

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2010/0362

BETWEEN:

CHRISTIANA YEARWOOD

Claimant

and

ROBIN KENSWORTH MONTGOMERY YEARWOOD

Defendant

Appearances:

Mr. Hollis Francis Jr. and Ms. Alincia Williams-Grant for the Claimant
Mr. David Joseph Q.C. and Mr. Hugh Marshall Jr. for the Defendant

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2011: December 1
December 8
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JUDGMENT

[1] **MICHEL, J.:** The Claimant (Christiana Yearwood) and the Defendant (Robin Kensworth Montgomery Yearwood) were married to each other in England in July 1981 and are the parents of two adult children. In February 2008 the Claimant petitioned for divorce in the Family Division of the High Court of Justice in England and a Decree Nisi dissolving the marriage was granted in August 2008, which decree was subsequently made absolute.

- [2] Upon application by the Claimant, on 7th December 2009 Philip Moor QC – sitting as a Deputy High Court Judge in England – made an order granting relief to the Claimant in ancillary relief proceedings arising from the dissolution of the marriage, which order included the payment by the Defendant to the Claimant of a lump sum of £4,121,037.00. Then on 10th May 2010, the said Philip Moor QC made a further order directing the Defendant to pay to the Claimant the sum of £3,144,456.80 pursuant to the order of 7th December 2009.
- [3] On 31st May 2010, the Claimant applied to the High Court of Justice in Antigua and Barbuda (without notice to the Defendant) for an order that the 10th May 2010 order be registered in the High Court of Justice in Antigua and Barbuda pursuant to the Reciprocal Enforcement of Judgments Act, Cap. 369 of the Laws of Antigua and Barbuda Revised Edition 1992 (hereafter “the Act”).
- [4] By order dated 9th June and entered on 11th June 2010, the Claimant was granted leave to register the order of 10th May 2010, with leave given to the Defendant to apply by 1st July 2010 to set aside its registration.
- [5] On 29th June 2010, the Defendant applied to the Court for provision to be made for the security of his costs in the proceedings, for registration of the order to be stayed and for an extension of time to challenge the registration of the order.
- [6] By various orders made by the Court, the Defendant did get security for his costs, the registration of the order of 10th May 2010 was stayed, an extension of time was granted to the Defendant to

apply to set aside the registration of the order and the Defendant was ordered to file written submissions by 7th November 2011 in support of his application to set aside the registration, while the Claimant was ordered to file written submissions in response by 21st November 2011.

[7] The Defendant's written submissions were filed one day late (on 8th November 2011) while the Claimant's written submissions were filed two days late (on 23rd November 2011) but both submissions were accepted by the Court and the Defendant's application to set aside the registration of the order was heard on 1st December 2011.

[8] At the hearing, the Defendant relied on his aforesaid written submissions (augmented and elaborated on at the hearing) and on affidavits filed on his behalf on 29th June 2010, 16th July 2010, 20th July 2010 and 8th August 2011, while the Claimant relied on her aforesaid written submissions (augmented and elaborated on at the hearing) and on affidavits filed on her behalf on 29th December 2010, 16th June 2011 and 23rd November 2011.

[9] The Defendant's submissions proceeded on the basis that the judgment sought to be registered by the Claimant is really the order of Philip Moor QC dated 7th December 2009, which order was varied or amended on 10th May 2010, and it was submitted on behalf of the Defendant that this order of 7th December 2009, as varied or amended, could not be registered in the High Court in Antigua and Barbuda for the following reasons:

- (1) The Act and Part 72 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (hereafter "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.

- (2) 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 the Act.
- (3) 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.
- (4) 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.

[10] In response to the first limb of the Defendant's challenge to the registration of the order, it was submitted by Learned Counsel for the Claimant that the judgment sought to be registered is not the order of 7th December 2009 but that of 10th May 2010 and that, although the order was made in family proceedings, the application to register it with a view to enforcement does not constitute family proceedings. Learned Counsel submitted that the registration of the order is not a family proceeding but an enforcement proceeding and that the application to register the order is no different from an application to enforce an order for payment of money due under a maintenance order, which type of application is habitually brought under enforcement provisions of the CPR.

[11] In response to the second limb of the challenge to the registration of the order, Learned Counsel for the Claimant again submitted that the order sought to be registered is the order of 10th May 2010 and not the order of 7th December 2009 and that this order is one for the payment of a sum of money and it stands on its own independently of the order of 7th December 2009. He submitted too that the order of 10th May 2010 is an order made in civil proceedings whereby a sum of money is made payable and it therefore satisfies the requirements for registration under the Act.

