In The Supreme Court of Bermuda

CIVIL JURISDICTION

2016 No: 307

BETWEEN:-

MICHAEL W JONES

Plaintiff

-and-

STEWART TECHNOLOGY SERVICES LTD

Defendant

RULING

(In Chambers)

Strike out application – Rules of the Supreme Court 1985, Order 18, rule 19 – whether reasonable cause of action – whether issue estoppel – whether defendant a privy of parties to US action said to give rise to estoppel – whether abuse of process

Date of Hearing: 10th October 2017
Date of Ruling: 30th October 2017

Mr Keivon Simons, Smith & Co, for the Plaintiff
Mr Philip J Perinchief, PJP Consultants, for the Defendant

Introduction

1. By a summons dated 19th December 2016, which was reissued in substantially the same form on 3rd February 2017, the Defendant seeks to strike out the Plaintiff's statement of claim: (i) pursuant to RSC Order 18, rule 19(1)(a), on the ground that it discloses no reasonable cause of action; or alternatively: (ii) pursuant to RSC Order 18, rule 19(1)(b) and (d), on the ground that it is scandalous, frivolous or vexatious, or is otherwise an abuse of the process of the court, in that it depends upon issues which have been judicially determined by a State Court in the USA ("the US action"). The claim was also said to be an abuse of process in that it allegedly breached various settlement agreements between the parties to the US action.

Background

2. The Plaintiff, a consulting actuary, was formerly a business partner of Patrick Sutherland and Yanique Lawrence, who are husband and wife. Although they are not named in the latest iteration of the statement of claim, their identity is not in dispute and is relevant to the second limb of the Defendant's strike out application.

3. The Plaintiff claims that he was formerly the owner of 45 per cent of the shares in an insurance broker called Insigne Consulting Inc ("Insigne Consulting"), which was incorporated in North Carolina in around 2000, and that Mr Sutherland and Ms Lawrence owned the other 55 per cent. The company was dissolved in 2010.

4. The Plaintiff's claim is for breach of contract. The nub of the claim, as contained in his re-amended statement of claim read in conjunction with his affidavit evidence, is as follows:

   (1) In or about late 2001/early 2002, in the United States, the Plaintiff and the co-owners of Insigne Consulting (ie Mr Sutherland and Ms Lawrence) agreed to form a company in Bermuda to facilitate Insigne Consulting's offshore insurance business. The ownership of the new company would mirror the ownership of Insigne Consulting. Ie the

Plaintiff would own 45 per cent of the shares and Mr Sutherland and Ms Lawrence would own the other 55 per cent.

(2) The new company was the Defendant. It was incorporated in Bermuda on 16th August 2002. At all material times Mr Sutherland or alternatively Mr Sutherland and Ms Lawrence had "*total and full control over the affairs of the Defendant*". It was agreed that the Plaintiff would not be a signatory on the Defendant's bank account. This was "*to avoid ties to the United States*", and because he only had a Jamaican passport, which had expired.

(3) However, after the Defendant was incorporated, Mr Sutherland, in his capacity as an agent of the Defendant, made an oral agreement with the Plaintiff that in consideration for the Plaintiff undertaking work to transfer Insigne Consulting's offshore consulting ventures to the Defendant, the Plaintiff would be entitled to 45 per cent of the profits generated by those consulting ventures, reflective of his interest in Insigne Consulting ("the Agreement"). Mr Sutherland made this agreement as an agent of the Defendant in that he was acting with its actual or ostensible authority.

(4) The Plaintiff undertook the necessary work, and Insigne Consulting's offshore consulting ventures were duly transferred to the Defendant.

(5) From 2007 through 2012 the Defendant distributed to Mr Sutherland profits in excess of $1,900,000.00. These profits were generated by the offshore consulting ventures referred to the Defendant by Insigne Consulting. The Plaintiff did not learn of these distributions until in or around July 2012. They were deliberately concealed from him by the Defendant.

(6) It is not known if the Defendant has distributed any profits subsequently.

(7) The Defendant, in breach of contract, has not paid any profits to the Plaintiff, let alone the 45 per cent share to which he was contractually entitled.

