EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHMT 2014/0043

BETWEEN:

GEORGIA KOUDA

Petitioner

and

DIMITIOUS ADAMOPOULOS

Respondent

Before:
The Hon. Mde. Justice Rosalyn E. Wilkinson

Appearances:
Mrs. Michelle Anthony-Desir of Counsel for the Petitioner
Mrs. Kimberley Roheman of Counsel for the Respondent.

2017: October 9th

JUDGMENT

[1] **WILKINSON J.:** On 18th March 2014, the Petitioner filed her petition for divorce. The ground of divorce was the Respondent's behaviour and same was particularised.

[2] At 17th April 2014, the Respondent filed an acknowledgement of service wherein he stated that he intended to defend the petition.

[3] On 26th September 2014, the Respondent filed a summons supported by affidavit and therein he sought the following orders:

i. That this Court has no jurisdiction to hear the petition for dissolution of marriage.

ii. That the Petitioner does pay the Respondent's costs.

[4] On October 27th 2014, the Petitioner with the leave of the Court filed her amended petition citing the same ground of behaviour with amended particulars. Leave to amend the petition was given under a consent order and therein, the Parties also agreed and the Court ordered that there was to be a stay on filing of the answer to the petition until the determination of the challenge to the jurisdiction of the Court to hear the petition.

[5] Subsequently, there were filed a number of other interlocutory applications however, the Court following the principle in **CA 6/2009 St. Kitts Nevis Anguilla National Bank v. Caribbean 649 Ltd,** the Respondent's summons filed first in time must be proceeded with and it is also necessary to get the substantive matter moving.

[6] The Respondent's summons came on for hearing on 16th March 2016, and thereafter Counsel for the Parties agreed between themselves that the transcript of proceedings before the Greek Court could be admitted relying on **ANUHCVAP2014/0030 Franciscus Petrus Vingehoedt v. Stanford International Bank Limited (In Liquidation)** and **Subramaniam v. Public Prosecutor PC [1956] 1 WLR 965.**

Issue

[7] The sole issue is whether Saint Lucia is the appropriate forum to hear the petition.

The evidence

[8] Much of the evidence pertaining to the relationship between the Parties is hotly contested. These however, are not matters going to the question before the Court at this juncture and so the Court at this time makes no reference to matters alleged to have caused the breakdown of the marriage but concentrates on the matters to which the authorities say the Court must have regard when the forum is challenged.

[9] The Petitioner was born at Corfu, Greece in 1974. The Respondent, the Petitioner's elder by 22 years and previously married, was born at LLioupolis Attikis, Greece in 1952. He holds dual citizenship as he acquired Canadian citizenship and was registered as a Canadian citizen in 1991. The Parties married on 30th May 2001, at Corfu, Greece. According to the marriage certificate, at time of marriage the Petitioner's occupation was stated to be employee and the Respondent an economist. Both Parties were resident at Corfu at the time of marriage.

[10] The Respondent's acquisition of Canadian citizenship in 1991 was not explained and so the Court is not aware if it was acquired by residence at Canada or thru family connection, the 2 most common forms of acquisition.

[11] The Respondent states that he was employed from 6th July 1992 to December 10th 2011 with the Bank of Nova Scotia ("the Bank"), a Canadian Bank, with headquarters at Toronto, Ontario, Canada. Subsequently, the Respondent says that he started with the Bank at Greece on June 1st 1997. This start date contradicts the earlier start date given of 6th July 1992 – a 5 year difference. It is unclear whether he worked for the Bank elsewhere. Nonetheless, he states that he was with the Bank at Greece until July 2nd 2001.

[12] Approximately 2 months after marriage the Parties started living in the Caribbean as the Bank moved the Respondent for work thru several of its Caribbean branches.

[13] First, on at or about 5th August 2001, the Parties travelled to Nassau, Bahamas where the Respondent took up duties as senior account manager-commercial banking with the Bank. While the Parties were at the Bahamas, at October 2001, the Petitioner commenced attending the University College of the Bahamas.

[14] At 23rd March 2002, the first child of the marriage, a son, Eleftherios was born at Nassau, Bahamas. In addition to being a Bahamian by birth, he was registered as a Canadian citizen.

[15] At September 2002, the Respondent was transferred by the Bank from the Nassau, Bahamas branch to the Bank's Freeport, Bahamas branch.

[16] At 16th December 2003, the second child of the marriage, a daughter, Danai was born at Florida, United States of America and holds a pre-paid college plan there. In addition to being an American citizen, she is also registered as a Canadian citizen.

