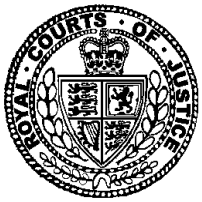

Neutral Citation Number: [2018] EWHC 3513 (Ch)

Case No: PT-2018-000012

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

IN THE ESTATE OF MRS LAURADEL ERNITA SAMUEL DECEASED

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 17/12/2018

Before :

MASTER TEVERSON

- -

Between :

MERLINA JACQUELINE SAMUEL	**Claimant**
- and -	
(1) SYLETA MONICA SUSAN SAMUEL	
(2) ELAN EZEKIEL CLIFTON SAMUEL	
(3) CHRISTOPHER TERRY GLEN SAMUEL	
(4) JAPETH FITZROY SAMUEL	**Defendants**
(5) CARLOS ALFRIDO WARWICK	

- -
- -

Bryony Robinson (instructed by **Edwards Duthie Solicitors** for the **Claimant**
Edward Francis (instructed by **Blaser Mills Law**) for the **First Defendant**

Hearing dates: 17 September 2018

- -

Judgment Approved

MASTER TEVERSON:

1. By an application notice dated 20 April 2018 the First Defendant, Syleta Monica Susan Samuel, applies for an order that a probate claim brought by her sister, Merlina Jacqueline Samuel, be struck out as an abuse of process pursuant to CPR r 3.4(2)(b). Shortly stated, the basis for the application is that Merlina was a party to a probate claim brought by their brother Christopher in 2012 seeking substantially the same

relief as that now sought by Merlina and that Merlina could and should have sought the relief she is now seeking in those earlier proceedings.

2. I also have before me an application by Merlina asking for permission in response to Syleta's strike out application to refer to and rely on evidence at what occurred at a mediation held on 20 May 2013 in relation to the settlement of the earlier probate claim.

3. Merlina's claim was issued on 2 January 2018. It relates to the estate of her mother the late Mrs Lauradel Ernita Samuel ("the Deceased") who died on 15 November 2008. Syleta is the First Defendant to the claim. The Second to Fifth Defendants were sons of the Deceased. Another son Carlton Sebastian Samuel ("Carlton") is not a party to the claim but was joined as the Sixth Defendant to the earlier proceedings brought by Christopher. Christopher is the Third Defendant to the 2018 claim.

4. The First and Second Defendants, Syleta and her brother Elan, are the named executors and trustees in an alleged will of the Deceased dated 8 September 2008 ("the 2008 Will"). Probate of the 2008 Will was granted to the First and Second Defendants on 29 January 2009 in common form. Merlina seeks to have that grant revoked and the 2008 Will pronounced against on the basis that the Deceased lacked testamentary capacity and/or did not know and approve of its contents. Merlina also seeks to have declared invalid or set aside a Deed dated 30 September 2008 by which the Deceased purported to declare that she held 50% of the beneficial interest in the property known as 164 Green Grove Road, Leytonstone, London E11 4EL ("the Property") on trust for Syleta and a transfer TR1 form by which the Deceased purported to transfer the property into their joint names. This claim is made on the basis again that the Deceased lacked capacity and/or that the Deed and transfer were procured by the undue influence of Syleta.

5. By the 2008 Will, the Deceased named Syleta and Elan as her executors and trustees. She left some shares to her two grandchildren. She gave pecuniary legacies of £25,000 to Elan, £12,000 each to Merlina and Christopher, and £5,000 each to Japeth and Carlos. The Deceased directed that the pecuniary legacies were to be paid within ten years of her death. She left the residue of her estate to Syleta with a direction that Syleta should not be obliged to sell her house in order to provide funds for the pecuniary legacies and a direction that no person other than Syleta might remove any item from the property.

6. In October 2012 Christopher (acting through Edwards Duthie solicitors) issued a probate claim in the Chancery Division. The relief sought is substantially same as that now sought by Merlina. Syleta and Elan were the First and Second Defendants to that claim. Merlina was the Third Defendant. Jepeth, Carlos and Carlton were the Fourth, Fifth and Sixth Defendants respectively.