5. Mr Sutherland was originally named as the First Defendant to the action and the original version of the statement of claim referred to him and Ms Lawrence by name. However the claim against him was discontinued. The Plaintiff filed an amended statement of claim, which was subsequently re-amended, in which references to Mr Sutherland and Ms Lawrence by name were replaced by references to an "*agent*" or "*agents*" of the Defendant. In an affidavit sworn in opposition to the strike-out application, the Plaintiff explained that this was simply to avoid confusion and that the facts relied on were the same. Similarly, in the re-amended statement of claim the Plaintiff alleges that the Defendant distributed profits in excess of $1,900,000.00 to "*parties other than the Plaintiff*" whereas in an affidavit sworn in support of a summons for leave to serve the writ out of the jurisdiction he specified that Mr Sutherland distributed the profits to himself.

6. I should note that the re-amended statement of claim exists in two versions: a version showing the amendments and a "clean" version. The text of these versions is slightly different. Eg the version showing the amendments avers that at all relevant times "*the agents of the Defendant*" (ie Mr Sutherland and Ms Lawrence) have had full control over its affairs, whereas the clean version makes this averment in respect of "*the Defendant's agent*" only (ie Mr Sutherland). The version showing the amendments avers that in return for work done by the Plaintiff in transferring the offshore ventured of Insigne Consulting to the Defendant, "*the Defendant would make distribution to the owners of Insigne Consulting, in proportion to their ownership percentages of Insigne Consulting Inc*". In the clean version, "*the Defendant would distribute 45% the profits generated by those ventures to the plaintiff, reflective of his ownership percentage in Insigne Consulting Inc*". However, in both versions it is absolutely clear that the contract price depends upon the Plaintiff's interest in Insigne Consulting.

The law on striking out

7. The law on striking out was summarised by the Court of Appeal in Broadsino Finance Co Ltd v Brilliance China Automotive Holdings Ltd

[2005] Bda LR 12. Stuart-Smith JA, giving the judgment of the Court, stated at 4 – 5.

"*... Where the application to strike-out on the basis that the Statement of Claim discloses no reasonable cause of action (Order 18 Rule 19(a)), it is permissible only to look at the pleading. But where the application is also under Order 18 Rule 19(b) and (d), that the claim is frivolous or vexatious or is an abuse of the process of the court, affidavit evidence is admissible. Three citations of authority are sufficient to show the court's approach. In Electra Private Equity Partners (a limited partnership) v KPMG Peat Marwick [1999] EWCA Civ 1247, at page 17 of the transcript Auld LJ said: 'It is trite law that the power to strike-out a claim under Order RSC Order 18 Rule 19, or in the inherent jurisdiction of the court, should only be exercised in plain and obvious cases. That is particularly so where there are issues as to material, primary facts and the inferences to be drawn from them, and where there has been no discovery or oral evidence. In such cases, as Mr Aldous submitted, to succeed in an application to strike-out, a defendant must show that there is no realistic possibility of the plaintiff establishing a cause of action consistently with his pleading and the possible facts of the matter when they are known….. There may be more scope for an early summary judicial dismissal of a claim where the evidence relied upon by the Plaintiff can properly be characterised as shadowy, or where the story told in the pleadings is a myth and has no substantial foundation. See eg Lawrence and Lord Norreys (1890) 15 Appeal Cases 210 per Lord Herschell at pages 219–220'. In National Westminster Bank plc v Daniel [1994] 1 All ER 156 was a case under Order 14 where the Plaintiff was seeking summary judgment, but it is common ground that the same approach is applicable. Glidewell LJ, with whom Butler-Sloss LJ agreed, put the matter succinctly following his analysis of the authorities. At page 160, he said: 'Is there a fair and reasonable probability of the defendants having a real or bona fide defence? Or, as Lloyd LJ posed the test: 'Is what the defendant says credible'? If it is not, then there is no fair and reasonable probability of him setting up the defence'.*"

8. In a very clear case, an action may be struck out because it is time-barred. See the judgment of Kawaley J (as he then was) in Global Construction Ltd v Hamiltonian Hotel & Island Club Ltd [2005] Bda LR 81 at paragraphs 16 – 17.

No reasonable cause of action

9. Philip Perinchief, who appeared for the Defendant, submitted with his customary eloquence that on the face of the statement of claim any claim

under the Agreement would be time barred. There are two difficulties with this submission.