[17] The Respondent disclosed a document dated 8th November 2005, wherein the Respondent's daughter, Anastasia Adamopoulos from his first marriage acting under a power of attorney on behalf of both Parties executed at Athens, Greece a document identified as No.10327 which titles reads (a) 'Parental Grant of the Right of Naked Ownership of a Site, done by parent towards children, according to article 1509 of the **Civil Code**' and (b) 'Donation of Usufruct of ½ undivided portion of same property' and there was a retention of right of lifelong usufruct. Therein it was recorded that the Respondent transferred by way of donation to the Parties' children each an undivided ½ share with an undivided ½ life interest to the Respondent and an undivided ½ life interest to Petitioner. While the Court has

recorded this document, it did not comply with the rules of evidence on foreign documents and so the Court will treat it as set out in **ANUHCVAP2014/0030 Franciscus Petrus Vingehoedt v. Stanford International Bank Limited (In Liquidation)** and **Subramaniam v. Public Prosecutor PC [1956] 1 WLR 965.**

[18] At 10th January 2006, the Respondent was transferred by the Bank to its Saint Kitts & Nevis branch. The Petitioner and children moved to Saint Kitts & Nevis with him. .

[19] While at Saint Kitts & Nevis, in 2009, 2 condominiums were purchased in the Parties' names at an approximate cost of US$325,000.00. The Petitioner states that although she is a co-owner of the condominiums and they are rented, she does not receive a share of the rental income from the Respondent. According to the Petitioner, the income is approximately US$2400.00 per month.

[20] While at Saint Kitts & Nevis, the Respondent applied for residency status.

[21] Once again at 18th April 2010, the Respondent was transferred by the Bank to its Saint Lucia branch where he held the post of director-credit solutions in corporate and commercial banking for the Eastern Caribbean. The Petitioner and the children remained at Saint Kitts & Nevis until the end of the school year. Once again, the Petitioner and the children joined the Respondent at Saint Lucia during summer 2010, at the close of the school year at Saint Kitts & Nevis. The children attended school at Saint Lucia and at the time of proceedings, they were attending the International School, a school which follows a Canadian school curriculum. The Petitioner registered at a local university and there continued her education.

[22] At August 2010, the Parties vacationed at London.

[23] The Bank terminated the Respondent in 2011. The actual date of termination is somewhat unclear. In his divorce proceeding claim 124441-1/1 filed at Greece the Respondent states that at March 2011, he was dismissed from the Bank without serious cause. In his affidavit filed herein at 26th September 2014, the Respondent at paragraph 6 deposes that his employment with the Bank ceased on December 10th 2011 (approximately 9 months later).

[24] The Respondent's employment with the Bank outside of Greece and spent in the Caribbean was approximately, 10 years.

[25] According to the Respondent, after termination by the Bank, he during the period of about 14 months travelled to Canada and the United States of America looking for a job. He failed to find a job.

[26] The Petitioner paints a slightly different picture or maybe adds to the reason for the Respondent's travel to Canada. According to the Petitioner, on termination of the Respondent's employment with the Bank at Saint Lucia, the Respondent and his family were to be repatriated to Canada. The Respondent however, while opting to travel to Canada where he remained from April 2011 until January 2012 refused to take his family with him and told her that he was concerned that she would file court proceedings there against him.

[27] The Parties separated at March 2012 after 11 years of marriage.

[28] During 2012, there were proceedings filed in both the Family Court and Magistrate's Court at Saint Lucia.

[29] At 1st October 2012, the Respondent filed Special Proceedings for Matrimonial Matters at Greece, cited as action filing report number 380/12.10.2012. At 24th February 2015, the Greece legal proceedings identified as No. 338/2015 came on for hearing. The translation states that it is a "Report of filing a legal document No. 380/2012". According to the translation, both Parties were represented by solicitors and evidence was taken. The judge reserved her decision. It then appears that the proceedings came on again on 20th March 2015, and whereat the court published in public but in the absence of the parties and their solicitors its judgment. The court there having regard to the fact that shortly after marriage the Parties departed Greece and resided elsewhere found that under Greek law cited it was locally not competent as both parties were residents of Saint Lucia, West Indies, at concrete addresses, and the last common place of residence was also Saint Lucia. Therefore, no locally competent court existed subject to art. 22, 23 and 39 CPL the case was to be "adjudged" by the One Judge Chamber of Athens Court of First Instance. The order made read that the court declared itself to be locally non-competent to pass judgment in the divorce case dated 01-10-2012 filed under No. 380/12-10-2012 and the court referred the case to the One Judge Chamber of the Athens Court of First Instance. The Respondent was ordered to pay the Petitioner's cost in the amount of €300.

