

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Claim No. 2021/CLE/gen/00241

Between

LAWRENCE MAURICE WELLS

Claimant

AND

ROYAL CARIBBEAN CRUISES LTD.

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: No appearance by or on behalf of the Claimant
Mrs. Justine Smith and Miss Ashley Sands for the Defendant

Hearing Date: 16th January, 2025

Submissions: 25th March, 2025

Strike out – Part 26(1)(c)-employment contract governed by arbitration clause – claimant terminated from his employment - claimant commenced two actions in the United States with respect to his termination – one of the actions dismissed – similar claim with respect to his termination commenced in the Bahamas – claim in the Bahamas arising out of the same or similar facts as United States actions – whether the Bahamas an improper forum - whether claim res judicata or an abuse of process

RULING

The Claimant was employed aboard one of the Defendant's vessels from 1st December, 2018 to 8th March, 2019 as an Executive Sous Chef. On 8th March, 2019 he was terminated for gross misconduct in violation of the Defendant's inappropriate guest interaction policy – namely having a cruise passenger in his crew quarters on 7th March 2019. Under the Claimant's employment contract he agreed to submit to arbitration should any dispute arise with respect to his employment.

In April 2019, he filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") alleging race and age discrimination. On 20th May, 2019 he filed a complaint in

the federal district court for the Northern District of Georgia. He alleged that he was discriminated against on the basis of race and age and that he had been retaliated against for engaging in protected activity. On March 9, 2021 he commenced this action (referred to as the “Bahamian action”) for: (i) Damages for Breach of Contract; (ii) Damages for Wrongful and/or Unlawful Dismissal (Special & General); (iii) Consequential Loss; (iv) Punitive & Exemplary Damages for discrimination; (v) Costs; (vi) Interest Pursuant to the Civil Procedure (Award Of Interest) Act 1999; and (vii) Such further or other relief deemed just by the Court;

The Application

- [1.] Royal Caribbean Cruises Ltd., the Defendant applied by Notice of Application filed on 19th April, 2023 (“*the Application*”) for an Order pursuant to Part 26 of the Supreme Court Civil Procedure Rules, 2022 (“*CPR*”) and the inherent jurisdiction of the Court that:
 - (a) the Claimant’s Writ of Summons filed on 9th March, 2021 and Statement of Claim filed 22nd March, 2023 be struck out and dismissed;
 - (b) such further or other relief as the Court deems just; and
 - (c) the costs of the application be paid by the Claimant to the Respondent to the Applicant, to be taxed if not agreed.
- [2.] The Application is supported by the Affidavit of Andrew C.D. Smith filed 19th April, 2023.
- [3.] The Application was uncontested.
- [4.] Counsel for the Claimant Miss Krysta A. Mason-Smith and Mr. Ducille, KC confirmed via email on 7th November, 2024 that they would not continue to represent Mr. Wells in the action and had already relayed the same to him. However, they did not make an application pursuant to the CPR to be removed as Counsel.
- [5.] The hearing of the Application was scheduled for 16th January, 2025 and despite the email received from the Claimant’s Counsel, they were also advised of the date.
- [6.] At the hearing on 16th January, 2025, the Claimant failed to appear in person or by Counsel and the Court proceeded to hear the Application.
- [7.] I am grateful to the Defendant for the helpful submissions which aided in the Court’s decision.

The Facts

- [8.] The Defendant did not file a Defence.

- [8.] While it is likely that there may have been a dispute of the facts as pleaded in the Claimant's Statement of Claim, the evidence as contained in the Defendant's Application demonstrated that the Claimant's contract of employment was governed by an arbitration clause.
- [9.] On that basis, the preliminary issue to be determined is one of law.
- [10.] I have adopted the relevant facts to determine this preliminary issue as contained in the Skeleton Arguments of the Defendant:
- (i.) On the 24th February, 2019 the Claimant entered into an employment agreement with the Defendant. Under the terms of the agreement, he agreed that "*all grievances and any disputes whatsoever whether in contract, regulatory, statutory, common law, tort or otherwise or in any way connected with the Seafarer's service for the Owner/Company under this present Agreement, including but limited to claims for personal injury/disability or death, no matter how described, pleaded or styled and whether asserted against the Owners/Company, Master, Employer, Ship Owner, vessel or vessel operator shall be referred to and resolved exclusively by mandatory binding arbitration pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958).*" The Collective Bargaining Agreement between the Defendant and the Norwegian Seafarers Union et. al. which became effective on the 1st July, 2017 was also incorporated and made a part of the Claimant's employment agreement and he agreed to be bound by its terms and conditions.
 - (ii.) In accordance with his employment terms, the Claimant agreed to submit to binding arbitration should any dispute arise with respect to his employment but has not instituted any such proceedings to date.
 - (iii.) Instead the Claimant commenced an action in the Supreme Court of The Bahamas.
 - (iii) The Claimant also previously commenced proceedings with the US Equal Employment Opportunity Commission ("EEOC") based on *inter alia* allegations of discrimination and retaliation by the Defendant as well as in the United States District Court Southern District of Florida ("US District Court") Case No. 1:19 c-22400KMW. The documents filed in relation to both of these applications were exhibited to the Affidavit of Andrew C.D. Smith.
 - (iv) These applications demonstrate that the Claimant commenced legal actions with claims based on similar subject matter and facts in the US Court system as he has in the current proceedings before this Court. The Claimant's action in the US District Court was eventually dismissed by Order and Final Judgement dated 25th August, 2020.

