

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV 2013/0422

In the Matter of the Reciprocal Enforcement of Judgments Act, Cap. 369

CHRISTIANA YEARWOOD

And

ROBIN KENSWORTH MONTGOMERY YEARWOOD

CLAIM NO: ANUHCV2013/0490

BETWEEN:

ROBIN KENSWORTH MONTGOMERY YEARWOOD

And

CHRISTIANA YEARWOOD

Appearances:

Dr. David Dorsett and Mr. Jared Hewlett for Christiana Yearwood in both Matters
Mr. Hugh Marshall and Ms Kema Benjamin for Robin K. M. Yearwood in both Matters

2015: April 17

DECISION

[1] **HENRY, J.:** The parties are former husband and wife. A decree nisi dissolving the marriage was pronounced on 6th August 2008 by the High Court of England. Christiana Yearwood thereafter filed an application in the Family Division of that court in claim no FD08D00763 for financial provision and property adjustment orders. Phillip Moor Q.C. Deputy High Court Judge in his judgment dated 5th January 2010 awarded her a lump sum of £4,121,000.00 in addition to other property. Justice Moor indicated that he would deal with costs separately. On 12th November 2010, the Senior Court Costs Office issued a Default Costs Certificate certifying that the costs payable by Robin Yearwood with respect to the ancillary relief proceedings between the parties was the sum of £592,602.33 with interest commencing on 7th December 2010. Thereafter, on 9th July 2012 Justice Moor sitting at the Principal Registry of the Family Division of the High Court, made an order that Robin Yearwood pay to Christiana Yearwood the sum of £1,882,851 pursuant to paragraph 2 of the court's order dated 7th December 2009. He also ordered that the costs of and incidental to the application be paid by Robin Yearwood, to be assessed if not agreed. I will refer hereafter to Christiana Yearwood as "the wife" and Mr. Robin Yearwood as "the husband".

[2] Before this court in Claim No. ANUHCV2013/0422, the wife seeks an order that:

1. The judgment and order of Mr. Justice Moor of the High Court in England, made on the 9th July 2012 be registered pursuant to section 3 of the Reciprocal Enforcement of Judgments Act, Cap. 369 of the Laws of Antigua and Barbuda.
2. The order by the High Court in England for the payment of costs in the amount of £592,602.33 as certified by a Default Costs Certificate issued on 12th November 2010 requiring Robin Yearwood to pay costs with interest from 7th December 2009 be registered pursuant to section 3 of the Reciprocal Enforcement of Judgments Act, Cap 369.
3. Costs

[3] On 24th July 2013, the husband filed claim No ANUHCV2013/0490 in which he seeks:

1. A declaration that Christiana Yearwood is not entitled to register judgments, Orders, or Directives of the High Court of Justice of England emanating from the Family Division or emanating from Suit FD08D00763 between the parties;
2. An injunction to restrain Christiana Yearwood, her agents and or servants or whomsoever from bringing, filing or seeking the further registration of any Order, Judgments or directions of the Court of England, emanating out of or from suit FD08D00763
3. Damages
4. Costs

[4] In his Statement of Claim the husband states that on separate occasions the wife has made applications under the Civil Procedure Rules 2000 (CPR) and the Reciprocal Enforcement of Judgments Act (Cap 369) for registration of various orders and or judgments emanating out of the Family Proceedings. He lists proceedings filed in January 29 2010, May 31st 2010 and June 27th

2013. He continues that on the 8th of December 2011, the court ruled against the wife on the grounds that the Reciprocal Enforcement of Judgments Act and Part 72 of the CPR do not apply to Family Proceedings. Notwithstanding the wife has again filed an application to the court.

- [5] The wife filed her defence on 15th January 2014 in which she disputes the claim. She states that in the judgment of the court handed down on 8th December 2011 it was held that the CPR does not apply to family proceedings and so the order cannot be registered under the CPR. The application filed on 27th June 2013 is an application for registration of a judgment under Cap 369, not under the CPR.

The wife therefore asks that the husband's claim be struck out with costs.

- [6] On 20th February 2014, the husband filed an application for summary judgment in claim No. 2013/0490. The grounds of the application are that the wife has no real prospect of successfully defending the claim in that:

- (a) The only rules of court made pursuant to section 5 of the Reciprocal Enforcement of Judgments Act are to be found in Part 72 of the CPR. Since under Part 2.2, the Rules do not apply to Family Proceedings such as these, there are no other applicable Rules to govern an application for registration under the Act and there is no intention for Cap 369 to apply to family proceedings:
- (b) High Court Justice Mario Michel in Claim No. ANUHCv2010/0362 held that Suite FD08D00763 are Matrimonial Proceedings in England
- (c) High Court Justice Mario Michel in the same claim held that section 3 (2)(c) of the Reciprocal Enforcement of Judgments Act renders incapable of registration a United Kingdom judgment or order from Suit FD08D00763 against the husband.
- (d) The wife has formerly brought applications for registration of Orders and Judgments which have been withdrawn or denied by the court. The matter is therefore *res judicata* and the wife is precluded by the doctrine of issue estoppel from re-litigation.
- (e) By filing claim No ANUHCv2013/0422, the wife is abusing the process of the court by re-litigating a decided matter.