[30] On 19th July 2013, at Saint Lucia, pursuant to a work permit, the Respondent commenced employment with Hermes Bank Limited as general manager. The Respondent disclosed this work permit and the Court observed that (a) he was stated to reside at Sunset Drive, Bonne Terre, Rodney Bay, (b) was to be employed by Hermes Bank Limited as general manager, (c) the work permit was for the period of 1 year, September 1st 2013 to August 31st 2014, (d) his nationality was shown as Canadian with place of birth being Athens, Greece., (d) his Canadian passport number was disclosed as well as the issue and expiration date of his Canadian passport.

[31] On 15th October 2013, approximately 3 months after commencing his employment with Hermes Bank Limited, the Respondent was terminated with immediate effect; reason stated was that his services were no longer required.

[32] The Respondent's employment with both the Bank and Hermes Bank Limited in the Caribbean were permitted pursuant to work permits issued by the various Countries, his family as dependents were allowed to reside with him in the various Countries. At Saint Lucia this was confirmed when at 22nd January 2014, Inspector Lucius Lake of the Immigration & Passport Office issued a letter addressed to "TO WHOM IT MAY CONCERN" and therein stated that the Petitioner had come to Saint Lucia on the Respondent's work permit on 22nd June 2010.

[33] Both Parties applied for residency status at Saint Lucia. The Petitioner states that she is aware, and which is not denied, that the Respondent was at April 2015, approved for permanent resident status at Saint Lucia.

[34] During 2015, the Petitioner was granted a certificate of residential status at Saint Lucia. Therein she was granted residency status from 3rd March 2015, to 3rd March 2017.

[35] Neither Party has any family at Saint Lucia save for their 2 children. Neither Party has any assets at Saint Lucia.

[36] It is agreed that there were initially some annual tax returns filed at Greece but the Petitioner has not seen any within the last 5 or so years of the marriage.

[37] Interestingly, the Respondent says that he was advised that a divorce decree granted at Saint Lucia will not be recognized at Greece and to the contrary, the Petitioner's Counsel at Greece in his opinion to the Petitioner's local Counsel stated that a divorce decree granted at Saint Lucia would be recognised in Greece because Saint Lucia was at the time the Parties "habitual residence" – this seems to be in keeping with the earlier decision recorded of the Court in Greece in the matrimonial proceedings filed there by the Respondent. .

The Petitioner

[38] The Petitioner at time of filing of her petition was a homemaker and student. As to her student status, the Petitioner deposed that at the time of her affidavit filed 17th February 2015, that she had to attend a further 3 to 4 semesters to complete her studies. She says that her studies were delayed as the Respondent who had promised to help finance her studies, reneged on his promise. She has with the assistance of family and friends been able to persevere.

[39] On the issue of domicile, the Petitioner deposed that she has always known the Respondent to be domiciled in Canada. When he repatriated after being terminated by the Bank, it was to Canada he went as his employment was based on him being a Canadian. His father, mother and brother all reside between Canada and the United States of America. The 2 children of his first marriage also reside at Canada notwithstanding that one of them was born at Greece.

[40] The Petitioner stated that the Respondent at no time stated to her that he wished to return to Greece.

[41] It is her view that his consideration of Canada being his domicile is supported by the fact that he registered the children at Saint Lucia in a local Canadian private school, the International School.

[42] She says that from 1997, his employment with the Bank was always thru his Canadian citizen status.

[43] The children according to the Petitioner are registered in the Registry and Tax Division in Greece but were never issued Greek passports.

[44] According to the Petitioner, the Respondent has maintained bank accounts in his name only and also together with his mother at Canada, Greece, Switzerland, Saint Kitts & Nevis, Saint Lucia and the United States of America.

[45] As to the alleged interest of property at Greece, the Petitioner says that while she was aware from draft copies of documents that the Respondent intended to transfer his land at Greece to the children of the family, she was not aware and had not seen any document giving her an interest in land.

The Respondent

[46] The Respondent in his affidavit filed 26th September 2014, deposed that his domicile is Greece for personal, professional, financial and emotional reasons and that Greece has always been his main place of residence. He said that he communicated his decision on domicile to the Petitioner and after discussion she agreed. He deposes that between 2002 to 2010 the Petitioner and the children visited Greece 5 times to maintain and strengthen the family's ties with Greece. He says that at time of filing affidavit, 26th September 2014, he was unemployed and had been forced to borrow money to pay the children's school fees for them to attend the private school "The International School" which follows a Canadian curriculum. This was his deliberate choice so as to afford the children an opportunity should they so desire to attend university at Canada.

