

THE EASTERN CARIBBEAN SUPREME COURT

ANGUILLA

IN THE HIGH COURT OF JUSTICE  
(DIVORCE)

CLAIM NO. AXAHMT2007/0037

BETWEEN:

JACKELINE BEVERLY NELSON-RUAN

Petitioner

and

JOHN STEVEN RUAN

Respondent

Appearances:

Ms. Dana J Campbell with Mr. Kenneth J. Potter for the Petitioner/Judgment Debtor  
Ms. Shameica Hodge for the Respondent/Judgment Creditor

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2012: July 24<sup>th</sup>, 30<sup>th</sup>

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JUDGMENT

COMBIE MARTYR J. (Ag):

[1] There are two applications currently before the Court for determination as follows:

- i) Application for the issue of a Judgment Summons/Amended Judgment Summons filed on behalf of Respondent/Judgment Creditor on April 19<sup>th</sup> 2012 and June 12<sup>th</sup> 2012 respectively;
- ii) Application to vary the Consent Order dated 12<sup>th</sup> December 2011 filed on behalf of Petitioner/Judgment Debtor on July 9<sup>th</sup> 2012.

[2] By a Consent Order of the parties granted on the 12<sup>th</sup> December 2011 it was ordered inter alia that:

- i) The Applicant/Petitioner is entitled to a 50% share in the real estate described in the Registry of Lands, Anguilla as Registration Section South East Block 78913 B Parcel 256;
- ii) The Applicant/Petitioner shall within three (3) months of the date of this Order, pay into the Chambers of C R Hodge & Associates, for the benefit of

the Respondent, US\$24,000.00 in return for two duly executed land transfer forms, sufficient to transfer all of the Respondent's interest in the property to the Applicant /Petitioner;

iii) The Applicant/Petitioner and the Respondent shall have joint custody of the minor child Guy Vaughn Ruan and

iv) Each Party shall bear its own costs.

[3] The Application for the issue of a Judgment Summons is supported by an Affidavit and accompanying exhibit filed on April 19<sup>th</sup> 2012 and June 12<sup>th</sup> 2012 respectively, to enforce payment of the sum payable under the said Consent Order.

[4] The Judgment Summons is not intituled with the provision or rule pursuant to which the Application is brought before the Court.

[5] No affidavit in reply or in opposition to the issue of a Judgment Summons has been filed by or on behalf of the Petitioner/Judgment Debtor.

[6] The Judgment Summons Application being first in time was given prior consideration for determination and the issue before the Court was whether the Court should entertain the Judgment Summons Application filed herein.

[7] Ms. Dana J Campbell for the Petitioner/Judgment Debtor opposed the Application on the basis that:

(1) The Judgment Summons procedure is not provided for under the Matrimonial Causes Rules 1937 of Anguilla;

(2) Rule 62 of the Matrimonial Causes Rules 1937 specifically provides for the enforcement of Orders and states that '*In default of payment to any person of any sum of money at the time appointed by any Order of the Court for the payment thereof, a writ of fieri facias, sequestration or elegit shall be sealed and issued as of course out of the Divorce Registry upon an affidavit of service of the order and of non payment*';

(3) Rule 3.3 of the Matrimonial Causes Rules 1937 provides that '*unless these rules otherwise provide, every other application in a matrimonial cause or matter shall and any leave or directions shall be obtained, by Summons to the Registrar or, if these Rules so require, by Summons to a Judge*'.

[8] Counsel for the Petitioner/Judgment Debtor further submitted that the Respondent/Judgment Creditor, not having availed himself of the procedure laid down in the aforementioned rules, the Application was therefore not properly before the Court.

- [9] Ms. Shameica Hodge for the Respondent/Judgment Creditor asserted that the Judgment Summons Application was properly before the Court and relied on the following submission in support of that assertion:
- (1) Section 9 of the Eastern Caribbean Supreme Court (Anguilla) Act Revised Statutes of Anguilla Chapter E 15 2000 provides that '*the jurisdiction vested in the High Court in civil proceedings and in probate, divorce and matrimonial causes shall be exercised in accordance with the provisions of this act and any other law in operation in Anguilla and the rules of Court and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered for the time being in the High Court of Justice in England;*
  - (2) Rule 81 of the Matrimonial Causes Rules 1937 which states that '*subject to the provisions of these rules and of any statute, the rules of the Supreme Court shall notwithstanding the provisions of Order 68 thereof, apply with the necessary modifications to the practice and procedure in any matrimonial cause or matter to which these rules relate;*
- [10] Counsel for the Respondent/Judgment Creditor further submitted that following the decision in *SKBHMT2009/0018 -DESMOND HERBERT v MARY HERBERT* and having regard to the fact that the rules of the Supreme Court have been repealed by the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (Civil Procedure Rules 2000), thereby creating a lacuna in the rules and procedure as it relates to matrimonial causes in this jurisdiction in particular.
- [11] According to Counsel for the Respondent/Judgment Creditor, reference to the rules of the Supreme Court in Rule 81 which said rules have been repealed has created a lacuna in the rules relating to matrimonial and family proceedings and as such the Judgment Summons procedure under Part 52 Civil Procedure Rules 2000, under which this Application has been brought, is applicable.
- [12] Ms. Dana J Campbell for the Petitioner/Judgment Debtor in response, submitted that the submission by Counsel for the Respondent/Judgment Creditor was predicated on a 'lacuna' which exists in the rules as it relates to matrimonial causes in this jurisdiction.
- [13] Counsel submitted that there is no such lacuna and that the Matrimonial Causes Rules 1937 specifically provide for the procedure for enforcement of the Consent Order under Rule 62, which Counsel asserts is the applicable rule of procedure. Accordingly says Counsel, Section 9 of the Eastern Caribbean Supreme Court (Anguilla) Act is not applicable.

- [14] Counsel asserted that Rule 2.2(3) of Civil Procedure Rules 2000 provides that these rules do not apply to family proceedings and that Civil Procedure Rules 2000 Part 52 could not therefore apply to matrimonial or family proceedings.
- [15] It is the opinion of this Court that Rule 62 (1) of the Matrimonial Causes Rules 1937 specifically provides the procedure for enforcement of Orders of the Court by means of *writ of fieri facias, sequestration or elegit* and enforcement of this Consent Order is no exception.
- [16] Accordingly the Judgment Summons and Affidavit in support filed on the 19<sup>th</sup> April 2012 and the Amended Judgment Summons filed on June 12<sup>th</sup> 2012 are not properly before the Court having been filed pursuant to CPR Part 52 and not in accordance with Rule 62 (1) of the Matrimonial Causes Rules 1937.
- [17] The Respondent/Judgment Creditor has the option to apply to this Court to withdraw the said application, otherwise the Judgment Summons application stands struck out.
- [18] There shall be no order as to costs.
- [19] Having had sight of the Consent Order and noted that the Order does not comply with Rule 62 (2) of the Matrimonial Causes Rules 1937, parties should by consent amend the Order so that the copy to be served upon the Petitioner/Judgment Debtor shall be endorsed with a Notice in accordance with Form 13 in Appendix 11 of the Matrimonial Causes Rules 1937.

Cynthia Combie Martyr  
High Court Judge (Ag)