



CAUSE NO: G2016-0136

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

BETWEEN:

(1) ERIC BRADLEY  
(2) JACQUELINE CHUANG

Plaintiffs

-and-

LINDA FRYE-CHAIKIN

Defendant

**Appearances:** Mr Michael Wingrave of Dentons for the Plaintiffs

Ms Linda Frye-Chaikin in person

**Before:** The Honourable Justice Jalil Asif KC

**Heard:** 30 April 2024

**Judgment:** 4 September 2024

*Civil procedure—summary judgment—issue estoppel—whether to grant summary judgment on basis of issue estoppel*

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**JUDGMENT**  
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**A. Introduction**

1. By summons dated 26 October 2023, the Plaintiffs seek summary judgment on their claim against the Defendant for specific performance of an agreement between them for the Defendant to sell a condo unit at Villas of the Galleon, Grand Cayman to the Plaintiffs. The Plaintiffs argue that the Defendant is estopped from resisting their claim by reason of a judgment of the Circuit Court in Michigan on the same issues. That court concluded that the agreement is valid and binding, and subsequently ordered specific performance of the agreement.
2. Initially, the summons also sought to join the Registrar of Lands to the current action to ensure that she was bound by the judgment, but that aspect was disposed of between the Plaintiffs and the Registrar without joinder being needed.
3. The matter was argued before me on 30 April 2024. The Plaintiffs were represented by Mr Wingrave of Dentons, formerly Dinner Martin, who have represented the Plaintiffs throughout this matter. Ms Frye-Chaikin appeared in person. At earlier times in the history of this matter, she has been represented by HSM Chambers and by Nelsons.

**B. Background facts**

4. This claim was commenced by a writ issued in the Grand Court as long ago as 22 July 2016. The Plaintiffs' pleaded claim is that they concluded an agreement with Ms Frye-Chaikin on 27 May 2014 for Ms Frye-Chaikin to sell her interest in a condo unit at Villas of the Galleon, on Seven Mile Beach, for US \$625,000, and that Ms Frye-Chaikin failed to complete the sale. The Plaintiffs claim specific performance, alternatively, return of the deposit monies that they paid to Ms Frye-Chaikin and reimbursement of their legal fees, totalling some US \$34,432 and interest of just under US \$1,000, calculated at the date of issue.
5. As all parties lived in Michigan, the Plaintiffs applied for leave to serve Ms Frye-Chaikin out of the jurisdiction, which was granted *ex parte* by Justice McMillan on 17 August 2016.

6. Ms Frye-Chaikin was served with the writ late in 2016 – the date is not apparent in the papers. On 16 December 2016, Ms Frye-Chaikin filed an Acknowledgement of Service indicating that she intended to defend the claim.
7. With hindsight, it may have been better for Ms Frye-Chaikin simply to have admitted the Plaintiffs' alternative claim for reimbursement of their outlay and interest, leaving her as owner of the condo unit. However, Ms Frye-Chaikin did not take that course. Instead, by summons dated 10 January 2017, she applied to set aside service of the writ and to challenge the jurisdiction of the Grand Court on the grounds that the parties were all based in Michigan; the agreement was made in Michigan, was stated to be subject to Michigan law and contained an arbitration clause requiring arbitration in Michigan; the claim did not satisfy any of the requirements for service out; and the agreement was in any event ineffective under Cayman law as an agreement to agree; and that in those circumstances the Cayman Islands was not the appropriate jurisdiction to decide the claim.
8. Substantively, Ms Frye-Chaikin's Defence was that the Plaintiffs had not paid the required deposit in full; the Plaintiffs had presented her with a second form of agreement, which she had not signed; and Ms Frye-Chaikin then terminated the agreement by notice dated 15 April 2016. Further, she alleged that, in any event, the agreement was not effective to transfer the property from her to the Plaintiffs and was merely an agreement to agree.
9. The Plaintiffs' summons was heard on 29 August 2017 and Acting Justice Carter (as she then was) delivered a written judgment dated 25 April 2018. Acting Justice Carter rejected Ms Frye-Chaikin's argument that the case was not one where service out of the jurisdiction could properly be ordered but the learned judge agreed with Ms Frye-Chaikin that the Cayman Islands was not the appropriate forum for the dispute. She therefore stayed the proceedings in the Cayman Islands, set aside service of the writ on Ms Frye-Chaikin and set aside the order giving leave to serve Ms Frye-Chaikin out of the jurisdiction.
10. The Plaintiffs therefore commenced proceedings in Michigan before the Circuit Court for Washtenaw County. Mr Bradley sets out a history of the proceedings in Michigan in his first and second affidavits, sworn on 6 September 2019 and 24 October 2023, and exhibits the judgments obtained, from which I have drawn the following, so far as it concerns events in Michigan.