10. First, in order to determine whether the claim is time-barred, it would be necessary to determine the proper law of the Agreement. This is not apparent on the face of the statement of claim. Such an exercise would involve a factual enquiry going beyond the evidence submitted for the purposes of this hearing. Eg a relevant consideration would be where the Agreement was made.

11. Mr Simons, who ably represented the Plaintiff, submitted that the proper law of the contract was Bermuda law as Bermuda is where the Defendant is domiciled and carries on business. For the sake of argument, I shall assume, for the moment, that this is correct. It is true that under section 7 of the Limitation Act 1984 ("the 1984 Act") the limitation period for an action founded on simple contract is six years. However a fresh six year period would arise with respect to each distribution of profits from which the Plaintiff was excluded. Moreover, on the Plaintiff's case he did not learn of the distribution of profits, which had been deliberately concealed from him by the Defendant, until around July 2012, when this information was disclosed to him by the US Department of Justice. Section 33 of the 1984 Act provides that where any fact relevant to a plaintiff's right of action has been concealed from him by a defendant, the limitation period shall not begin to run until after the plaintiff has discovered the concealment or could with reasonable diligence have done so. On the Plaintiff's version of the facts, it is strongly arguable that section 33 would bite in the present case. Similar provisions may apply whatever the proper law of the Agreement. In the premises, I am not satisfied that the action is time-barred.

12. Mr Perinchief further submitted that the Plaintiff's claim for breach of contract was not properly pleaded. Eg it did not include the material facts upon which the allegation that Mr Sutherland was acting with the ostensible authority of the Defendant when offering him 45 per cent of its profits was based. But in my judgment the claim for breach of contract contains the fundamental ingredients of the cause of action: the Plaintiff has pleaded an agreement, which implies an offer and acceptance;

consideration; breach; and damage. The appropriate way to address a lack of particularity is through an application for further and better particulars.

The US action

13. Mr Perinchief submitted that the Plaintiff's claim was subject to issue estoppel, or was alternatively an abuse of process, by reason of various agreements and orders entered into or made in the US action, which was brought in the General Court of Justice in North Carolina between Mr Jones as plaintiff and Mr Sutherland and Ms Lawrence as Defendants. The parties included Insigne Consulting but not the Defendant.

14. The US action was settled by a Settlement Agreement and Mutual Release dated December 30th 2011 ("the First Settlement Agreement"). The relevant terms were as follows:

> "*8.* ***Releases and Dismissal.*** *The Parties hereby agree to the following releases and dismissal:*
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> . . . . .
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> *b. For and in consideration of the terms of this Agreement, and other good and valuable consideration, the Jones parties [defined to include the Plaintiff] … hereby release, acquit and forever discharge the Sutherland Parties [defined to include Mr Sutherland, Ms Lawrence and Insigne Incorporated] … (including but not limited to any entity in which any Sutherland Party owns a controlling interest, either directly or indirectly). … from any and all claims, actions, causes of action, contracts, charges, demands, losses, fees and any other damages or liabilities of every kind, nature and description whatsoever that such Party or Parties ever had or now have, or shall or may have, from the beginning of time to the execution of this Agreement.*
>
> *c. Within seven (7) calendar days of the execution of this Agreement by all Parties, the parties' respective counsel … shall file a Stipulation of Dismissal of the Litigation in its entirety with prejudice.*
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> . . . . .
>
> *10.* ***Compromise Not An Admission.*** *The Parties agree and acknowledge that this Agreement is being entered into only for the purpose of avoiding the burdens, inconveniences and expenses of further disputes and collection efforts between the Parties and is not and shall not be construed or deemed to be an admission or concession by any Party as to the merits of any claim or defense of any Party.*
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> . . . . .

*12. **Governing Law.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with the laws of the State of North Carolina. The parties agree that any actions to enforce the terms of this contract shall be brought in Mecklenburg County, North Carolina.*"

15. Pursuant to para 8.c of the First Settlement Agreement, on 5th January 2012 the parties signed a stipulation dismissing the action with prejudice ("the Stipulation"). They entered into a second Settlement Agreement and Mutual Release dated November 2nd 2012 and a third Settlement Agreement and Mutual Release dated January 18th 2017, both of which reaffirmed the terms of the First Settlement Agreement. On 19th January 2017, pursuant to the third Settlement Agreement, the General Court of Justice made a Consent Permanent Injunction which ordered, decreed and adjudged that *inter alia*:

"*(a) Defendant [ie the Plaintiff] shall immediately take all action necessary to dismiss with prejudice or otherwise permanently terminate all claims asserted against Sutherland in the Bermuda Lawsuit.*

(b) Plaintiffs [ie Mr Sutherland and Ms Lawrence] and Defendant shall not at any time in the future, in any forum anywhere in the world, file or in any way assert against any other party any claim based on any act or omission that actually or allegedly occurred, or actually or allegedly did not occur, prior to January 18, 2017."