7. The only substantive difference between the two claims (apart from the fact that Christopher was Claimant in one and Merlina in the other) is that Christopher was seeking a declaration that the Deceased had died intestate, whereas Merlina is seeking to propound an earlier purported will dated 3 March 2003 under which the Deceased left the residue of her estate to be divided as to 30% to Syleta, 30% to Elan, 15% to Christopher, 15% to Merlina and 10% to Japeth. It appears that the existence of the

2003 Will was not known to Christopher when he issued his claim but was one of Syleta's testamentary scripts.

8. A defence to Christopher's claim was filed on behalf of Syleta, Japeth, Carlos and Carlton. Those Defendants were represented by Blaser Mills Solicitors who now act for Syleta in relation to Merlina's claim.

9. It is not in dispute that Merlina was served with Christopher's claim. Neither she nor Elan acknowledged service of the claim.

10. On 30 January 2013 Master Price ordered that unless within 14 days of service Elan and Merlina acknowledged service giving notice of intention to defend and complied with CPR r57.5 in relation to lodging of testamentary documents they should be debarred from further defence of that claim. Master Price directed that Christopher's claim be listed for trial in a window between 1 December 2013 and 28 February 2014. He also gave case management directions including directions for standard disclosure, witness statements and permission to adduce expert evidence in the field of psycho-geriatric medicine limited to 1 expert per side. It appears that Master Price's order was not served on Merlina and for that reason no reliance is placed on behalf of Syleta on the sanction contained in that order.

11. On 2 May 2013 the legally represented parties being Christopher on the one hand, and Syleta, Japeth, Carlos and Carlton on the other, lodged a consent order agreeing that the directions ordered by Master Price on 30 January 2013 be stayed until 31 May 2013 to allow the parties to enter into a mediation.

12. On 3 May 2013 Merlina signed a document prepared and sent to her by Christopher's solicitors, Edwards Duthie Solicitors, which stated:-

"I confirm that I do not wish to attend mediation. I understand that any agreement reached at the mediation will be binding upon me and I agree to be bound by the outcome of the mediation."

13. A mediation took place on 20 May 2013. It is accepted on behalf of Syleta that Merlina was in fact present at the mediation. It is further agreed that no settlement was reached on that day.

14. On 7 June 2013 a further case management hearing took place before Master Price attended by the legally represented parties. The timetable for filing witness statements and exchanging experts' reports and the agreed statements by the experts was extended by consent.

15. A settlement agreement was, however, concluded some two months after the mediation between Christopher on the one hand (acting through Edwards Duthie solicitors) and Syleta, together with Japeth, Carlos and Carlton (acting through Blaser Mills solicitors) on 25 July 2013. It is accepted that Merlina was not a party to the negotiations leading to the settlement agreement.

16. On 14 August 2013 Master Price by consent ordered that the claim be discontinued with no order as to costs. The order recites that Christopher on the one hand and Syleta, Japeth, Carlos and Carlton on the other have agreed to the terms set out in a

Confidential Agreement. The order was made without a hearing. The Order was not served on Merlina.

17. Merlina's probate claim is dated 22 December 2017 and was issued by the court on 3 January 2018. The Particulars of Claim state that that statement of case largely adopts the statement of case in the discontinued proceedings in which the Third Defendant, Christopher, was the Claimant. It says this is done in order to save expense. The claim is intended to be supported by the same Expert's report namely that of Professor Howard dated 27 November 2011 as was relied on by Christopher in support of his claim.

18. A Defence to Merlina's claim was filed on behalf of the First Defendant, Syleta, on 13 February 2018. A Reply to the Defence of the First Defendant was served on 27 March 2018.

19. It is expressly pleaded in Syleta's Defence that Merlina had agreed to be bound by any settlement of the 2012 Claim disposing of the claim to revoke the 2008 Will; that Syleta had relied upon the fact that Merlina had not made any claim and/or on Merlina's agreement to be bound by the mediation in entering the settlement agreement and that it would be unjust in all the circumstances and unfair and oppressive for Merlina to be permitted to bring this further claim for revocation.

