[2002] BHS J. No. 159

Kohlrautz v. Kohlrautz and others

1998 No. FP/81

Bahamas Supreme Court, Common Law Side

Moore J.

Heard: .

Judgment: April 30th, 2002.

Mr. Philip Davis and Mr. Ian Winder for the Plaintiff

Ex Parte

RULING

1 **Moore J.** Franz Whilhelm Kohlrautz is an avuncular looking sexagenarian who is of German nationality but who now resides in the Bahamian city of Freeport.

2 In happier days he took as his bride the Respondent who was then a Canadian citizen in ceremonies held on 4 February 1981 in Europe in the Grand Duchy of Luxembourg. The couple cohabited in that fair country until late in 1985 when they forsook the wintry climes of Europe for the balmy ambiance of Freeport where the applicant purchased a matrimonial home in 1987. So agreeable were the salubrious Bahamian Islands, that the spouses obtained permanent residency here in August 1990.

3 Alas however, discord was to enter into their Eden. The marriage broke down with the applicant husband complaining that his wife had treated him with cruelty and had deserted him. She apparently found the State of Texas in the United States more congenial and, it would seem that on 1st December 1997, she succeeded in obtaining what was described as a Final Decree of Divorce from the Bexar County Court by default.

4 That decree, the Texan decree, was the precursor to a plethora of actions and proceedings brought against Mr. Kohlrautz in various parts of the world in pursuit of claims by his erstwhile wife, as she plainly regarded herself, for

various forms of relief arising out of the marital estate. The applicant drew especial attention to an ex parte order which purported to appoint a certain Mr. Christopher Weber as Receiver of what was claimed to be the marital estate of the parties, fifty percent of which had been awarded to the Respondent by The Texas Court.

5 Mr. Kohlrautz describes the Texas receivership as a sham. He bemoans what he sees as the malevolent pursuit of himself and his assets by the Respondent, acting through her receiver, in courts in various parts of the world. He considers that he is being harried and harassed and hounded and vexed by a multiplicity of suits in various jurisdictions by Mr. Christopher Weber, whose actions he likens to those of the relentless Inspector Javert of Victor Hugo's famous novel Les Misarabelles which was set in pre-revolutionary France.

6 In support of his contention that he, together with his associates and entities related to him, are being systematically targeted with a view to inflicting maximum financial damage upon him and his interests, the

7 against her and against Mr. Christopher Weber in Bahamian Action CL/53 of 1999 which have also not been paid.

9 Now I pause here to say, that orders of Court must be complied with unless varied or set aside or unless the Court orders a stay. The authority and efficacy of a Court order derives from obedience of it. If litigants were allowed to flout orders of competent Courts with impunity, then no one would respect the Courts or their orders and these salutary institutions, designed and developed for the pacific settlements of disputes between subjects or between subjects and the state would be stripped of their value and anarchy would reign.

10 Courts are ready to lend their assistance to all those who come before them in good faith and with clean hands. They could properly refuse to come to the aid of those who wilfully flout their orders, or seek to be heard while maintaining a state of actual contempt. For a refusal to comply with the orders of a Court is a contempt of that Court which the Court can punish by a variety of means including a refusal to hear the contemnor, or preventing the contemnor from conducting fresh proceedings until such time as the contempt is purged to the satisfaction of the Court.

11 The proceedings about which the applicant complained, were all launched from the platform of the Texas decree of divorce of 18th December, 1997. But in so far as the Courts of The Bahamas are concerned, that platform collapsed under the weight of the order of Lyons J. who on 4th August 2000 determined that the Final Default Decree of Divorce of 1st December 1997 was not recognizable or enforceable in The Bahamas. Thus the basis upon which the rash of proceedings pursuant to the Texan matrimonial decree were founded, was washed away, at least in the Bahamas, by the order the Supreme Court pronounced by Lyons J.

12 Indeed the matrimonial order recognised in The Bahamas, is that of this court pronounced by Moore J. on the 4th January 2001, the Respondent having participated in the proceedings which culminated in that order. The hearing of ancillary matters with respect to the adjustment of property commenced in 2002 in Freeport Grand Bahama and is still currently ongoing. All of the parties to that hearing and their legal advisers have participated in that hearing. Further, Ms. Jeanne I. Thompson, the Respondent's then lawyer, wrote on September 27, 2001, that her **"client is prepared to abide the outcome of any proceedings in The Bahamas and reserves the right to challenge on points of law or**

facts in The Court of Appeal, or the Privy Council, if necessary." The Respondent was thus indicating her preparedness to pursue her rights up to the very summit of the judicial system of The Bahamas.

13 Notwithstanding the proceedings in Grand Bahama, Mrs. Kohlrautz, continues her ruthless pursuit of the applicant and his assets in a number of jurisdictions abroad. She has obtained an ex parte Distraint Order and Payment Order in Switzerland in the amount of 7,850,000.00 Swiss Franks based on the Texas decree which, as has already been noted, the Bahamian Court does not recognise.