It was pursuant to the Consent Permanent Injunction that in February 2017 the Plaintiff discontinued the claim against Mr Sutherland in the instant case.

Issue estoppel

16. Mr Perinchief submitted that the dismissal of the US action with prejudice gave rise to an issue estoppel which prohibited the Plaintiff from asserting in the present case that he had held a 45 per cent interest in Insigne Consulting.

17. I recognise the Stipulation as being capable of giving rise to an estoppel in Bermuda. Whatever its precise juridical nature, and notwithstanding that it involves no finding on the merits, it appears to dispose of the action finally and conclusively at first instance; the Plaintiff in the present

case was a party to the action; and the Stipulation, which was by consent, cannot be impeached on grounds of fraud, public policy or breach of natural justice.

18. As to issue estoppel, the applicable principles were helpfully summarised by Sir Terence Etherton Ch in Price v Nunn [2013] EWCA Civ 1002 at para 68:

> "*Issue estoppel is a form of estoppel precluding a party from disputing the decision on an issue reached in earlier proceedings even though the cause of action in the subsequent proceedings is different. It may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties or their privies to which the same issue is relevant one of the parties seeks to re-open that issue. In such a situation, and except in special circumstances where this would cause injustice, issue estoppel bars the re-opening of the same issue in the subsequent proceedings.*"

19. For present purposes, the key requirement is that the cause of action giving rise to the estoppel must have been litigated and decided between the same parties as in the subsequent proceedings or their privies. There are three classes of privity: privity of blood, title and possession. See Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2) [1967] 1 AC 853 *per* Lord Reid at 910 G. In the present case, only privity of interest is potentially engaged. It is a notoriously slippery concept. In Resolution Chemicals Limited v Lundbeck [2013] EWHC 739 (Pat), Arnold J reviewed the relevant case law and at para 100 summarised the applicable principles thus:

> "*i) The test for privity of interest is whether, having due regard to the subject of the matter of the dispute, there is a sufficient degree of identification between the relevant persons to make it just to hold that the decision to which one is party should be binding in the proceedings to which the other is party: Gleeson v Wippell [1977] 1 WLR 510 [per Megarry V-C at 515 C – 516 C, Ch D] approved in Johnson v Gore Wood [2002] 2 AC 1 [per Lord Bingham at 32 D – G, HL].*
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> . . . . .
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> *iii) A direct commercial interest in the outcome of the litigation is insufficient to make someone a privy: Kirin-Amgen v Boehringer Mannheim [1997] FSR 289 [per Aldous LJ at 307 – 309, EWCA].*

iv) Whether members of the same group of companies are privies or not depends on the facts: Special Effects Ltd v L'Oreal SA [2007] RPC 15 [per Lloyd LJ at paras 81 – 82, EWCA]."

20. Turning to the facts of the instant case:

(1) In my judgment, the Stipulation, read in the context of the First Settlement Agreement, was intended to prevent any further litigation between the Jones parties and the Sutherland parties, including what might be termed the Sutherland/Lawrence Group of companies ("the Group");

(2) On the Plaintiff's pleaded case, the Defendant is part of that Group in that: (i) Mr Sutherland or alternatively Mr Sutherland and Ms Lawrence control the Defendant and its assets, including its profits, which he or they have distributed to himself or their selves, even though it is common ground that he or they is or are not its legal owner(s) or registered with the legal owner as its beneficial owner(s); and (ii) the Defendant was established to carry on Insigne Consulting's offshore business; and

(3) This action has arisen from the fact that, on the Plaintiff's pleaded case, the Defendant is part of the Group: if, on his case, he had not had a 45 per cent interest in Insigne Consulting then he would not have a claim to 45 per cent of the profits generated by the Defendant.