20. There was in those circumstances proper grounds for concern on the part of Merlina that Syleta's application would be determined on an incorrect factual basis. To meet this concern, Mr Francis made clear in his skeleton argument that it was not suggested that there was any settlement reached at the mediation to which Merlina was bound by reason of the statement signed by her on 3 May 2013.

21. Mr Francis also made clear in his skeleton argument that Syleta does not dispute that Merlina was present at the mediation.

22. The issue between the parties on Merlina's application was whether what took place at the mediation should remain confidential or whether that confidentiality had been waived or needed to be lifted in view of the strike out application.

23. In paragraph 18 of her witness statement, Syleta's solicitor, Sangita Manek stated:-

"I am informed by Syleta that she entered into this settlement agreement in the belief that this would conclude any challenge to the 2008 Will or 2008 Transfer and Declaration of Trust. In particular she was not aware that Merlina wished or intended to pursue her own challenge to the 2008 Will or 2008 Transfer and Declaration of Trust, and had she known of this, and of the fact that she would be faced with litigating exactly the same issues, for a second time, she would not have entered into the settlement agreement with Christopher."

Similarly, in paragraph 9 of her witness statement, Syleta says that if she had known that a further challenge would or could be made to the will she would not have entered into the settlement agreement which, she says, placed a significant financial burden on her.

24. It is accepted by Syleta that Merlina did tell her that she wished to challenge the will prior to the issue of Christopher's claim, in a text message sent shortly after Merlina ceased living at the Property in late May or early June 2012. It is also accepted that Merlina gave an indication to similar effect at or about the same time to Syleta's solicitors, Blaser Mills, causing them to inform Merlina they could not continue to act for her as Syleta was an existing client. Syleta's case is that this was not carried through into the 2012 proceedings.

25. It was agreed between counsel that Merlina's application need not be determined on the basis (1) that it was not suggested that there was any settlement reached at the mediation to which Merlina was bound as a result of having signed the document dated 3 May 2013, (2) that it was agreed that Merlina was in fact present at the mediation and (3) no reliance was being placed by Syleta in support of her application on the alleged failure of Merlina to state her position otherwise than by failing to take any formal steps in the proceedings such as to file an Acknowledgement of Service, a defence or a counterclaim.

26. I am prepared to proceed on that basis but it would be wrong for me not to record that I have read Merlina's evidence as to what took place at the mediation.

27. I turn then to the arguments advanced by Mr Francis on behalf of Syleta in support of the strike out application. These are set out succinctly and with clarity in the Skeleton Argument filed on behalf of Syleta. In summary it was submitted that:-

    i) It was a mandatory requirement under CPR r57.4(1) that Merlina file an acknowledgment of service following service on her of Christopher's probate claim;

    ii) Thereafter, Merlina was required to serve a counterclaim if she contended that she had any claim or was entitled to any remedy relating to the grant of probate of the will: r.57.8(1)

    iii) In addition, if Merlina contended that at the time of the execution of the will, her mother did not know and approve of its contents, she was required to give particulars of the facts and matters relied upon; r.57.7(3);

    iv) Further, if Merlina contended that the 2008 Will was not duly executed or that at the time of execution of the will her mother lacked testamentary capacity, she was likewise required to set out that contention specifically in her statement of case; r.57.7(4).

    v) The purpose of these rules was so that the court could deal with finality with all questions as to the validity of a will which any person interested in the estate wishes to propound.

    vi) These requirements were not onerous; Merlina could simply have stated that she adopted the grounds relied upon by Christopher in his Particulars of Claim;

    vii) However, Merlina failed to comply with these mandatory requirements and took no formal part in the 2012 proceedings;

viii) Had Merlina complied with these procedural requirements, the claim would not have been settled as it was and Master Price would not have permitted the claim to be discontinued without the grounds of challenge being determined by the court;

ix) It is, accordingly, an abuse of process for Merlina to seek to challenge the 2008 Will in the present claim on grounds which were known to her and which she should, and was required by the rules, to set out in the 2012 proceedings;

x) Likewise it would be an abuse of process to seek the same relief as Christopher had done in relation to the Declaration of Trust and transfer;

xi) Syleta should not be subjected again to the expense, anxiety and uncertainty of litigation on issues which Merlina was required to set out in the 2012 claim; nor should the resources of the court be further taken up with such matters.

