Chief Justice
21-1-92

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause No D58/91

GRAND COURT - CAYMAN ISLANDS

F v. F AND ANOTHER

21-01-92

Mr. Turner for the Petitioner
Mr. Hill QC and Mr. Hampson for Respondent

ORDERS

The petition in this matter was filed by the wife in this Court on the 28th May, 1991. The wife claims that the husband has committed adultery and she finds it intolerable to live with him and further that he has behaved in such a way that she cannot reasonably be expected to live with him. The husband had earlier, on the 10th May, 1991, filed a petition in the Macclesfield County Court in England alleging unreasonable behaviour on the part of the wife.

On an ex parte application made by the wife on 4th July, 1991, I granted an injunction restraining the husband from continuing to prosecute the proceedings in Macclesfield County Court. That injunction remained in force until the 8th July, 1991, when it was reviewed inter partes. An application for orders pending suit had been filed by the husband in this Court on 4th July, 1991. At the inter partes hearing on the 8th July negotiations were commenced between the parties to resolve all ancillary matters and on the husband's undertaking not to take further action by himself or his agents in the English proceedings I lifted the injunction. The application for orders pending suit came before the Court on 19th July, 1991, and was adjourned on several occasions, the husband's undertaking not to pursue the proceedings in Macclesfield County Court remaining in force. The husband's summons of the 4th July was finally determined when I delivered orders on the 31st October, 1991. With the delivery of those orders the husband considered that his

843, that the Court would choose the forum in which the case

Maritime Corp.. v.. Consulex Ltd..". The Spiliada [1986] 3 All E R

that the true test is not to the headnote to Spiliada

that the husband pursued was to prove it would be unjust to

I cannot accept the contention of counsel for the husband

deprive him."

"In the opinion of their Lordships, in a case
such as the present where a remedy for a
particular wrong is available both in the
(Cayman) court and in a foreign court, the
(Cayman) court will, generally speaking, only
restrain the plaintiff from pursuing
proceedings in the foreign court if such
pursuit would be vexatious or oppressive."
This presupposes that as a general rule, the
(Cayman) court must conclude that it provides
the natural forum for the trial of the action,
and further, since the court is concerned with
the ends of justice, that account must be
taken not only of injustice to the defendant
if the plaintiff is allowed to pursue the
foreign proceedings, but also of injustice to
the plaintiff is he is not allowed to do so."
So, a general rule, the court will not
grant an injunction if, by doing so, it will
deprive the plaintiff of a legitimate
advantage in the foreign forum of which it would be unjust to

"...

The principles governing the grant of an injunction to restrain the commencement or continuance of proceedings in a foreign jurisdiction can be ascertained from the following passage from the decision of the Privy Council in SNI Aerospatiale v.. Lee Kui Jak and another [1987] 3 All E R 510, 522

"

application inter partes. This I now do.

ex parte application restraining the husband from continuing to

this week, the 24th January. I have granted the wife's further

The decree in that suit comes up for determination on Friday of

taken steps to pursue his petition in Macclesfield County Court.

summons filed by the husband for a discharge of the injunction

but such summons was unnecessary because the order granted ex

parte is only effective until I have considered the wife's

further prosecute those proceedings but set the matter for an

inter partes hearing on the 17th January. There is a cross

undertaking regarding the English proceedings abated and has

could be tried more suitably for the interests of all the parties and for the ends of justice. The Spiliada was not a case involving an application for an injunction to restrain foreign proceedings. Lord Goff of Chieveley said in Aerospatiale, just before the passage above cited:

> "(Their Lordships) wish to observe that, in The Spiliada [1986] 3 All E R 843 esp at 857-858 [1987] A C 460 esp at 857-858 [1987] A C 460 esp at 480 per Lord Goff, care was taken to state the principle of forum non conveniens without reference to cases on injunctions."

I must follow, in this application, the principles stated in Aerospatiale.

I have no hesitation in finding that the Grand Court of the Cayman Islands provides the natural forum for the trial of this divorce suit. Although the husband is domiciled in England his wife and the child of the marriage are citizens of the United States of America. Both parties are ordinarily resident in the Cayman Islands and have been so since the summer of 1986. The alleged adultery took place in Cayman and all witnesses thereto are here. The alleged unreasonable behaviour of both parties took place in Cayman and all parties thereto are here. The cost of transporting the parties and the witnesses to England would be high. Whilst it is argued on behalf of the husband that there is a strong possibility that at the end of the day this suit will be uncontested, there is at present no sign of this and the Court must proceed on the basis of the present standing of proceedings, that the suit is contested. I cannot therefore accept the husband's argument that it would be less expensive to pursue proceedings in the Macclesfield County Court as matters stand at present. The husband avers that the wife will be eligible for legal aid in England, but there is nothing to support that averment.