11. On 8 August 2019 the Plaintiffs obtained summary judgment in the Circuit Court upholding the validity of the agreement, following a contested hearing at which Ms Frye-Chaikin was represented by counsel. The court ordered specific performance of the agreement.
12. On 27 August 2019, Ms Frye-Chaikin filed an appeal against the Circuit Court's judgment. On 30 August 2019, the Plaintiffs served notice on Ms Frye-Chaikin requiring her to comply with the Circuit Court's order for specific performance. She did not do so.
13. In parallel with developments in Michigan, the Plaintiffs reactivated the Cayman Islands proceedings. On 16 September 2019, they filed a summons to set aside Acting Justice Carter's order dated 25 April 2018, to obtain leave to pursue the action in the Cayman Islands and to obtain directions for trial.
14. The Plaintiffs' summons was heard by Acting Justice Carter on 25 March 2020, when she lifted the stay of the Cayman proceedings, extended the validity of the writ and gave the Plaintiffs permission to serve the writ on Ms Frye-Chaikin in Michigan. However, the order also provided that it was stayed from coming into effect until the determination of Ms Frye-Chaikin's outstanding appeal in Michigan.
15. On 28 January 2021, the Michigan Court of Appeals upheld the Circuit Court's decision to grant summary judgment and Ms Frye-Chaikin's appeal was dismissed. On 1 June 2021, the Michigan Supreme Court refused Ms Frye-Chaikin's application for leave to appeal.
16. On 27 May 2021, the Plaintiffs issued a summons in the Grand Court seeking substituted service on the ground that Ms Frye-Chaikin was evading service of the Cayman Islands proceedings. Ms Frye-Chaikin appeared by Zoom at the hearing of the summons on 24 June 2021. Acting Justice Carter ordered that the Plaintiffs could serve Ms Frye-Chaikin by email and via her attorneys in Michigan, and it appears that they then did so.
17. Ms Frye-Chaikin prepared her own Defence dated 12 August 2021. This is a somewhat discursive document, which it is difficult to quote from concisely. I can summarise her position from her Defence and her oral presentation to me as follows:
  - 17.1 Ms Frye-Chaikin was pressured into selling her condo unit. In 2016, Ms Frye-Chaikin's mother was sick, and Ms Frye-Chaikin needed to raise money to fund her mother's healthcare. Ms Frye-Chaikin had been turned down by a lender. She therefore met Mr Bradley, who was working as a finance broker, to discuss how to proceed. Mr Bradley suggested that Ms Frye-

Chaikin could sell her condo unit to him, or to him and someone else. Ms Frye-Chaikin said she did not want to sell her condo, but Mr Bradley persuaded her that it was the best way to help her mother. Mr Bradley said that Ms Frye-Chaikin could continue to manage the condo and could use it occasionally. Ms Frye-Chaikin did not have time to research prices and reluctantly agreed to the transaction. Mr Bradley said he would research prices and prepare all the paperwork.