- [7] The application for registration of the United Kingdom Orders by the wife and the **claim** by the husband were consolidated for hearing. As a matter of convenience, the court will deal with the application for summary judgment first.

The Application for Summary Judgment

- [8] In his submissions in support of the application for summary judgment, Counsel for the husband points out that following Justice Moor's Judgment made on the 5th January 2010, the wife sought registration of an order by application filed on the 29th January 2010. This application was subsequently discontinued. The wife made a fresh application for registration on 31st May 2010 in claim No. ANUHCv2010/362. Following a hearing, the court ruled that Orders and Judgments

emanating from those divorce proceedings could not be registered under the Cap 369 nor can the provisions of the Civil Procedure Rules apply to such applications. He states that despite the said ruling the wife has filed yet a further application under the same Act and from the same proceedings commenced in the United Kingdom.

- [9] He therefore submits that the court must recognize the established doctrines of res judicata and issue estoppels and also take action to prevent an abuse of process and procedures.
- [10] The wife opposes the application for summary judgment. Her counsel submits that the wife has a legal prospect of successfully defending the claim brought by the husband. Since the reality is that the claim is not a cause of action known to law. There is not a cause of action that entitles the husband not to have a judgment registered against him. Further, the inescapable reality is that an order made in civil proceedings has been obtained in the High court in England in favour of the wife. The Act gives the wife a right to register the judgment and accordingly the notion that the wife has no real prospect of successfully defending the claim is preposterous. He refers the court to the definition of "judgment" in section 2 of Cap 369.
- [11] Furthermore, he submits that the wife is not seeking registration of a judgment under CPR 2000. He states that the wife is not proceeding in any way, shape or form under CPR. His position is that the wife is seeking registration pursuant to Cap 369 and the fact that no rules have been made regulating the practice and procedure for the registration of an order obtained in family proceeding does not prevent the jurisdiction of the court, under Cap 369, from being exercised. The exercise of the court's jurisdiction is not made conditional upon rules of court first being made.
- [12] He further notes that the order of the court made on 9th July 2012 has not been the subject of any proceedings before this court under the Act. He states that there is no abuse of process and no issue of estoppel arises. He expresses the view that Michel J, in his judgment, did not decide the issue of whether or not a judgment in family proceedings may be registered under the Act. He only decided that a judgment in family proceedings may not be registered pursuant to CPR 72. He acknowledges that the wife's previous efforts to register the judgment pursuant to CPR 72 had failed. He states that the previous effort had failed because of her resort to an inapplicable procedure. This however, does not preclude her coming again to the court in a manner consistent with the Act.
- [13] Part 15.2 of the CPR authorizes the court to give summary judgment to a claimant on a claim or on a particular issue if it considers that the defendant has no real prospect of successfully defending the claim or the issue.
- [14] The rule is designed to deal with cases which are not fit for trial. The judge must carry out the necessary exercise of assessing the prospects of success of the relevant party . . . it is the

assessment of the case as a whole which must be looked at. The criterion which the judge has to apply is not one of probability; it is the absence of reality¹.

[15] The husband herein has asserted that the wife has no real prospect of defending the claim because in essence, the issue of the registration of an order emanating from Justice Moor's judgment in the UK claim No. FD08D00763 pursuant to Cap 369, has been previously litigated and a decision given by Michel, J against the wife. Therefore based on the principles of res judicata and issue estoppel, the wife is barred from re-litigating the issue of registration of such orders.

[16] **In Reg. v. Humphreys** [1977] A.C. 1, the doctrine of issue estoppels in civil proceedings was stated as follows:

"A party to civil proceedings is not entitled to make, as against the other party, an assertion, whether of fact or of legal consequences of fact, the correctness of which is an essential element in his cause of action or defence, if the same assertion, whether of fact or of the legal consequences of fact, the correctness of which is an essential element in his cause of action or defence, if the same assertion was an essential element in his previous cause of action or defence in previous civil proceedings between the same parties or their predecessors in title and was found by a court of competent jurisdiction in such previous civil proceedings to be incorrect, unless further material which is relevant to the correctness or incorrectness of the assertion and could not by reasonable diligence have been adduced by that party in the previous proceedings has since become available to him."

[17] It is accepted that on 31st May 2010, the wife filed claim No ANUHCV2010/0362 in Antigua seeking to register a UK Order made on 10th May 2010 in case No FD08D00763. At the hearing, the husband submitted that: (a) Cap 369 and Part 72 of the CPR do not permit the registration of orders in family proceedings and the order sought to be registered was made in family proceedings in England; (b) the order sought to be registered is not a judgment for a sum of money and therefore falls outside of the ambit of section 2 (1) of Cap 369; (c) the registration of the order would be an abuse of the process of the court because there were previous proceedings involving the same parties seeking the same relief and these proceedings were determined by the court and (d) it would not be just and convenient to register the order sought to be registered because it is based on English jurisprudence which is different from the jurisprudence of the court in Antigua and Barbuda on the issue at hand.

