

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2
3 CAUSE NO. D15 OF 1994

4
5 BETWEEN: Edward Earl Johns PETITIONER

6
7 AND: France Levethe Johns RESPONDENT

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10 For the Petitioner: Mr. Steve McField
11 For the Respondent: Mr. Graham Hampson

12
13 BEFORE HARRE CJ

14
15 RULING

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17 On 29th July 1997 I delivered a judgment in which I outlined the unhappy history of
18 this case. It concluded as follows -

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20 “The outstanding summonses by the husband are an abuse of
21 process and are dismissed. There remains the question of costs.
22 I am disposed to have regard to the whole pattern of this case
23 since the first consent order in considering submissions on these.”
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25 These submissions have now taken place, and I now give my ruling on these.

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27 Costs were provided for up to the making of a second consent order which was made
28 on 5th December 1995.

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30 The only question now is whether I am able properly to make an order other than the
31 usual order that costs be taxed if not agreed. The question is one of jurisdiction. It is
32 a matter where, on the merits, I am abundantly satisfied that an order for costs on an
33 indemnity basis should be made. The Respondent wife had to obtain the services of

1 leading counsel to enforce the orders in her favour and this court's finding of abuse of
2 process by the husband has not been appealed.

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4 The Grand Court Rules 1995 do not, subject to certain exceptions, apply to any
5 proceedings which are governed by the Matrimonial Causes Rules 1986, as amended.
6 There is, however, no such exclusion in the Grand Court (Taxation of Costs) Rules
7 1995.

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9 The general power of the Rules Committee to make rules is subject to the Grand
10 Court Law and any other law, so I need to consider the Matrimonial Causes Law also.

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12 Section 4 of the Matrimonial Causes Law (1997 Revision) provides that it is the Court
13 which makes rules. The 1977 rules were made by the Rules Committee. They were
14 revoked by the 1986 rules, which were made by the two judges of the Grand Court.

15 In my view, the Grand Court (Taxation of Costs) Rules 1995 nevertheless apply to
16 proceedings governed by the Matrimonial Causes Law. Rules made by the Rules
17 Committee are Rules of Court. It is mandatory under section 19 (3) of the Grand
18 Court Law (1995 Revision) that they be called by that name. They are properly to be
19 regarded as rules made by the Court. That does not invalidate the rules made in 1986
20 by the full Grand Court Bench of the day. There is a concurrent power.

21

22 Mr. Hampson, while frankly acknowledging an element of creativity in this,
23 submitted that as a consent order is evidence of a contract on which it is based, Order
24 62 rule 2 applies. That rule reads as follows -

1 “A person who claims to be entitled pursuant to a contract to
2 recover the legal fees and expenses incurred in enforcing that
3 contract shall be entitled to judgment for the amount found due
4 under the contract and such amount shall not be subject to
5 taxation.”
6

7 Both the consent orders contain express provisions as to costs. They do not relate to
8 the costs of enforcing the consent orders, but the way in which the other matters of
9 costs have been expressly dealt with under both orders reinforce my view that there is
10 nothing in either order which is evidence of a contract pursuant to which the
11 Respondent can claim to be entitled to recover the legal fees and expenses incurred in
12 enforcing it without taxation.

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14 However, I considered whether a more just solution could be arrived at on another
15 basis, unfortunately without success. I set out nevertheless the nature of my attempt.

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17 Rule 23 of the Matrimonial Causes Rules provides that orders of the Court for the
18 payment of money and the like are enforceable in like manner as such orders are
19 enforceable by the Court in its general jurisdiction.

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21 Section 19 of the Matrimonial Causes Law (1997 Revision) provides that in dealing
22 with all ancillary matters arising under that Law the Court shall have regard to, among
23 other things, the deserts of the parties.

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25 Rule 3 of the Grand Court (Taxation of Costs) Rules reads as follows -

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1 “Whenever the Court makes an order for costs to be paid out
2 of a fund on an indemnity basis, the scale contained in the
3 Schedule hereto shall have no application and all fees and
4 disbursements shall be allowed except insofar as they are
5 of an unreasonable amount or have been unreasonably
6 incurred and any doubts which the Taxing Officer may have
7 as to whether the costs were reasonably incurred or were
8 reasonable in amount shall be resolved in favour of the party
9 entitled to be paid.”
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12 Section 22 of the Matrimonial Causes Law provides that, at the time of pronouncing a
13 decree the Court shall, as appropriate, make orders for, among other things, the
14 disposition of matrimonial property and varying any other settlement of matrimonial
15 property.
16

17 I would now, had I been in a position to do so, have invited counsel to address me, at
18 the time of pronouncement of the decree, as to whether the matrimonial property
19 could be considered a fund subject to the provisions of rule 3 of the Grand Court
20 (Taxation of Costs) Rules and whether, if it were, I should make an order for costs
21 incurred in enforcing the orders of this court after the second consent order dated 5th
22 December 1995 on a full indemnity basis. However, I find to my surprise that the
23 decree of divorce was pronounced as long ago as February 1995 on the basis of what
24 was then believed to be an agreed settlement of the ancillary matters. Had that not
25 been so the matter could have been considered under s. 22 of the Matrimonial Causes
26 Law.
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28 The procession of attorneys who have acted for Dr. Johns and desired to come off the
29 record speaks for itself. I do not find that any of them have acted in such a way as to

1 merit a personal order for costs against any of them. Reprehensible though the
2 conduct of the petitioner has been I have to decline to do more than make the usual
3 order that the remaining costs be agreed or taxed.

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11 28th August 1998

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G.E. Harre
Judge