- (v) The Respondent also failed to comply with the Case Management Directions Order which stipulated that the Claimant should file an Affidavit in Reply no later than the 6th August, 2024. The Claimant failed to do so.

The Law

- [11.] The Court has general case management powers under Part 26 which include the following:

‘26.1 Court's general powers of management.

(1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions or any enactment.

(2) Except where these rules provide otherwise, the Court may —

...
(i) dismiss or give judgment on a claim after a decision on a preliminary issue;

...
(n) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;’

...
(q) stay the whole or part of any proceedings generally or until a specified date or event;’

- [12.] The Court’s jurisdiction to order that a claim be struck out and dismissed is derived from Part 26 of the CPR. It provides that:

‘26.3 Sanctions – striking out statement of case.

(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 —

...
(c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings;’

- [13.] The Court must also consider the overriding objective of the CPR under Part 1.1 when exercising its discretion which includes ensuring that matters are dealt with expeditiously and fairly and enforcing compliance with rules and orders.

Analysis and Disposition

- [14.] The Court is being asked to strike out the action on the following bases:

- (i) That the action has been commenced using an improper forum; and
- (ii) the action is res judicata and abuse of process.

Improper forum

- [15.] In the case of **Gardiner; Holbert; Rolle; Walkine v Island Hotel Company Limited d/b/a Atlantis Paradise Island** [2011] 1 BHS J. No. 68 the Plaintiffs commenced an action alleging breaches of their employment contracts. They appealed a registrar's order for them to proceed to arbitration to resolve their respective disputes. The Plaintiffs' terms and conditions of employment were all governed by collective bargaining agreements which stipulated that disputes were to be resolved by arbitration. The Honourable chief Justice Sir Michael L. Barnett (as he then was) found at paragraph 16 that, '*the parties should be held to their bargain unless there are compelling reasons to depart from the agreed terms.*'
- [16.] Similarly, in the instant action the Claimant's terms of employment were governed by collective bargaining agreements which addressed that disputes were to be resolved via arbitration proceedings. Mr. Wells commenced two prior actions in the United States and the third action is now before the Bahamian court.
- [17.] Since the commencement of the Bahamian action, the Claimant has not advanced his case after the filing of his Statement of Claim in March 2023 and has not complied with any of the Case Management Orders.
- [18.] Therefore, given Mr. Wells' abandonment of the Bahamian action there are no compelling reasons to *depart from the agreed terms.*
- [19.] Accordingly, the Bahamian action must fail.

Res judicata and abuse of process

- [20.] The Claimant's Bahamian action arises from the termination of his employment with the Defendant. Whilst the claims in the two US actions may vary from the Bahamian action each of the claims arise from the termination of his employment. Thus, they all arise from the same or substantially the same facts.
- [21.] The Claimant appears to have spread his claim against the Defendant across three courts of competent jurisdiction; the EEOC, the United States District Court and the Supreme Court of the Bahamas.
- [22.] The action in District Court was dismissed by final order in August 2020.

- [23.] In *Henderson v Henderson* [1843-60] All ER Rep 378, where a matter is litigated by a court of competent jurisdiction, the parties to that litigation are required to bring forward their whole case and are not (except in special circumstances) permitted to re-litigate the same subject matter.
- [24.] Also, in *Doris Thompson v Stephen J. Albury and another* [2023] 1 BHS J. No. 87, Senior Justice Deborah Fraser opined at paragraphs 53-54:

‘53 In the Privy Council decision of *Yat Tung Investment Company Ltd v. Dao Heng Bank Ltd* [1975] AC 581, Lord Kilbrandon said at page 590:

“But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The locus classicus of that aspect of res judicata is the judgment of Wigram V.C. in *Henderson v. Henderson* [1843] 3 Hare 100, 115, where the judge says:—
... 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.”

The shutting out of a “subject of litigation” — a power which no court should exercise but after a scrupulous examination of all the circumstances — is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless “special circumstances” are reserved in case justice should be found to require the non-application of the rule...

The Vice-Chancellors phrase “every point which properly belonged to the subject of litigation” was expanded in *Greenhalgh v. Mallard* [1947] 2 All E.R. 255, 257, by Somervell L.J.:—

res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but ... it covers 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 (emphasis added).”

54 Borrowing the language from the *Thomas* decision (referred to at paragraph 23 of this judgment): “*It is in the interest of the public that there should be finality to litigation and*

that no person should be subjected to action at the instance of the same individual more than once in relation to the same issue.”

[my emphasis added]

- [25.] Further, in ***James Fleck v Pittstown Points Landing Limited*** [2022] 1 BHS J. No. 183, Justice Stewart opined on the principles of res judicata.
- [26.] It is obvious to this Court that the Claimant is seeking to leverage his position by spreading his claim across different courts and to pursue a new judgment on identical issues in the Bahamian action.
- [27.] This is an abuse of process.
- [28.] I adopt the language of Senior Justice Fraser in the case of **Doris Thompson**, “*It is in the interest of the public that there should be finality to litigation and that no person should be subjected to action at the instance of the same individual more than once in relation to the same issue.*”
- [29.] For these reasons I strike out the action against the Defendant in accordance with Part 26(1)(c) of the CPR. I award costs to the Defendant in the amount of \$8,000.00.

Dated the 30th May, 2025



Camille Darville Gomez
Justice