28. Mr Francis submitted that the principles by which the court should approach this application were those set out by Lord Bingham in the well-known passage in *Johnson v Gore Wood & Co* [2002] 2 AC 1 at p. 31:-

"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 proceedings 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 earlier 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 not 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."

29. It was submitted on behalf of Merlina by Ms Bryony Robinson that on a proper analysis this was more akin to a case of procedural default than to the type of abuse identified in *Henderson v Henderson* (1843) 3 Hare 100, *Johnson v Gore-Wood* [2002] 2 AC 1 and *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748. Reference was made to *Davies v Carillion Services Ltd* [2017] EWHC 3206 (QB), [2018] 1 WLR 1734, where Morris J at paragraphs 28-30 distinguishes between two categories of case involving abuse of process. The first category of case is where a party brings a second action in respect of matters which *were* raised in a first action but where that action had been struck out on procedural grounds and without any consideration of the merits. The second category is where a party seeks to raise in a second action issues or facts which could and should have been, but were not, raised in a first action, which action had resulted in a substantive adjudication or settlement.

30. To my mind the present case falls in, or much closer to the second category than the first. Christopher's claim was not struck out on procedural grounds without any consideration of the merits. The issues that Merlina now seeks to raise in her claim are the same as those raised by Christopher in his claim and are based on the same expert evidence as was relied upon by Christopher.

31. In the second category of case, the court, following the guidance provided by Lord Bingham in *Johnson v Gore-Wood* must apply to the particular facts and circumstances of the case before it a broad merits-based judgment focussing on the critical question whether a party is misusing or abusing the process of the Court.

32. The way in which Christopher's claim was settled is a material consideration. It was settled without notice to Merlina and without her being made a party to the compromise.

33. In *Wytcherley v Andrews* (1871) L.R. 2 P. & D. 327 a question arose whether the Plaintiff was precluded from further proceedings by a decree in a previous suit. The Plaintiff had not been a party to the previous suit but it had been carried on by her sister, Mrs Meyrick, with *"the knowledge and cognizance"* of the plaintiff. The claim was however settled by a compromise which Lord Penzance described as being *"of a suspicious character"* Lord Penzance referred to the practice in the Prerogative Court by which any party having an interest might make himself a party by intervening and he said:-

"…*because of the existence of that practice the judges of the Prerogative Court held, that if a person, knowing what was passing, was content to stand by and see his battle fought by somebody else in the same interest, he should be bound by the result and not allowed to re-open the case."*

Lord Penzance, however, said at p329:-

"It is one thing to say that a person who stands by and lets another fight his battle, must be bound by the result of the contest; and it is quite another thing to say that, without any notice that there was going to be a compromise, and without any knowledge that the suit was not proceeding to its natural end, he must nevertheless be

bound by any agreement which the parties to the suit may choose to enter into. That would be carrying the rule very far indeed."

He added:-

"A bargain only binds those by whom it is made. Persons who are willing to stand by while a contest is going on are bound by the decision of the Court, but they are not compelled to abide by a compromise, when no decision is in fact come to by the Court."

34. Mr Francis does not claim that Merlina was bound by the compromise. His submission is rather that it should be held to be an abuse of process for someone who was joined to, but chose not to participate in, earlier proceedings concerning the validity of a will to seek in subsequent proceedings to raise a challenge of her own to the same will. He submits that should be so regardless of whether there was any pronouncement for or against the will in the earlier proceedings, or whether, as happened in this case, the proceedings were permitted to be discontinued because the parties who had participated in the claim on either side had been able to reach a compromise removing the need for the court to make any determination in the absence of any other claim being asserted.

