

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**

3
4
5 **Cause No: FAM 255/2011**
6

7 **BETWEEN:**

8 **ANNE PENGELLY AITMESSAOUD**

9
10 **PETITIONER**

11
12 **AND:**

13 **AZIZ AITMESSAOUD**

14
15 **RESPONDENT**

16
17
18 **Appearances:**

Mrs. Stacy Thompson for the Petitioner

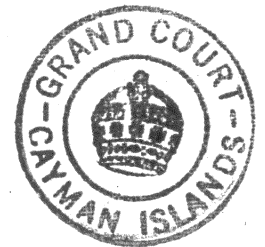
19
20 **Mr. Delroy Murray of Murray & Westorborg**
21 **for the Respondent**
22

23 **Before:**

Hon. Justice Robin McMillan (Actg.)

24 **Heard:**

28th September 2015



25
26 **JUDGMENT**

27
28
29 1. On the 28th September 2015 I ruled that the Petitioner (Anne Aitmessaoud) was in
30 contempt of court as alleged in the Respondent's Notice of Motion dated 22nd October
31 2014, in that she had intentionally failed to pay to the Respondent an outstanding sum
32 of CI\$164,250.00, together with post judgment interest of CI\$524.70, in furtherance of
33 a Consent Order to do so.

34
35 2. Notwithstanding that decision, I further directed that in the circumstances of this case
36 and in accordance with GCR O.52 r.15 (1) (d) I would make no further order in this
37 matter at that time. I shall now briefly set out the Reasons of the Court.

BACKGROUND

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

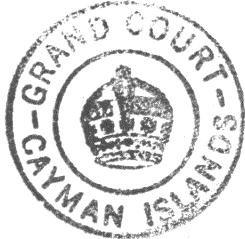
3. This issue has arisen in the context of an Amended Petition for Dissolution of Marriage between the parties re-dated 29th March 2012 – the facts and matters of which were ordered proved on the 3rd April 2012 by Williams J.

4. Thereafter in relation to ancillary matters the parties, who were unrepresented, agreed a Consent Order dated 13th June 2013, which was approved by the Clerk of Court on 19th June 2013.

5. Paragraph 1 of that Consent Order provided that the Respondent was to transfer the house located at 37 Runaway Close, George Town, to the Petitioner, with the difference in value to be paid to the Respondent. The values were described “*as were presented to the Court*”.

6. It became clear as the result of correspondence between the attorneys for the respective parties that the amount in question came to CI\$174,250.00, of which CI\$10,000.00 was in fact paid by the Respondent. Despite the transfer of the relevant property by the Respondent to the Petitioner the balance has never been paid.

7. It is also clear from email correspondence, exhibited to the Respondent’s Affidavit dated the 11th May 2014, that even though the Petitioner had arranged financing with Scotiabank on or about the 30th April 2014, she had, by then withdrawn her instructions from her attorney Mr. John Meghoo and that she, in effect, reneged upon her obligations under the Consent Order.



1 8. Subsequent Orders of Henderson J. dated 24th January 2014 and of Williams J. dated
2 the 25th September 2014 reiterated that the Petitioner was required to pay to the
3 Respondent within a reasonable time after the transfer of the house to her the
4 difference in value.

5
6 9. At the time of my decision in this matter there had still been no payment.

7
8 **THE EVIDENCE**

9
10 10. The Respondent, in his Affidavit dated 11th May 2014, states that the Petitioner has
11 consistently said to him that she will never pay. He admits to being in arrears with
12 respect to the payment of certain sums of money for the two children of the marriage,
13 but asserts that this would not have been the case had he been paid "*what is due to*
14 *me*"¹.

15
16 11. The Petitioner, in turn, maintains in her Affidavit which is undated but filed on the 9th
17 April 2015, that she is opposed to full payment because the Respondent is in breach of
18 court orders in not making payments for the children's "*half costs on account of*
19 *educational and medical expenses*"².