- 17.2 In argument, Ms Frye-Chaikin added that: she had told Mr Bradley that she wanted to get legal advice on the contract, but Mr Bradley said she could not as it was not a “real” contract; there was no witness present when she signed it, the witness signed later; and the contract was backdated. Ms Frye-Chaikin therefore believes that the agreement is invalid or unenforceable.
- 17.3 Ms Frye-Chaikin believes that Mr Bradley is pursuing the claim because the value of the condo has substantially increased since 2016 and he wants to be able to sell it on and take the profit.
- 17.4 Ms Frye-Chaikin accuses the Plaintiffs of being dishonest and alleges that they have taken advantage of her. She asserts that they have fabricated documents and telephone conversations in order to support their claim.
- 17.5 Ms Frye-Chaikin alleges that the Plaintiffs’ attorney in Michigan colluded with the judge in the Circuit Court, who had been his teacher, in order to ensure that the Plaintiffs’ claim succeeded in Michigan.
- 17.6 Ms Frye-Chaikin complains that she was not allowed to speak during the hearing in Michigan to correct misinformation, with the result that false information went unchallenged and allowed the Plaintiffs to win.
- 17.7 Ms Frye-Chaikin says that her attorney in Michigan believes that the case was decided against Ms Frye-Chaikin unfairly. The outcome was predetermined because of the judge’s corruption.
- 17.8 Ms Frye-Chaikin accuses the Plaintiffs’ attorney in Michigan of having made a deal with the Plaintiffs to get a share of the net proceeds of sale of the condo unit, once they have sold it on for a profit. Towards the end of her oral argument, she asserted that Mr Bradley intended to share the profit with the judge in Michigan following a sale.

- 17.9 Ms Frye-Chaikin says that two members of the Michigan Court of Appeals were newly appointed and therefore biased against allowing any appeal in order to safeguard their positions. The Court of Appeals knew nothing about the case and only allowed 15 minutes for argument, which did not allow Ms Frye-Chaikin's attorney sufficient time to present her appeal properly.
- 17.10 In addition, Ms Frye-Chaikin alleged to me orally that there All E.R. a lot of complaints about the Circuit Court judge in Michigan but, because he is a native American, no one dares to challenge him for fear of being accused of racism.
18. The Plaintiffs filed a Reply on 25 August 2021 and Ms Frye-Chaikin filed an Addendum to Defence on 31 August 2021, which sought to respond to some of the Plaintiffs' criticisms of the form of her Defence. This gave rise to another summons, heard on 14 December 2021, when Acting Justice Walters ordered that Ms Frye-Chaikin's combined Defence and Addendum to Defence should be treated as her Amended Defence, and the Plaintiffs should be permitted to serve an Amended Reply in response to it.
19. The focus for procedural progress then moved back to Michigan. On 21 January 2022, the Circuit Court judge in Michigan granted the Plaintiffs' motion to require Ms Frye-Chaikin to sign certain documents needed to enable the Plaintiffs to check whether any strata fees on the condo unit were outstanding. Ms Frye-Chaikin applied to the judge to reconsider his decision, which he rejected on 3 March 2022.
20. On 24 August 2023, the Circuit Court judge in Michigan granted the Plaintiffs' motion to compel Ms Frye-Chaikin to sign a formal sale agreement to complete the sale of the condo unit to the Plaintiffs and ordered that the court would sign the document on her behalf given Ms Frye-Chaikin's consistent refusal to perform the agreement as previously ordered. The judge signed the sale agreement on Ms Frye-Chaikin's behalf on 24 August 2023.
21. Finally, in terms of the background chronology, the Plaintiffs issued the current summons for summary judgment on 26 October 2023. I do not know why the listing for the summons did not occur before 30 April 2024, which it should have done.