35. It is at this point that procedural default comes in and is relied upon by Mr Francis. He relies in particular on CPR r 57.8(1) which provides:-

"A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person must serve a counterclaim making that contention."

36. Ms Robinson accepted that there had been a failure on the part of Merlina to file an acknowledgement of service as required in a probate claim, but she submitted that all Merlina had been required to do was to state she did not intend to contest the claim. I do not agree. Rule 57.8(1) makes it compulsory for any Defendant who claims to have any claim or entitlement to any remedy to counterclaim. The purpose of the rule is to ensure that every will which anyone wants to set up or attack is dealt with in the claim and that the court pronounces for the valid will and does not merely pronounce against one will. Further, the Defendant's Notes For Guidance in a Probate Claim (Form N2B) under the heading "Counterclaim" state:-

"If you believe that you have a claim or are entitled to a remedy relating to the grant of probate of the will, or letters of administration of the estate of the deceased person, you must serve a counterclaim."

37. How material was the failure of Merlina to comply with CPR 57.8(1)? Mr Francis submits it was material for had Master Price known that Merlina was claiming any remedy relating to the grant of probate, he would not have given permission for the claim to be discontinued. He would instead have directed that the claim must proceed to trial unless a compromise involving Merlina was reached as well.

38. Merlina's explanation as to why she did not participate in the 2012 proceedings is that she was not in the right frame of mind to deal with the claim, given the state of her

mental health and the problems regarding her son Michael. She says that she could not afford to be legally represented at the time.

39. Nevertheless, Merlina attended the mediation in order, according to her own witness statement, to support Christopher. She gives the impression that she saw her role as a supporter or "witness" for Christopher.

40. Merlina refers to the fact that after the 2012 proceedings were concluded, Syleta emailed her to get back in touch. She says she was contacted in August 2013. She refers to an email dated 28 August 2013. That is about two weeks after the order of Master Price discontinuing the claim.

41. Merlina's evidence is silent as to when or how she learnt that Christopher's proceedings had been settled or were no longer proceeding. She says in paragraph 22 of her statement, that she did tell Syleta when they were talking *"that the estate had money to pay out and I would challenge the will when I had funds."* She says that between 2014 and January 2016 she had sparse contact with Syleta. She says she told Syleta by telephone on 17 July 2016 that she would be commencing Court proceedings "*now that she had some funds"*.

42. A court will only strike out a claim as an abuse of process after the most careful consideration. It has to balance a claimant's right to bring before the court a claim whose merits have yet to be determined against a defendant's right to be protected from being harassed by a second set of proceedings where one should have sufficed.

43. Merlina's claim has the unattractive feature that it arises out of the very same facts as those relied on by Christopher. It is to all and intents and purposes the same claim. In circumstances in which Merlina was a party to the original proceedings that points strongly to the conclusion that one set of proceedings should have sufficed.

44. In my view, Merlina has misused the process of the court. She did not put the court on notice in any formal way in 2012 or 2013 that she was herself claiming any remedy relating to the grant of probate. Had she done so, the court would have been alerted to the fact that there was another claim. It would then have been in a position to ensure that all claims relating to the estate were determined.

45. Nor do I think that Merlina's conduct is excused or justified by special circumstances. She was required to tell the court formally that she supported Christopher's claim. Her inability to afford legal representation does not in my view excuse her failure to put her position on record.

46. Merlina has instead, in effect, granted to herself the right to bring her own claim in her own time without regard to the underlying public interest in disputes being determined in one set of proceedings. The effect is that Syleta is being required to defend for the second time the same claim. By the time of settlement, the 2012 proceedings had reached the stage of standard disclosure.

