

BERMUDA SUPREME COURT

***L Junos -v- HSBC & K Taylor* [2012] SC
(Bda) 33 Civ (29 June 2012)**

**POSSESSION ORDER - STRIKE-OUT APPLICATION
- RES JUDICATA - FRAUDULENT INVASION -
ABUSE OF PROCESS**

This case concerned an objection by a Mortgagee in proceedings issued by the Bank seeking possession and sale against the Plaintiff Mortgagee. The Plaintiff sought a strike-out application for the following reasons: first that the Second Defendant obtained a possession order in the action by fraudulent means; second the Bank obtained the possession order fraudulently; third the possession order was unenforceable because it failed to specify a date of compliance; and lastly the Writ of Possession and all steps taken to enforce it were unlawful and a nullity by virtue of the failure to specify a date of compliance. Further, the Plaintiff issued a Summons for interim relief to restrain the Bank from exercising its rights of possession pursuant to the possession order.

In regards to the Second Defendant, a lawyer, the Court struck out the claim under Order 18 Rule 9(1)(b) of the *Rules of the Supreme Court, 1985* and/or under the inherent jurisdiction of the Court, the Court held that the allegation that the possession had been obtained fraudulently by the Second Defendant was bound to fail. The Court considered whether the doctrine of *res judicata* would apply to the allegation that the possession order had been obtained by fraud and refused to strike the claim out on that basis. However, it did strike out the claim against the First Defendant on the basis that it was bound to fail and refused the Plaintiff's injunction application to refrain the Bank from exercising its rights. The case contains a helpful statement of the principles of the doctrine of *res judicata* when that term is used in its wider sense.

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