

BARBADOS.

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 2414 of 2000

BETWEEN:

YOLANDE REID

(Plaintiff)

AND

JEROME LEON REID

(Defendant)

Before the Honourable Mr. Justice Sherman R. Moore, Judge of the High Court.

2001: September 5, 12 and 14; and

2002: February 6.

Mrs. B. J. Walrond, Q.C., and Mrs. M. Franklyn for the Plaintiff.

Mr. P.D.H. Williams, Q.C., for the defendant.

DECISION

By Writ and Statement of Claim dated 13th November, 2000, the plaintiff, Yolande Reid, commenced an action against Jerome Leon Reid seeking to enforce a judgment of the Probate and Family Court of the Commonwealth of Massachusetts, United States of America. The Statement of Claim alleges, inter alia, the following:

1. The plaintiff is the former wife of the Defendant and resides in the Commonwealth of Massachusetts, United States of America and was the Plaintiff in a Suit shortly entitled "Yolande C. Reid, Plaintiff and Jerome L. Reid, Defendant" Docket No. 92D3204 in the Probate and Family Court of the Commonwealth of Massachusetts, United States of America.[1]
2. The Defendant herein was the Defendant in the above mentioned Suit brought by the Plaintiff and at the time the Suit was brought resided in the Commonwealth of Massachusetts, United States of America and defended the said Suit.
3. The said Court was duly constituted and held in accordance with the laws of the Commonwealth of Massachusetts, United States of America and had jurisdiction in that behalf.
4. On the 21st day of November, 1996 the said Probate and Family Court gave judgment in the said action in favour of the Plaintiff and ordered the Defendant to forthwith pay to the Plaintiff the sum of US\$415,800.00 (currency of the United States of America) and to further pay the sum of US\$148,690.08 (currency of the United States of America) to the Plaintiff's Attorneys-at-Law on the Plaintiff's behalf as contribution towards the Plaintiff's costs in the Suit aforesaid.
5. The Defendant has failed to pay the Plaintiff the said sum of \$415,800.00 or its equivalent in the currency of Barbados and has further failed to pay to the Plaintiff or to the Plaintiff's Attorneys-at-law Cherny & Atwood the said sum of US\$148,690.08 and the Plaintiff was forced to pay the said sum of US\$148,690.08 to the said Attorneys-at-law and now claims to recover same.

In response, on the 2nd April 2001, the defendant filed a defence alleging, inter alia, the following:

That the Plaintiff is not entitled to enforce the judgment for US\$415,800.00 as the same contravened the principles of natural justice having regard to the circumstances in which, and the procedures by which, the said judgment was made. The particulars of defence state, inter alia,

(1) the award to the Plaintiff was not determined according to the principles of family law that would be acceptable to a Court in this Island, but was [2] arbitrary without any proper judicial assessment of the value of the assets and the respective needs of both parties in order to determine a fair division of the said assets, (2) in the result Justice Sweeney awarded all of the Defendant's assets in the U.S.A. to the Plaintiff, as well as 1/3 of the gross sale

proceeds of the Defendant's major asset in this Island, without regard to principles of substantial justice, (3) there was no proper judicial hearing of the matter, and (4) the Defendant was not present or represented by an Attorney nor were any submissions made on his behalf.

The Defendant also alleges that the Plaintiff is not entitled to enforce the judgment for US \$148,690.08 costs as there were irregularities in the procedure adopted by the said Probate and Family Court which rendered the said judgment objectionable on natural justice grounds to the extent that it would be contrary to public policy to permit its enforcement in this Island. That allegation is supported by the following particulars:

(1) The Defendant was not ordered to pay the said costs to the Plaintiff, but to Atwood & Cherny and the said Atwood and Cherny was specifically given an enforceable right in respect of the said costs. The Plaintiff therefore has no right to enforce the said Order for costs.

(2) The award of costs was contrary to (a) the Order that each party was to be responsible for his or her own attorney's fees for the hearing appealed from and (b) the fact that no order was made for costs by the Appeals Court. In spite of the above, costs were awarded for all of the Plaintiff's legal fees [3] from 25th August, 1992 to 21st November, 1996.

(3) The amount of the costs was not arrived at by consent (as the Defendant was not present or represented at the hearing) or by taxation or other adjudication of the same, but arbitrarily by Justice Sweeney, who ordered payment of the Plaintiff's total legal bill and thereby granted costs on a full indemnity basis, without regard to whether or not the said costs were reasonable, when in fact they were exorbitant.