**C. The parties' contentions**

22. Mr Wingrave's arguments are as follows.

- 22.1 The test for summary judgment can be discerned from *Lakatamia v Su* [2017 (1) CILR 416], *Simamba v HSA* [2019 (2) CILR 213] and *Meekins v Harvey* (unreported, 20 March 2024).
- 22.2 The burden is on a defendant to show that they have a defence with a real prospect of success that should proceed to trial. That is confirmed in the context of enforcement of a foreign judgment by the decision in *Lakatamia v Su*.
- 22.3 A judgment from another country that is a determination on the merits and which is final and enforceable in the court in which it was pronounced is to be considered final and conclusive in the Cayman Islands irrespective that there may be a right of appeal or an outstanding appeal in progress: see *Lakatamia v Su* and *Dicey, Morris and Collins on The Conflict of Laws* (15th ed) at para 14-026.
- 22.4 Where a defendant alleges that they have been deprived of a fair trial in the foreign jurisdiction, the defendant must establish a *bona fide* defence arising from their procedural complaints regarding the foreign court: see *Lakatamia v Su* at [83]-[92].
- 22.5 Ms Frye-Chaikin took the position that the rights of the parties should be resolved by the court in Michigan and under the laws of Michigan, and she applied to set aside service of the writ from the Grand Court on that basis.
- 22.6 Following a hearing on the merits in the court of Ms Frye-Chaikin's own choice, the Circuit Court judge in Michigan decided that the agreement is valid and enforceable and that the Plaintiffs are entitled to specific performance of the agreement.
- 22.7 The decision of the Circuit Court judge in Michigan is "final and conclusive", as set out in *Dicey*. Moreover, Ms Frye-Chaikin has pursued and exhausted her rights of appeal in Michigan, so the Plaintiffs are in an even stronger position regarding the finality of the Michigan judgment.

22.8 The Michigan judgment gives rise to an issue estoppel because the parties are the same, the issues are the same and the remedies sought are the same in both jurisdictions. Ms Frye-Chaikin is therefore estopped from arguing that the agreement is invalid or that the Plaintiffs are not entitled to specific performance of the agreement.

22.9 The Court should reject Ms Frye-Chaikin's attempts to undermine the Michigan judgment on the basis of alleged judicial impropriety and/or corruption. Ms Frye-Chaikin did not raise any of her arguments about impropriety or fraud before the courts in Michigan. Ms Frye-Chaikin had professional representation at the time who should have raised any such points. In the absence of cogent supporting evidence, these suggestions are incredible and scandalous on their face.

22.10 Equally, Ms Frye-Chaikin's attempts to suggest that she is the victim of fraud should be rejected. Those arguments, if they had any merit, would and should have been advanced in Michigan. It is inconceivable that Ms Frye-Chaikin, who was professionally represented, would permit the Michigan Court to decide the matter without raising the issue of fraud either before the Circuit Court judge or on appeal or both, if it were a genuine point.

22.11 Ms Frye-Chaikin has no realistic defence and judgment should be given accordingly.

23. Ms Frye-Chaikin did not disagree with Mr Wingrave's summary of the approach that I should take to the task of deciding whether or not to give summary judgment. On the substance of the matter, Ms Frye-Chaikin reiterated to me the contents of her Defence, as summarised earlier in this judgment, along with the additional arguments that she put forward orally and which I have noted earlier, and sought to argue that she should be allowed to defend the claim on that basis.

**D. Applicable law and practice on applications for summary judgment**

24. Applications for summary judgment are governed by GCR O.14. GCR O.14, r.2(1) requires that a plaintiff's application must be supported by an affidavit:

*"... verifying the facts on which the claim ... is based and stating that in the deponent's belief there is no defence to that claim ... or no defence except as to the amount of any damages claimed."*

25. GCR O.14, r.3(1) provides that:

*“Unless on the hearing of an application ... either the Court dismisses the application or the defendant satisfies the Court with respect to the claim ... that there is an issue or question in dispute which ought to be tried, the Court may give such judgment for the plaintiff against that defendant on that claim ... as may be just having regard to the nature of the remedy or relief claimed.”*

26. In Meekins v Harvey (unreported, 20 March 2024), Justice Carter drew on the regularly cited summary of the proper approach to applications for summary judgment in the English case of Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339, a decision of Lewison J (as he then was). I agree that Easyair Ltd v Opal Telecom Ltd provides the most useful recent statement of the principles to be applied when considering an application for summary judgment, and that it reflects the law and practice in the Cayman Islands, subject to recognising that Easyair concerned an application for summary judgment by a defendant, rather than an application by a plaintiff. To recap:

*“... the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:*

- i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: Swain v Hillman [2001] 2 All ER 91;*
- ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED&F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]*
- iii) In reaching its conclusion the court must not conduct a “mini-trial”: Swain v Hillman*
- iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED&F Man Liquid Products v Patel at [10]*
- v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550;*
- vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63;*
- vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court,*

*such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725."*

27. The test that I must apply is therefore whether Ms Frye-Chaikin has a realistic prospect of successfully defending the claim in the current proceedings, or whether there is some issue or question that ought to be tried.