The only party to the marriage who is earning is the husband,

Court to entertain the wife's petition is based on her ordinary

Law to entertain a suit filed by him. The jurisdiction of this

jurisdiction as set out in section 5 of the Matrimonial Causes

domiciled in Cayman and does not fall within this Court's

is determined. Clearly that would be unjust. The husband is not

husband of an opportunity to present his own petition for the

dissolution of the marriage, at least until the wife's petition

the injunction in those circumstances would be to deprive the

wife could then cross-petition in the English suit. For to grant

his petition in England, in which case, as I understand it, the

I would therefore refuse this injunction and leave him to pursue

answer the wife's petition, but to file a cross-petition himself."

ought not to deprive the husband of his opportunity, not only to

to do so. I readily concede that if this view is correct then I

his client cannot cross-petition in this Court although he wishes

justice. Counsel for the husband has taken the view that in law

In this connection the Court is concerned with the ends of

petition.

sight of the fact that it was the husband who first filed

properly brought in a foreign jurisdiction and I must not lose

oppressive. I must be reluctant to interfere with proceedings

continuing in England if their pursuit would be vexatious or

of the matter. I can only restrain the proceedings from

But of course, according to Aerospatiale, that is not the end

indeed it has little true connection with England"

this divorce suit is the Grand Court of the Cayman Islands"

is also persuasive. The most appropriate forum for the trial of

relation of high remuneration to cost of living in these Islands

the Grand Court will be more readily able to understand the

counsel for the wife that, in connection with ancillary matters,

matters, are more easily performed in Cayman. The argument of

discovery in all other respects, in relation to ancillary

substantial family asset is the family home in Macclesfield but

and his professional pursuits are all in Cayman. The most

residence within these Islands for at least two years immediately preceding the presentation of the petition. In Levett v. Levett and others [1957] 1 All E R 720 the English Court of Appeal held that in relation to the English statutory equivalent conferring jurisdiction on the Court to hear a petition based on the wife's ordinary residence in England, as opposed to domicile, the jurisdiction extended in favour of the wife and gave the husband no right to cross-pray if he could not petition in his own right as being domiciled in England. The relevant portion of the English statute then in force reads:

> "18. (1) Without prejudice to any jurisdiction exercisable by the Court apart from this section, the Court shall by virtue of this section have jurisdiction to entertain proceedings by a wife in any of the following cases.........
>
> (b) in the case of proceedings for divorce or nullity of marriage, if the wife is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings, and the husband is not domiciled in any part of the United Kingdom or in the Channel Islands or the Isle of Man."

In Levett Hodson LJ held, at p. 723:

> "The courts in this country under s. 18 have jurisdiction to entertain proceedings by a wife; it is quite true that the meaning of the word "proceedings" may vary according to its context, and in one authority to which our attention was drawn, Pryor v. City Offices Co. (1883), 10 Q.B.D. 504, from the decision of this court it was quite clear that the word "proceedings" may cover the whole of the proceedings in question, beginning with the claim and including a counterclaim. It does not follow, to my mind, that in the present context, in considering the question of proceedings being entertained by a wife, the word "proceedings" includes anything that may follow in the same suit. The position is, I think, exactly the same as if Parliament has used more homely language and said that the court should have jurisdiction to listen to a request or to hear a claim by a wife for a particular form of relief. That approach to this section makes it impossible to hold that a husband, in answer to a wife's claim could get himself under the umbrella of this section so as to make use of the argument based on reciprocity."

That decision was applied by Sachs, J. in Russell v. Russell and Roebuck [1957] 1 All E. R. 929. The result of the decision

filed at the instance of a wife who has been ordinarily resident

a fresh suit. This Court has jurisdiction to entertain this suit

Leyett above. If a husband cross-petitions he does not commence

Hodson LJ. makes that very distinction in the passage quoted from

English statute and "suit" as in the Cayman statute; indeed

There is a distinction between "proceedings" as in the

" 5. The Court has jurisdiction to entertain
a suit arising out of this Law where at the
time of filing suit, being a
Islands for at least two years immediately
preceding the presentation of the petition."