In addition to his defence the defendant deposes in paragraphs 10 and 11 of his affidavit filed in this action on 19th April 2001 as follows:

"10. I am legally advised and verily believe that in this jurisdiction the plaintiff would have been required under the Family Law Act to file a statement of financial circumstances setting out details of the assets giving the improved capital value of any real estate, prior to an order being made. In an application for alteration of interests in property, the applicant is also required to file an affidavit setting out:

"(b) particulars of title to the property, an estimate of the value of it together with details of the basis upon which that estimate was made, and details of any charge or encumbrance on the property (including a statement of the amount currently outstanding under any such charge or encumbrance)." Section 68(5)(6) of the Family Law Rules, S.I. 1982 No. 18

The procedure adopted in the Massachusetts Court did not therefore comply with Barbados standards of substantial Justice in family law cases. I am legally advised and verily believe that it was particularly important for the Judge to have a full and accurate [4] memorandum regarding the Change in Value of Marital Assets in view of the findings of the Appeals Court and the directions given by the said Court to the Judge on remand: see Exhibit 4R2 at pages 7 and 8.

"11. I am seeking expert evidence as to whether the procedures adopted by the Massachusetts Court in this case were defective according to the procedural requirements and standards usually applicable in those Courts. In the meanwhile I draw the attention of this Court to the following matters:

(i) Whilst the procedures adopted by the Massachusetts Court in this case did not comply with Barbados standards of substantial justice, it would be fair and reasonable for this Court to infer, at this preliminary stage, that this resulted from a failure in this particular case to comply with the usual requirements and standards of Massachusetts justice, rather than any general lack of fairness and natural justice in those usual requirements and standards;

(ii) It follows that it would be fair and reasonable for this Court to infer, at this preliminary stage, that a procedural defect or defects occurred in this case under the procedural requirements and standards usually applicable in the Massachusetts Court."

With regard to the award of costs on the rehearing in Massachusetts, Mr. Williams contends that the award of costs offends against Barbados notions of substantial justice because the judgment for costs granted by Justice Sweeney was contrary to the statutory provisions in the Barbados Family Law Act by which the starting position is that each party bears his or her own costs. In the [5] addendum to his skeleton argument he sets out the provisions of section 94 and 95 of the Family Law Act and then states:

"2.1. It is significant that the Order made on December 20, 1993 was that each party was responsible for his or her own costs. This order, therefore, conformed to the Barbados statutory provisions.

2.2. It is not known at this stage whether there was a Massachusetts statutory provision to the effect that each party bear his or her own costs or whether the order of the judge was completely discretionary.

3. It is only exceptionally that one party pays the costs of the other party. This power can be invoked only in accordance with the guidelines set out in The Family Law Rules, S.I. 1982, No. 18".

The defendant appeared at and was represented by Counsel in the suit for divorce and ancillary relief entitled "Yolande C. Reid, Plaintiff and Jerome L. Reid, Defendant Docket No. 92D3204 in the Probate and Family Court in the Commonwealth of Massachusetts, United States of America. The judgment therein given on the 22nd day of December, 1993 purported to deal, inter alia, with the assets of the parties including assets situate in Barbados. A decree nisi was also granted.

Cross appeals were filed in that Court, in respect of the said order of the Court. On the 10th day of March, 1994 on a motion of the defendant the Court granted a stay of the proceedings until the hearing of the Appeal. That stay was reversed on the 7th day of May, 1996. On the 29th day of August, 1996, the Court ordered an evidentiary hearing between the parties on the 14th day of November, 1996. The hearing took place on that day and the order made then is [6] now the subject matter of the present suit. The defendant did not appear in person or by Counsel at the re-hearing. The defendant swore that he did not contest the re-hearing because he had no money and that he would have had to obtain permission

from the Central Bank of Barbados to send money out of Barbados. It has not been demonstrated either on affidavit or by argument that any attempt was ever made by the defendant to obtain such permission and to seek an adjournment pending the grant of such permission.

Mr. Williams then set out in turn Rules 125 to 127 (Family Law Rules (Barbados)) with accompanying comments and concludes thus:

"In conclusion, it is submitted that the Massachusetts judgment for costs was definitely contrary to the Barbados statutory provisions and offend against Barbados principles of substantial justice in Family Law."

The plaintiff cannot enforce the judgment by action in this country unless, by standards of Barbados law, the Massachusetts Court was entitled to take jurisdiction over Jerome Reid, the defendant. A Court of a foreign country outside Barbados has jurisdiction to give a judgment in personam capable of enforcement or recognition in Barbados if the judgment debtor was, at the time the proceedings were instituted, present in the foreign country. It is on that ground that the plaintiff relies.