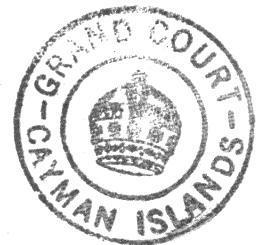
20
21 12. One further point is made by the Petitioner in argument and it is that because neither
22 Henderson J. nor Williams J. identified a specific timeframe for payment, then no
23 contempt can arise – relying upon a dictum of Wall L.J. in *Re S-C (Children)*³.

24
25
26
27

¹ See paragraph 13 of the Affidavit

² See paragraph 12 of the Affidavit

³ [2010] EWCA Civ. 21 at paragraph 17



THE RELEVANT LAW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. The Respondent relies upon s.25 of the Judicature Law (2007 Revision) (“the Law”) under which where a Court has given judgment for the payment of any sum of money “*such sum shall be payable forthwith*”.

14. In light of this statutory requirement it is clear that when the learned Judges directed that payments were required within a reasonable time after transfer of the house, they were providing guidance that if the Petitioner acted in an expeditious and reasonable manner, she would suffer no adverse consequences. The only specified legal frame applicable remained the requirement to pay “*forthwith*”. In any case, I find below that the Petitioner had no intention to pay at all, irrespective of any timeframe, reasonable or otherwise.

15. Section 30 of the Law also provides that the Court may commit a person to prison for non-payment of a judgment debt. In the present case I find that the Petitioner is in default, has the means to pay and is willfully refusing or neglecting to satisfy the judgment debt in the manner in which the Court is satisfied she has the means.

16. The Petitioner correctly draws attention to the principle in *Hammerton v Hammerton*⁴, under which the Respondent must satisfy the criminal standard of proof. This is of course a high standard of proof, as stated by Moses L.J. at paragraph 15.

17. In addition, the Petition submits that the Court should take into account the principle in the *S-C (Children)* case, which I have already distinguished above.



⁴ [2007] EWCA Civ 248

FINDINGS OF THE COURT

1
2
3 18. Taking into full account both the evidence which has been adduced and the applicable
4 statutory law and common law, I am satisfied beyond reasonable doubt that the
5 Petitioner has deliberately and persistently failed to meet her legal obligations to effect
6 payment, and that this conduct is contumelious in nature.

7
8 19. However, having reached this conclusion, the Court, nonetheless, does not at this stage
9 make an order to commit the Petitioner to prison as sought by the Respondent.

10
11 20. As matters stand, it is the understanding of the Court that the Petitioner is seeking both
12 to vary the Consent Order approved on the 19th June 2013 and to seek from the
13 Respondent certain alleged and quantified arrears of monies owed.

14
15 21. In *Hadkinson v Hadkinson*⁵ the general principle therein set out is that no application
16 to the Court by a person who is in contempt will be entertained until that person has
17 purged himself or herself of the contempt⁶.

18
19 22. However, Denning L.J. elaborates upon this general rule by stating at page 575 B-C
20 that the fact that a party to a cause has disobeyed an order or the court "*is not of itself a*
21 *bar to his being heard*" unless the disobedience "*impedes the course of justice in the*
22 *cause*".

23
24 23. Denning L.J. further explicitly states that the court has a discretion in refusing to hear
25 that party.
26

⁵ [1952] 2 A.E.R. 567

⁶ (see Romer L.J. at page 569F)



1 24. Given the arguments which the Petitioner now wishes to advance, I am of the view that
2 that to allow her to make an application for variation of the Consent Order and for
3 payment of arrears would not in itself impede the course of justice in the cause.

4
5 25. Therefore in the exercise of the Court's discretion the Petitioner will be permitted to
6 proceed with her own applications.

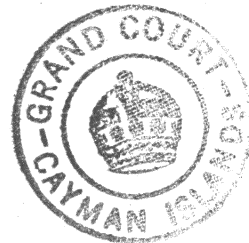
7
8 26. Finally, in accordance with GCR O.52, r,15(4), in every case where an Order is made
9 within this rule, the Court shall award costs of the committal proceedings to the
10 judgment creditor, who is the Respondent, and I so order.

11
12
13

14 **Dated this the 13th day of November 2015**

15
16

Robin McMillan



17

18 **Mr. Justice Robin McMillan (Actg.)**
19 **Acting Judge of the Grand Court**