21. In the premises, I am satisfied that there is a privity of interest between the Defendant and the Sutherland parties to the US action so as to give rise to the issue estoppel which Mr Perinchief asserts.

22. I therefore reject Mr Simons' submission that the Stipulation merely prevents the Plaintiff (and the other Jones parties) from pursuing a cause of action against any of the Sutherland parties based upon his alleged 45 per cent interest in Insigne Consulting: it prevents him from asserting such an interest for any purposes in any litigation anywhere against any of the Sutherland parties or their privies, including the Defendant.

23. I also reject Mr Simons' submission that the Plaintiff's claim to a 45 per cent interest in Insigne Consulting is merely contextual information and not a necessary part of his claim. This submission should itself be put into context. The Plaintiff's original case, as advanced in his affidavit in support of a summons for leave to serve the writ out of the jurisdiction dated 10th October 2016, statement of claim dated 21st November 2016, and amended statement of claim dated 9th February 2017, was that he was entitled to 45 per cent of the profits made by the Defendant because he had a 45 per cent interest in Insigne Consulting. There was no averment that his entitlement arose under a contract which he had made with Mr Sutherland as agent for the Defendant in consideration for work to transfer Insigne Consulting's offshore consulting ventures to the Defendant.

24. This allegation was made for the first time in the Plaintiff's re-amended statement of claim dated 7th September 2017. The contract price was nonetheless alleged to be proportionate to his interest in Insigne Consulting. Thus the contract provided a mechanism for distributing to the Plaintiff a share of the profits in the Defendant to which, by reason of his interest in Insigne Consulting, he had in this action always claimed to be entitled.

25. However, Mr Simons submitted at the hearing that the contract price should be viewed as having been arrived at independently of the Plaintiff's interest in Insigne Consulting and that any such interest was irrelevant. This submission was not only contrary to the Plaintiff's pleaded case in its various iterations: it was also highly implausible. If the Plaintiff did not have a prior 45 per cent interest in either Insigne Consulting or the Defendant, then, absent a compelling explanation, it was not credible that Mr Sutherland, acting with or without the Defendant's authority, would offer to pay him 45 per cent of the Defendant's profits for unspecified work transferring the offshore business of Insigne Consulting to the Defendant. This is because the contract price would appear, on the face of it, wholly disproportionate to the services which the Plaintiff claimed to have provided. No explanation, compelling or otherwise, was provided for the contract price other than the pleaded explanation which Mr Simons invited me to

disregard. Suffice it to say that had I been required to determine this strike out application on the basis of the facts as submitted by Mr Simons rather than the evidence and pleadings which the Plaintiff had in fact filed then I should have had no hesitation in dismissing it as incapable of belief, and therefore frivolous and vexatious.

Abuse of process

26. Abuse of process is a broader and more flexible concept than issue estoppel. As stated by Lord Diplock in Hunter v Chief Constable [1982] AC 529 at 536 C:

> "*It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; ..*"

27. The facts giving rise to an issue estoppel would also, in my judgment, justify the Court in dismissing the action as an abuse of process. Eg in the alternative, which I have rejected, that the juridical nature of the Stipulation is such that it is incapable of giving rise to an estoppel.

28. But there is another ground on which the action is an abuse of process. Under the First Agreement the Plaintiff released the Sutherland parties from any and all claims etc. The Sutherland parties were defined to include "*any entity in which any Sutherland Party owns a controlling interest, either directly or indirectly*". On the Plaintiff's pleaded case, he agreed that Mr Sutherland and Ms Lawrence should have a 55 per cent interest in the Defendant corresponding to the 55 per cent interest which they held in Insigne Incorporated; the Defendant is controlled by Mr Sutherland or alternatively Mr Sutherland and Ms Lawrence; and the Defendant distributed profits in excess of $1,900,000.00 to Mr Sutherland or alternatively Mr Sutherland and Ms Lawrence.

29. In the premises, I am satisfied that the pleaded facts alleged by the Plaintiff, assuming that they are true, give rise to an irresistible inference

that Mr Sutherland, or alternatively Mr Sutherland and Ms Lawrence, own a controlling interest in the Defendant and that the Defendant is therefore included within the scope of the release in the First Agreement. It is true that the Defendant is not a party to the First Agreement and that the parties agreed that any action to enforce the First Agreement should be brought in Mecklenburg County, North Carolina. Nonetheless, for the Plaintiff to sue the Defendant, having contracted not to do so, would in my judgment be abusive.