The plaintiff contends that when the proceedings were instituted in the Massachusetts Court the defendant was resident in Massachusetts, took part in the proceedings and lodged an appeal against the decision of that Court; and the fact that the defendant was [7] not present or represented at the re-hearing ordered by the appellate court is immaterial because the proceedings, including the re-hearing is "one unit of litigation".

The defendant denies that the Massachusetts Court had, for the purposes of Barbados law, jurisdiction over him because he was not resident in Massachusetts at the time of the re-hearing and also he had withdrawn from the re-hearing on the grounds that he had insufficient funds to retain Counsel. He also alleges that the judgment of the Massachusetts Court is impeachable on the grounds that it was obtained in circumstances that offend the principles of substantial justice as that notion is understood in Barbados and is unenforceable in that it would be contrary to public policy.

The following cases were referred to in argument:

Swain v Hillman and Another [2001] 1 All E.R. 91

Pemberton v Hughes [1899] 1 Ch 781

Godard and Another v Gray and Another [1870] Q.B. [L.R. Vol V1] 139

Robinson v Penner [1913] 3 K.B. 835

Jet Holdings Inc. And Others v Patel [1990] 1 Q.B. 335

Humphrey and Murphy v. Jolly Roger Cruises No. 61 of 1998 (Barbados)

Adams And Others v. Cape Industries PLC And Another [1990] 1 Ch. 433

Caribbean Communications Inc And Caribbean Week Inc. v The Nation Publishing Company Ltd. Civil Appeal No. 32 of 1995 (Barbados) [8]

The defendant has produced no evidence of breach of any of its procedural rules by the Massachusetts Court: yet Mr. Williams invites this Court (paragraph 11 of defendant's affidavit filed on 19th April, 2001 and set out earlier in this judgment) to infer that the procedure adopted by the Massachusetts Court did not comply with Barbados standards of substantial justice and to permit the defendant to call expert evidence as to whether the procedures adopted by the Massachusetts Court were defective according to the procedural requirements and standards usually applicable in those Courts.

The defendant resided in Massachusetts when those proceedings were instituted, he took part in them up to the appeal stage but absented himself from the re-hearing ordered by the Appeals Court citing his impecuniosity. He had considerable funds in Barbados having sold a property here contrary to the order of the Massachusetts Court and for which he was held in contempt by that Court. He said that he needed permission from the Central Bank of Barbados to access those funds but there is no evidence that he ever sought such permission. On his own admission he was aware of the re-hearing ordered by the Appeals Court.

In my opinion, (1) the Massachusetts Court had jurisdiction, and (2) the hearing, appeal and re-hearing were a single unit of litigation of which the defendant had notice. I therefore hold that there was no breach of natural justice in respect of the Massachusetts proceedings.

In Pemberton v Hughes [1899] 1 Ch. 781, 790-791 Lindley, M.R. said: [9]

"If a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter with which it is competent to deal, English courts never investigate the propriety of the proceedings in the foreign court, unless they offend against English views of substantial justice. Where no substantial justice according to English notions, is offended, all that English courts look to is the finality of the judgment and the jurisdiction of the court, in this sense and to this extent - namely, its competence to entertain the sort of case which it did deal with, and its competence to require the defendant to appear before it. If the court has jurisdiction in this sense and to this extent, the courts of this country never inquire whether the jurisdiction has been properly or improperly exercised, provided always that no substantial injustice, according to English notions, has been committed."

The defendant alleges that the method of assessment of the value of property and the respective needs of the parties was contrary to the principles of family law that would be acceptable to a court in Barbados. It is not for the Massachusetts Courts to apply the substantive law or rules of procedure of Barbados. There is also no evidence to support the suggestion that the Massachusetts Court did not apply the substantive law or rules of procedure applicable in that Court or that the method of assessment of the issues in the Massachusetts Court by Judge Sweeney was

contrary to the rules applicable in that Court.

In the circumstances the defendant has failed to show that he has a triable issue. Accordingly I hold that there is no defence to the plaintiff's claim.

The plaintiff will have the award made by the Massachusetts Court with interest at the rate of 4 percent per annum [10] from the date of the writ until the date of judgment and at the rate of 8% per annum thereafter until paid.

The plaintiff is also entitled to the costs awarded by the Massachusetts Court.

The plaintiff is also awarded the costs of this action certified fit for two Counsel to be agreed or taxed. [11]

S. Moore

Judge of the High Court.