### **E. Discussion and decision**

28. The evidence in support of the Plaintiffs' application is contained in Mr Bradley's second affidavit, sworn on 24 October 2023. The affidavit does not in terms contain the wording required by GCR O.14, r.2(1), namely that Mr Bradley believes there is no defence to the claim. However, he does say:

*"20. ... there is no real prospect of the Defendant successfully defending these proceedings and summary judgment should be granted against her."*

I consider that the effect of this evidence does satisfy the requirements of GCR O.14, r.2(1), and that it would be a triumph of form over content to conclude otherwise. However, I reiterate that, where the Rules provide that a certain evidential requirement must be satisfied, that requirement must be satisfied, and it is prudent to do so in the terms required by the Rules rather than adopting some other form of words.

29. Turning to the substantive dispute between the parties, the current position is that, at Ms Frye-Chaikin's insistence, it has been litigated to a conclusion before the courts in Michigan. It is a well-established principle that litigants do not get a second go at litigating the same issues in another court just because they do not like the outcome the first time around. This is the essence of the concept of issue estoppel. *Dacey* addresses this at paragraph 14-032:

*"It was established by a majority of the House of Lords in Carl Zeiss Stiftung v Rayner & Keeler (No.2) that a foreign judgment could give rise to an issue estoppel, i.e. prevent a party from denying any matter of fact or law necessarily decided by the foreign court. For there to be such an issue estoppel, three requirements must be satisfied: first, the judgment of the foreign court must be (a) of a court of competent jurisdiction in relation to the party who is to be estopped, (b) final and conclusive and (c) on the merits; secondly, the parties to the English litigation must be the same parties (or their privies) as in the foreign litigation; and, thirdly, the issues raised must be identical. ..."*

30. In this case:

- 30.1 the parties are precisely the same;
- 30.2 the Michigan courts are courts of competent jurisdiction and were the venue positively contended for by Ms Frye-Chaikin;
- 30.3 the judgment of the Circuit Court judge is final and conclusive in the sense required, namely it is final and unalterable in the court which pronounced it, and moreover Ms Frye-Chaikin's appeals against that judgment have failed; and
- 30.4 the issues that Ms Frye-Chaikin now wishes to raise in the Grand Court as to the validity of the agreement are the same issues that were decided against her by the Circuit Court judge in Michigan.
31. Thus, it is now too late for Ms Frye-Chaikin to try to re-open and re-argue the dispute regarding the validity and enforceability of the agreement. Those arguments have already been presented to the courts in Michigan. The issues between Ms Frye-Chaikin and the Plaintiffs regarding the agreement have been determined in Michigan, and the Plaintiffs and Ms Frye-Chaikin are bound by that determination.
32. In my judgment, there no realistic prospect that Ms Frye-Chaikin would be permitted at any trial to argue that she is not bound by the outcome of the Michigan proceedings and is not subject to an issue estoppel. It follows that there is no realistic prospect that Ms Frye-Chaikin can advance at trial the kinds of arguments regarding the validity of the agreement that she put before me, as summarised at paragraph 17 above.
33. Further, Ms Frye-Chaikin's arguments concerning alleged judicial impropriety and corruption in Michigan are not supported by cogent evidence, or any evidence, and I agree with Mr Wingrave's characterisation of them as being incredible and scandalous. I therefore conclude that there is no other issue or question that ought to be tried.
34. I therefore accede to the Plaintiffs' summons for summary judgment on their claim against Ms Frye-Chaikin.
35. Within 14 days of handing down of this judgment, the parties should indicate: (a) whether they wish to be heard on costs and any consequential matters, providing their agreed available dates for a

hearing; or (b) whether they will submit written submissions on those points within 14 days. In either case, the parties should provide a draft order, agreed if possible, in advance of the hearing or with their written submissions.

**Dated 4 September 2024**



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**THE HONOURABLE JUSTICE JALIL ASIF KC**  
**JUDGE OF THE GRAND COURT**