 2018 will reveal that the focus of that claim was the legality of the registration or omission thereof of three main*



*documents; the 1<sup>st</sup> Claimant's transfer, the 1<sup>st</sup> Claimant's caution and the charge in favor of the Belize Bank Ltd over Parcel 673."*

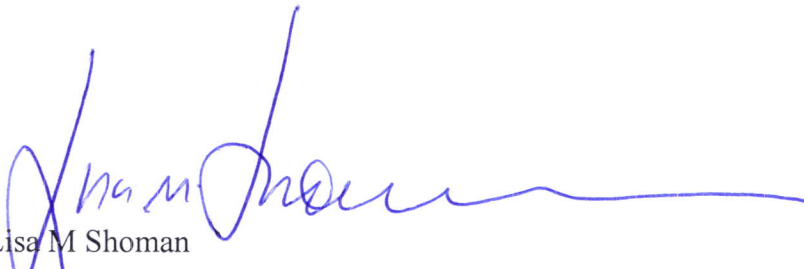
18. Mrs. Uc Myles argues therein that *"Therefore, Madam Justice Young's decision determines claims that deal with and concern the effects of registration of transfer of land forms, cautions and charges over properties and the interest each allocates to the parties registering those documents."*
19. Counsel for the Claimants/Respondents says further that *"In contrast, the present claim seeks the cancellation of the register in favor of the 4<sup>th</sup> Defendant not based on the effect of registering a caution, transfer or charge but on the validity or lawfulness in the registration of the charge in favor of the 3<sup>rd</sup> Defendant."*
20. Mrs. Uc Myles in oral arguments said the cases are "completely different". I do not agree. Not only is the subject matter the same, but the issues in this case are in substance those which are covered under the Rule in Henderson v. Henderson and are *"issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."*
21. I find that the claims presented herein, are so clearly part of the subject-matter of the litigation and should have been raised and could have been litigated in Claim No 102 of 2018.
22. In that case, the Court ordered against the Claimants possession of the property in dispute in favour of the 4<sup>th</sup> Defendant on the basis of title secured on a sale and transfer under charge by the Bank named as the 3<sup>rd</sup> Defendant in this Claim - which charge and transfer were then already registered by the Registrar of Lands.

23. In my view, the circumstances are such that it would be an abuse of the process of the court to allow a new proceeding to be started by the Claimants in respect thereof.
24. Mrs. Uc Myles' second point in oral submissions was there may be issues that the Claimants may have not known, and did not raise at the time when Claim 102 of 2018 was litigated. This would be the kind of issues which could guide the Court and assist as to "whether the abuse is excused or justified by special circumstances." as per Lord Bingham's explanation of the Rule in Henderson v Henderson given in the **Gore Wood** case.
25. However, the Claimants/Respondents put no evidence at all before this Court to justify the issues by any special circumstances; nor did they seek to substantiate the contention made by Mrs. Uc Myles. An Affidavit sworn by or on behalf of the Respondents setting out their reasons or any special circumstances being raised, may have made a difference, but there is nothing in that regard before me, on which the Court may so properly conclude.
26. The appeal by Mrs. Myles in oral arguments, to ask the Court to find the sort of "special circumstances" that the Court should and must look at as being an exception to the Rule in Henderson v. Henderson, such as "oppression or abuse of the Court" are not particularized or elaborated upon by the Claimants/Respondents, and no evidence at all to the existence of the same was provided by any affidavit evidence by the Claimants/Respondents.
27. In the premises, I do find that the statement of case in the instant claim against the 3<sup>rd</sup> and 4<sup>th</sup> Defendant is an abuse of the process of the Court and therefore should be struck out under Rule 26. 3 (1)(b) of the Supreme Court (Civil Procedure) Rules.

28. I hereby order as follows :

- a. That the Claimants' Claim Form and Statement of Claim filed herein is struck out and the Claim dismissed as being an abuse of process of the Court;
- b. That the Claimants shall not without the permission of the Court first having been obtained commence a new claim against any of the Defendants affecting possession of Parcel 673 Block 23 Santa Elena Cayo Registration Section or arising out of acts which are the same or substantially the same as those as in Claim No. 102 of 2018 : Challette Limited v Garry Young, Glenda Young and Charles Young;
- c. That the Claimants shall pay the 3<sup>rd</sup> and 4<sup>th</sup> Defendant's costs of this application and of the claim to be agreed or taxed.

DATED THIS 16<sup>th</sup> DAY OF FEBRUARY 2021



Lisa M Shoman  
Justice of the Supreme Court