[47] According to the Respondent when he joined the Bank of Nova Scotia international division at June 1997, he was required to work outside of Canada and so any plans he had to permanently reside at Canada ceased.

Children

[48] The Respondent says that although there was no Greek Orthodox Church at Saint Lucia; that he was raising the children in that faith, traditions and they are fluent in Greek. According to the Petitioner, while both Parties are of the Greek Orthodox Faith, and as a result the children would have been introduced to certain aspect of the faith, at Saint Kitts & Nevis, the children attend the Catholic Church and at The Bahamas the children attend the Greek Orthodox Church.

[49] According to the Petitioner, the children last visited Greece in 2007 to attend the funeral of the Respondent's father. They speak little basic Greek, cannot write the language and have never attended Greek school.

[50] At time of hearing before the Court, the Respondent has primary care with the Petitioner having access every other weekend from Friday 4pm until Sunday 6pm.

The law

[51] The first matter of jurisdiction for the Court is prescribed by the **Divorce Act Cap. 4.03** section 18 which states:

> **"18. ADDITIONAL JURISDICTION IN PROCEEDINGS BY A WIFE**
>
> (1) Without prejudice to any jurisdiction exercisable by the Court apart from this section, **the Court shall have jurisdiction to entertain proceedings by a wife, despite that the husband is not domiciled in Saint Lucia**—
>
> (a) in the case of any proceedings under this Act (other than proceedings under sections 35 to 37), if—
>
> (i) the wife has been deserted by her husband, or
>
> (ii) the husband has been deported from Saint Lucia under any law for the time being in force relating to deportation; and the husband was immediately before the desertion or deportation domiciled in Saint Lucia;

(b) in the case of proceedings for divorce or nullity of marriage, if—

(i) **the wife is resident in Saint Lucia and has been ordinarily resident there for a period of 3 years immediately preceding the commencement of the proceedings**, and

(ii) the husband is not domiciled in Saint Lucia.

(2) In any proceedings in which the Court has jurisdiction by virtue of subsection (1), the issues shall be determined in accordance with the law which would be applicable if both parties were domiciled in Saint Lucia at the time of the proceedings."

Indeed this very section 18 was used by the Respondent against the first petition **SLUHMT 2013/0061 Georgia Kouda v. Dimitrios Adamopoulos** which at a hearing challenging the jurisdiction of the Court on this ground the Petitioner sought leave to withdraw that petition. On this occasion, the Petitioner has passed the residency test.

[52] In regard to the present issue before the Court, the locus classicus is **Spiliada Maritime Corporation v. Cansulex Limited**[1]. Lord Goff wrote the substantive judgment with which the other judges concurred. There, Lord Goff after reviewing the relevant case law at the time he issued the reminder at p.11:

> "I feel bound to say that I doubt whether the Latin tag forum non conveniens is apt to describe this principle. For the question is not one of convenience **but of suitability or appropriateness of the relevant jurisdiction.** However the Latin tag (sometimes expressed as forum non conveniens and sometimes as forum conveniens) is so widely used to describe the principle not only in England and Scotland, but in other Commonwealth jurisdictions and in the United States, that it is probably sensible to retain it. But it is most important not to allow it to mislead us into thinking that the question is one of "mere practical convenience."

[1] [1986] 3 AER 843 at p. 854

Lord Goff having reviewed the authorities summarised the following considerations:-

> "In my opinion, having regard to the authorities (including in particular the Scottish authorities), the law can at present be summarised as follows:
>
> (1) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.
>
> (2) As Lord Kinnear's formulation of the principle indicates, in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay (see, e.g., the Societe du Gaz case 1925 S.C. (H.L.) 13, 21, per Lord Sumner; and Anton on Private International Law (1967) at p. 150)…. Furthermore, if the court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country (see (6), below).
>
> (3) The question being whether there is some other forum which is the appropriate forum for the trial of the action, it is pertinent to ask whether the fact that the plaintiff has, ex hypothesi, founded jurisdiction as of right in accordance with the law of this country, of itself gives the plaintiff an advantage in the sense that the English court will not lightly disturb jurisdiction so established…. In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right … I may add that if, in any case, the connection of the defendant with the English forum is a fragile one (for example, if he is served with proceedings during a short visit to this country), it should be all the easier for him to prove that there is another clearly more appropriate forum for the trial overseas.
>
> (4) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum. These are the factors which Lord Diplock described, in

MacShannon's case [1978] A.C. 795, 812, as indicating that justice can be done in the other forum at "substantially less inconvenience or expense.