47. On behalf of Merlina, it was submitted that Syleta took the risk of a further challenge by Merlina by choosing to settle with Christopher. I accept that the way in which the proceedings were compromised is a material consideration and in some cases is a highly material consideration as found on the facts in *Aldi Stores Ltd v WSP Group*

plc [2007] EWCA Civ 1260. Merlina was however a party to the proceedings which involved all 7 siblings. This was a dispute between siblings over their mother's will and property. She attended the mediation to support Christopher. She was closely involved.

48. Merlina must have known or discovered that the proceedings had been settled without reference to her and that as a result her entitlement to a legacy of £12,000 payable within 10 years of her mother's death was to remain unchanged. Had Merlina applied back to the probate court promptly, there would have been at least a reasonable prospect of her being allowed to claim relief.

49. Merlina was a party to the 2012 proceedings. She did not participate in them or put her position on record at any stage in those proceedings. She was not a party to the negotiations following the mediation and may well have felt that a deal had been done behind her back. But she must have been cognisant of the fact that the proceedings were not proceeding to trial and that her legacy was not being increased.

50. In my view the present proceedings should be characterised as a misuse of the court's process. Merlina failed to put on record that she herself wanted to claim a remedy in relation to the grant of probate. Having failed to do that, she failed to apply back to the court for permission to pursue her own remedy in those proceedings.

51. It is in my view a misuse of the court's process for Merlina instead to bring a second claim at the time of her choosing claiming the same or substantially the same relief as was being sought by Christopher in the 2012 proceedings in circumstances in which the facts giving rise to the claim were broadly known to Merlina at the time. Merlina's email to Jolene Hutchison of Blaser Mills sent on 3 June 2012 makes that clear. Merlina says (as written):-

"I have been in contact with my brother Christopher and I have to agree my mum did not write that 10 page will. 4 brain tumours! House signes over a month before.

I am now after justice for Lauradel E Samuel. The sigiture was fake. I am not interested in money. Since selling my flat and the will action. I felt my life under threat. I am staying at a place of safety but we only have a single bed. Plus michael distress.

Not sure what to do but I want to speak to my brothers solicitor, to start action plus the police.

Regards

Merlina Samuel"

52. The fact that Merlina was a litigant in person and did not at the time have the funds needed to enable Edwards Duthie to represent her in the 2012 proceedings does not in my view overcome the misuse of the court process. The misuse lies in the bringing of a second claim in circumstances where Merlina was a party to the first claim. She did not formally put the court on notice that she was claiming any remedy in relation to the grant of probate in the first claim. Nor once she found out that Christopher was not pursuing his claim did Merlina go back to the court and seek to raise her claim.

Lack of funds is I accept a factor that may be taken into account when looking at all the circumstances but in this case it cannot in my view be allowed to outweigh the other private and public interests.

53. Although not covered by Rule 57.8(1), the claim to set aside the Declaration of Trust and transfer was part of the relief claimed by Christopher in the 2012 proceedings, and a claim that could and should have been pursued by Merlina in those proceedings. In my view the attempt to pursue that claim in the present proceedings is as much a misuse of the court process as the attempt to pursue the revocation claim.

54. There is a public interest in there being finality in litigation especially between family members who are disputing a will and transfer of a share in a family home. All the members of the family were parties to the first set of proceedings. Whether or not they could afford legal representation, it was their opportunity to come before the court and notify the court of any relief or remedy they sought to claim. Merlina's failure to put her position on the record meant that the court was not alerted to the fact that she too wished to assert a claim in relation to the 2008 Will and the transfer.

55. Relief might have been granted to Merlina if she had returned to court promptly after finding out that Christopher's claim was compromised and not being pursued. At that point the court would have looked at all the circumstances and considered in effect whether to grant relief from sanction. It is in my view a misuse of court procedure for Merlina to bring a second almost identical claim having been a party to the first, relying on the same expert evidence, and having known of the broad facts giving rise to the claim. That is open to the objection that a second claim is being brought where one should have sufficed; to a defendant being twice vexed; to court resources having to deal with the same claim a second time and to all this being pursued, in effect, free from sanction.

56. For those reasons I dismiss this second claim as an abuse of process.