30. I have considered whether in continuing to pursue this action the Plaintiff has breached the Consent Permanent Injunction, which would be a further ground for finding that he has acted abusively. On the one hand, the language of para (b) of the Injunction is broad enough to encompass the present action. On the other hand, if the parties had intended that the injunction should require the Plaintiff to terminate his claim against the Defendant in the present action it is surprising that the Injunction did not impose that as an express requirement.

31. The reason may be that on the Defendant's case Mr Sutherland and Ms Lawrence have no interest whatsoever in the company. The Defendant submitted an affidavit from Cheryl-Ann Mapp, the General Manager of BCB Charter Corporate Services Limited, which provides corporate administrative and secretarial services for the Defendant. She stated that there was a nominee agreement dated 4th November 2011 whereby two companies within the BCB Group act as registered legal owners of the Defendant on behalf of its beneficial owners, Beverly Stewart and Kelly-Ann King. She stated that Mr Sutherland was a director of the Defendant from February 2007 through to May 2016 but that the Defendant's records did not indicate any relationship at any time of any kind with the Plaintiff.

32. Ms Stewart has sworn several affidavits in which she stated that she is the founder, president, beneficial owner and majority shareholder of the Defendant and that the Defendant has never had any relevant dealings with the Plaintiff or held any assets on his behalf. She accepted that from 2007 through 2010 the Defendant paid money to Mr Sutherland, and did not dispute that this was in excess of $1,900,000.00. However she stated

that the payments were loans, duly approved by resolutions of the company, which Mr Sutherland has repaid by providing shares in various overseas companies, which companies he owned jointly with others including Ms Lawrence and the Plaintiff. She pointed out that the Plaintiff had not produced one shred of documentary evidence to support his claim.

33. Mr Sutherland and Ms Lawrence have both sworn affidavits in which they averred that they have no ownership interest in the Defendant; that they are not directors or officers of the Defendant, and that they do not direct or control the Defendant's affairs. They stated that they had no discussions and made no agreements with him regarding the establishment of the Defendant or any share of its ownership or profits, and aver that the Plaintiff's allegations to the contrary are fabrications to extort money from them.

34. The Plaintiff's response was in substance: "*They would say that, wouldn't they*". He stated that the reason why there is no documentary evidence to support his claim is because it is based on an oral contract. He alleged in his affidavit in response to the strike out application that the present "*legal principals, directors or owners*" of the Defendant are merely "*pawns*" used by Mr Sutherland to avoid any formally documented connection to the Defendant. Eg the Plaintiff stated in his affidavit in response to the strike out application that Ms Stewart is an occasional part time summer worker in a US motel earning close to the minimum wage, and that her modest circumstances contrast with the luxury lifestyle enjoyed by Mr Sutherland. The Court was invited to see this contrast as a telling pointer towards the person with whom, the Plaintiff submitted, control and, impliedly, beneficial ownership, of the Defendant really lies. Ms Stewart, it is only fair to say, did not accept this characterisation of her circumstances.

35. I am not in a position to form a judgment as to the merits of the Plaintiff's claim. But this much is clear. If the facts are as the Plaintiff contends, then his claim is abusive because it is in breach of the terms of the First Agreement. If the facts are as the Defendant contends, then the claim is not abusive for that reason but for another, namely because it is based

upon a pack of lies. Either way, the Plaintiff's claim is an abuse of process. In the circumstances, it is not necessary for me to determine whether it is breaches the Consent Permanent Injunction and is also abusive for that reason.

36. I therefore allow the Defendant's application and strike out the Plaintiff's claim both on the ground of issue estoppel and because it is as an abuse of process. That brings this action to an end, apart from the question of costs.

37. On the principle that costs follow the event, I can see no good reason why the Plaintiff should not pay the Defendant's costs, both of the strike out application and of the action generally, as the Defendant is the successful party. Costs would be on a standard basis, to be taxed if not agreed. If either party wishes to persuade me otherwise, they may attempt to do so, provided that they serve written notice of that intention on the other party and the Court within seven days of the date of this judgment.

Dated this 30th day of October, 2017

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Hellman J