(5) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of action, it will ordinarily refuse a stay; see, e.g., the decision of the Court of Appeal in European Asian Bank A.G. v. Punjab and Sind Bank [1981] 2 Lloyd's Rep. 651. It is difficult to imagine circumstances when, in such a case, a stay may be granted.

(6) If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this enquiry, the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent evidence, that the plaintiff will not obtain justice in the foreign jurisdiction;…"

Findings and analysis

[53] The Court's first observation is that while both Parties were Greek citizens by birth and married at Greece at 2001, that save for 2 months thereafter when they resided at Greece, the marriage endured entirely outside of Greece. And indeed both children were born outside of Greece and while registered at Greece, they do not hold Greek passports and they are dual citizens of the Bahamas and Canada, and the United States of America and Canada respectively.

[54] While it may be true according to the Respondent that he only left Greece because the Bank transferred him, it is observed that at no time after termination by either the Bank or Hermes Bank did the Respondent seek employment at Greece, rather according to him, he sought employment at Canada, the United States of America and Saint Lucia.

[55] The Court observes that the children attend school at Saint Lucia, they do not follow the Caribbean curriculum but rather they attend a private school which follows the Canadian curriculum.

[56] The Court observes that both Parties had applied for residency status at both Saint Lucia and Saint Kitts & Nevis where they own 2 condominiums and the Respondent now has residency status at Saint Lucia.

[57] As to the matter of the property at Greece, on face value, it appears the Respondent has transferred to property to the Parties' children and retained life interest for Petitioner and himself. The Petitioner says that she was not consulted about this transfer and has no knowledge about the conclusion set out in the alleged transfer document.

[58] It is agreed between the Parties, that while they may have wished to raise their children in Greek traditions, this was only feasible by their home efforts as no support for same existed in the communities within which they lived throughout the Caribbean. There is here actually contest between the Parties as to the strength of the Greek traditions and language in the children's knowledge. It is admitted that the children and the Petitioner travelled to Greece on a number of occasions and that the last such visit was in 2007, some 5 years before the Parties separated, to attend the funeral of the Respondent's father.

[59] Again, the Respondent states that he made it clear to the Petitioner that they were to retain their Greek domicile. The Respondent is a Canadian citizen from 1991. The Petitioner contest the allegation of this discussion about an agreement to retain Greek domicile and says that there was no such discussion and further, all of the Respondent's immediate family live outside of Greece and that at all times she has known the Respondent to exercise his Canadian nationality and indeed when he worked for the Bank, he worked as a Canadian overseas and not as a Greek national.

[60] While the Respondent made claims about tax returns at Greece, none for the period of the marriage were disclosed to the Court.

[61] The Court observes that the Respondent has no address at Greece and indeed, nothing in the tone of the Respondent's affidavits indicates that he has any intention of returning to Greece and save for the undeveloped land transferred to the children while retaining life interest, nothing else was disclosed as connecting the Respondent to Greece.

[62] Looking at the evidence against the principles laid out **Spiliada Maritime Corporation v. Cansulex Limited** the Court ask the questions posed.

[63] Against the evidence as set out, the Court is not satisfied that some other forum is more appropriate for hearing the petition as the Respondent has not demonstrated as close a connection with Greece as warranted. All facts point to at least the Respondent being more closely connected to Canada at this stage in his life rather than Greece. The Court could find no reason why in the interest of justice, that Saint Lucia could not be an appropriate forum to hear the divorce petition.

[64] It is the Court's view that the Respondent has not discharged his burden to persuade the Court to exercise its discretion in his favour and grant a stay.

[65] As to the third question, as the Court sees it, once the Petitioner satisfied the **Divorce Act** section18 (b) (i) and (ii), she could competently file her petition at Saint Lucia.

[66] In regard to the fourth question, the Court could find no factors which point to Greece being a better or more advantageous forum. From all accounts although not recited herein, the Petitioner and Respondent being resident at Saint Lucia and the Petitioner being unemployed and living mostly on the generosity of family and friends, would be totally disadvantaged if the proceedings were filed at Greece

and she was being asked to contest them there. Further, the Petitioner does not consider herself to be domiciled at Greece.

[67] In conclusion, the Court is of the view that Saint Lucia is an appropriate forum for hearing the petition. The Court will therefore refuse to grant the stay.

[68] **Court's order:**

i. The Respondent's application is denied.

ii. The Respondent is to pay the Petitioner $1500.00 costs within 21 days.

JUCTICE ROSALYN E. WILKINSON
HIGH COURT JUDGE

BY THE COURT

REGISTRAR