Section 5 of our Matrimonial Causes Law, passed subsequent to the

decisions in Leyett and Russell, reads:

Court a clear direction that the husband is not shut out as he

appears to be in England. The relevant section is differently

worded than the English provision upon which Leyett was decided.

Fortunately in the Cayman Islands the legislation gives the

> "It has not unnaturally been argued that it would seem hard to husband, and might even be distasteful to a court, that a wife, after praying for the exercise of the court's jurisdiction in the knowledge that any adultery of hers must be determined, and after having unsuccessfully contested to the utmost the issue whether she was guilty of such adultery, and having failed on that issue, should then be able to turn round and say that the court has no power to grant relief to the husband according to the justice of the case. It could indeed be argued that a better example of "heads I win and tails you get nothing" would be hard to devise" but such an argument cannot of itself prevail where the issue is purely one of construction and where the intentions of the legislature can be ascertained from the contents of the statute. The court is chary of assuming jurisdiction over the matrimonial affairs of those not domiciled in this country in the absence of clear direction so to do."

in Leyett has been described by Lord Pearce in the House of Lords

decision in Indyka v Indyka [1967] 2 All E.R. 689 (at p. 717) as

less than satisfactory. Indeed in applying that decision in

Russell Sachs J. said:

am unable to make any comment on the justification for that

I turn "frustration" in the husband's own frustration is justification for unreasonable advisors then there is legal advice or the pedantry of her wife's reclcitrance or the

If indeed the negotiations are being frustrated because of the

"frustration" in that negotiations to settle all matters connected with this suit are being protracted and are not bearing fruit.

I detect in the husband and his advisors some degree of frustration

are needed, as indeed they may well be."

of these proceedings and to pay the expenses of witnesses if they wherewithal to spend protracted periods overseas in the pursuit present financial needs." The parties do not seem to have the trip the wife dissipated funds which would now be useful to meet husband has argued in another application that in making that offered herself to the jurisdiction of the English Court, but the year the wife spent several weeks in England and could have be heard in England." I have taken into account that in the last one single criterion which would persuade me that the suit should jurisdiction to entertain the suit, I have been unable to accept appropriate forum for this suit. Whilst the English Court has suit." To my mind everything points to this Court being the no injustice to him in preventing him from pursuing the English putting himself within the jurisdiction of this Court." There is

The husband is not, therefore, at a juridical disadvantage in

exactly the position with our equivalent statutory provision.

"entertain suit" instead of "entertain proceedings by a wife" the decision in Levett would have been different. That is read

of the husband". It seems that if the English section 18 (1) had entertain any other step in the suit, including a cross-petition to qualification of the wife, the Court must have jurisdiction

jurisdiction is assumed by the Court by virtue of the residential husband cross-petitioning, within this same suit." Once

to prevent either party taking other proceedings, including the presentation of her petition, and I can find nothing in the Law in these Islands for at least two years immediately preceding the

frustration, because I know little of the conduct of the negotiations. I do comment however that it would not be legitimate for this Court to put a party to the kind of inconvenience and expense which the wife would be subjected to if the suit were to progress in England on the sole ground that she is balking a smooth settlement of the matters in dispute. So far as I am aware there is no backlog so as to prevent a suit of this nature being speedily dealt with in this Court. Let the husband then set the matter for hearing and have all issues determined, if negotiations are not bearing fruit. I cannot see that such a course could possibly be more expensive than the pursuit of similar proceedings four thousand miles away. From my knowledge of the financial resources of the parties which is on record so far it would be unjust to expect the wife to defend the suit in England".

I am of the opinion that for the husband to pursue the proceedings in the Macclesfield County Court would be vexatious and oppossive to the wife, and I order that the injunction dated the 10th January, 1992, remain in force. Accordingly I dismiss the prayer in paragraph (1) of the husband's cross-summons filed on the 16th January, 1992".

Paragraph (2) in that summons, that the husband have leave to file an answer in this suit within 7 days is granted. And now on the husband's application to extend that prayer, he is granted leave to file a cross-petition within fourteen days".

Costs of this application to the wife".

Dated this 21st Day of January, 1992

D. Schofield

GRAND COURT - CAYMAN ISLANDS