[18] Furthermore, the order made on 10th May 2010, was obtained without notice to the husband. Section 3 (2) (c) forbids the registration of a judgment under the Act if the judgment debtor being

¹ *Three Rivers District Council v Bank of England (No 3)* [2001] UKHL 16

the defendant in the proceedings, was not duly served with the process of the original Court and did not appear.

[19] In response, the wife argued that although the order of 10th May 2010, was made in family proceedings, the application to register it with a view to enforcement does not constitute family proceedings. She argued that the registration of the order is not a family proceeding but an enforcement proceeding.

[20] Michel, J did not accept the wife's submission. The judge held as follows:

"In the circumstances, having regard to the fact that the order sought to be registered in this case was made in family proceedings, then – by virtue of Rule 2.2 of the CPR – it cannot be registered under Part 72 of the CPR. And, having regard to section 3 (2)(c) of the Act, the order cannot be registered under the Act."

[21] It is therefore for the court to determine whether in these proceedings the same assertions made and determined in claim no 362/2010 are being asserted by the wife in respect to the same judgment.

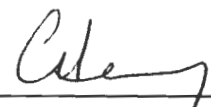
[22] The judgment of Michel J had two limbs: (1) that the United Kingdom proceedings, being family proceedings, by virtue of Rule 2.2 of the CPR, the order could not be registered under Part 72 of CPR; and (2) having regard to section 3(2) (c) of Cap 369 the order could not be registered under Cap 369.

[23] The wife now seeks to register a different judgment/order-one made on 9th July 2013. The allegation that is now being made by the wife in claim no.422/2013 is that notwithstanding that the order of the 9th July 2013 emanates from the English Family Division, it can be registered under Cap 369 even if the provisions of Part 72 of the CPR are inapplicable.

[24] In the court's view while the order cannot be registered under part 72 of the CPR, Cap 369 does not exclude judgments obtained in family proceedings from registration. Section 2 of the Act provides for the registration of any judgment or order given or made by a Court in any civil proceeding . . . whereby any sum of money is made payable . . ."

[25] Further, the court notes that Michel, J under the second limb of his judgment found that the order could not be registered under Cap 369 because it was made ex parte. The order of 9th July 2013, which is now being sought to be registered in claim 422/2013 is not an ex parte judgment but one made on notice to the husband. Therefore the issue of whether a judgment obtained in family proceedings, made on notice to the judgment debtor, can be registered under the Act has not been previously determined by the decision of Michel J. Therefore the principles of res judicata and issue estoppel do not operate to bar the current proceedings. The court also finds that the issue of abuse of process does not arise since the order sought to be registered herein differs from the one before Michel J. Accordingly the application for summary judgment fails.

- [26] With regard to the wife's application for registration of the order of 9th July 2013, Counsel for the wife submits that the application is not made under the CPR; that in no form or fashion are they proceeding under Part 72. The court accepts the submission that the fact that no rules have been made regulating the practice and procedure for registration of an order obtained in family proceedings does not prevent the jurisdiction of the court from being exercised. Cap 369 provides for enforcement in Antigua and Barbuda of judgments obtained in the United Kingdom. Section 3 provides where such a judgment is obtained in the High Court in England, the judgment creditor may apply to the High Court to have the judgment registered. Although it appears that no rules have been made under section 5 of Cap 369, regulating the practice and procedure in respect of judgments obtained in family proceedings, that circumstance does not prevent the High Court from exercising the jurisdiction conferred by Cap 369². The judgment creditor is entitled to approach the court by any acceptable means. An application is an acceptable means.
- [27] Section 3(1) further provides that the time within which to apply for registration is 12 months after the date of judgment. The application was filed on 27th June 2013 and seeks to register the judgment and order made on 9th July 2012, and is therefore within the 12 month time limitation.
- [28] Further section 3 (2) lists certain prohibitions to registration. None of them apply to the instant matter and no allegation has been made by the husband that any of the prohibitions apply to the case. Accordingly, there is nothing which prevents the order of 9th July 2012 from being registered.
- [29] The Default Cost Certificate, made on 12th November 2010, and which followed from a Financial Remedy Order granted on 7th December 2009, is outside of the time limitation.
- [30] Accordingly, the applications are disposed of as follows:
1. The application by the husband, Robin Yearwood for summary Judgment is denied;
 2. The application by the wife, Christiana Yearwood for registration of the judgment of Mr. Justice Moore of the High Court of England, made on 9th July 2012 pursuant to section 3 of the Reciprocal Enforcement of Judgments Act Cap 369 is granted.
 3. Cost to the wife to be assessed if not agreed.



CLARE HENRY
High Court Judge
Antigua & Barbuda

² Attorney General for Ontario v Daly [1924] A.C. 1011