[12] In response to the third limb of the Defendant's challenge, Learned Counsel for the Claimant submitted that the application to register the order of 10th May 2010 is not an abuse of process because the order sought to be registered in the previous proceedings between the parties was not the order of 10th May 2010 but the order of 7th December 2009 and that, in any event, the previous application was not dismissed but was discontinued, so that the current application is not caught by the doctrine of res judicata.

[13] In response to the fourth limb, Learned Counsel for the Claimant submitted that the jurisprudence of the English High Court is no different from the jurisprudence of the High Court of Antigua and Barbuda as to issues of maintenance and division of property consequent on divorce and that the factors to be considered by the High Court in Antigua and Barbuda in arriving at its judgment are no different from the factors to be considered by the High Court in England in arriving at its judgment.

[14] In the course of their oral submissions at the hearing on 1st December 2011, the Court drew the attention of Counsel on both sides to section 3 (2) (c) of the Act, which states: "No judgment shall be ordered to be registered under this section if – The judgment debtor being the defendant in the proceedings, was not duly served with the process of the original Court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of the Court or agreed to submit to the jurisdiction of that Court". The question was asked of Counsel by the Court as to whether this section did not render the order of 10th May 2010 incapable of being registered under the Act because, although the Defendant may have submitted to the jurisdiction of

the English High Court in the ancillary relief proceedings, he was not served with the process of the English High Court resulting in the order and did not appear in the Court when the order was made.

[15] Learned Counsel for the Defendant responded that - although the Defendant's submissions were premised on the Claimant seeking in effect to register the order of 7th December 2009 - if the Claimant persists with her position that the order sought to be registered is the order of 10th May 2010, then the order could not be registered under the Act because the proceedings leading to it were ex parte, with no service of or appearance by the Defendant.

[16] Learned Counsel for the Claimant on the other hand contended that section 3 (2) (c) does not apply, because - although the Defendant might not have been served with the process before the making of the order - he had liberty after the making of the order to apply to have it set aside and that he did not do so.

[17] In terms of the first limb on which the Defendant challenges the registration of the order of 10th May 2010, Counsel for the Claimant conceded that the order was made in family proceedings, that the application to register the order was made pursuant to Part 72 of the CPR and that the CPR does not apply to family proceedings. Counsel however contended that, although the order was made in family proceedings, the order can nonetheless be registered under the CPR because the application to register the order does not constitute family proceedings. The Court does not accept Counsel's submission on this issue, because the process by which an order made in family proceedings is registered cannot but be within the ambit of the family proceedings. Indeed, the order made in the proceedings would be as much a part of the proceedings as would be the application leading to the making of the order, and the registration of the order would be as a much

a part of the proceedings as would be the filing of the application. The CPR expressly provides that it does not apply to family proceedings and so the order cannot be registered under the CPR.

[18] In terms of the second limb on which the Defendant challenges the registration of the order of 10th May 2010, if one takes the view - which view is tenable - that the order of 10th May 2010 can stand on its own, then it is an order whereby a sum of money, to wit, £3,144,456.80, is made payable to the Claimant and can therefore be registered under the Act.

[19] In terms of the third limb, again on the basis that the order of 10th May 2010 stands on its own, then there have not been previous proceedings involving the same parties on the same issue and, in any event, it does not appear that there ever was a final judgment on the merits between the parties on the registration in Antigua and Barbuda of any judgment in this case. There is therefore no abuse of process by the Claimant arising from the application to register the order of 10th May 2010. It would not therefore, on this basis, be unjust or inconvenient to register the order.

[20] In terms of the fourth limb, the Court accepts the submission on this issue by Learned Counsel for the Claimant that the cause of action leading to the order is one that could have been entertained by the High Court in Antigua and Barbuda and, although the jurisprudence on financial provisions resulting from marital breakdown may be differently nuanced in England and in Antigua and Barbuda, the fundamental elements of the law applicable to the financial provisions for the parties attendant on the breakdown of marriage are essentially the same.

[21] In terms of section 3 (2) (c) of the Act, I can give no other interpretation to this provision than that it renders incapable of registration a United Kingdom judgment or order if the defendant in the

proceedings in which the judgment or order was made had not been duly served in the proceedings leading to that specific judgment or order and the defendant did not appear at these proceedings. On the facts, this appears to be exactly what happened in the proceedings leading to the order of 10th May 2010 and so the order cannot be registered pursuant to the Act.

[22] 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 (1) (c) of the Act, the order cannot be registered under the Act. The registration of the order of Mr. Philip Moor QC, Deputy High Court Judge, made on 10th May 2010 in the Family Division of the High Court of Justice of England in case no. FD08D00763 is therefore set aside with costs to the Defendant to be agreed or otherwise assessed.

*[22] Costs to the Defendant agreed between the parties
in the sum of \$20,000-10*


Mario Michel
High Court Judge