14 The applicant exhibited to his affidavit a transcript of proceedings in the United States District Court, District of Nevada, Las Vegas, Nevada in which, allegedly, Mr. Christopher Weber who described himself as the State's Court Appointed Receiver appointed by the 166th Judicial District Court of Bekar County Texas sitting in San Antonio, in extravagant and intemperate language, seeks to disparage the Bahamian Courts and the Bahamian Court System with sweeping slanders of which the following excerpt from his address before the Las Vegas Court at page 12 lines 17-19 is a typical example:

> "We are dealing with a court system that has five hundred years of history of assisting pirates, thieves, scoundrels, scallywags."

15 These remarks could have stemmed only from a most superficial and casual reading of post Columbian, colonial and contemporary Bahamian history. They are coloured by the legendary tales of the exploits of pirates and privateers which are an undoubted part of the history of the British Empire in the New World. If made without seeking to ascertain the truth, they are plainly malicious. They ignore the unbroken continuum of good governance of these Islands under British Administration and maintained after Independence, under Governors and Governors General respectively appointed by Her Majesty the Queen and Her predecessors who have sat upon the British Throne in a line of succession going back to William the Conqueror in 1066 and interrupted only during the Reformation under Oliver Cromwell. Among Colonial Governors was no less a personage than the Duke of Windsor the late uncle of the reigning Monarch.

16 Mr. Weber's wild swipe at the reputation of the Bahamas reminds one of the famous words of the English poet and essayist Alexander Pope who wrote in 1711 in 'An Essay on Criticism, 1.215-8:

> "A little learning is a dangerous thing; Drink deep, or taste not the Pierian spring: There shallow draughts intoxicate the brain, And drinking largely sobers us again."

17 One of the arts of the advocate is the art of persuasion. Persuasion is best achieved by a reliance upon reasoned argument based upon established fact. Bluster, bluff, and vilification are no substitutes for reasoned argument. Rather, they are the havens to which some advocates flee when utterly bereft of sound propositions worthy of advancement.

18 In the matter of **Tracy O'Rielly Kohlrautz v. Oilmen Participation Corporation, Docket No. CV-S-00-42 RLH** in the United States District Court District of Nevada, Las Vegas, Nevada, the transcription of the Court Recorder shows that Drew Stagg, Esq. appeared both for the Plaintiff, Mrs. Tracy Kohlrautz and Christopher Weber, Court Appointed Receiver 166th Judicial District Court of Bexar County, Texas. Mr. Stagg himself noted his appearance for the record at page 3 lines 10 - 11.

19 I am unfamiliar with the laws and rules of procedure obtaining in the 166th Judicial District Court of Bexar County. But it seems odd to Bahamian eyes that Mr. Weber could at one and the same time, be the state court appointed receiver and yet say at page 8 lines 4 - 10: ***"I am the state court appointed receiver appointed by the 166th Judicial District Court of Bexar County, Texas sitting in San Antonio. I replaced Senior Justice Solomon Casseb who was my predecessor receiver. I am also a plaintiff in this matter and I've also been sued both in my representative and in my individual capacities counter sued in this matter."*** How in those various capacities, he could effectively maintain the neutrality and objectivity required of a receiver is entirely beyond me.

20 Warming in his unwarranted attack upon The Bahamas, Mr. Weber declaimed at page 12 lines 8 - 12:

> "The G-7 and the United States State Department has blacklisted the Bahamas Government because its court system is corrupt, it is slow, and their financial sector has assisted and is assisting what I've come to call "fraudsters" in hiding assets from legitimate creditors."

21 **Levelling** his fire specifically upon our esteemed Court of Appeal, he thundered at page 12 lines 21 - 25:

> "..... when you have a situation where a court of appeal disagrees with a judge and then not only remands the matter -- or I'm sorry, reverses the matter, but then also removes the trial judge, that should -- at least to my mind, that invokes some suspicion of the process available there."

22 Ranting on at page 14 lines 22 - 25 and page 15 line 1 he spouted:

> "And, like I say, as a result we not only have a reversal but we have a removal of a judge. Which is -- I think that in itself is demonstrative of the type of dealings that the G-7 and the U.S. State Department are concerned about and why the Bahamas Court system is going to be blacklisted."

23 Further bombast was to billow forth from Mr. Weber at page 23 lines 24 - 25 and page 24 lines 1 - 4:-

> "It turns out that the Bahamian court has put a gag order on her that she's not even permitted to testify in any court in the world, which strikes me as being demonstrative once again of the skulduggery and tomfoolery that goes on in this jurisdiction, the very reason that the State Department is blacklisting that jurisdiction."

24 It would appear that a certified copy of the transcript of the Nevada proceedings was brought to the attention of the Court of Appeal of The Bahamas. Because of the gravity with which their Lordships viewed these transcripts, they adopted a course which is only reserved for the most serious of situations. They directed the Deputy Registrar of that court to write to Miss Pleasant Bridgewater, the then Attorney for Mrs. Kohlrautz in the following terms.

> "4th April, 2001
>
> Ms. Pleasant Bridgewater
>
> Attorney-at-Law
>
> P.O. Box F-41572
>
> Freeport, Grand Bahama
>
> Bahamas
>
> Dear Madam,
>
> Kohlrautz v. Kohlrautz
>
> I have been directed by the Justices of the Court of Appeal to write to you as a result of the information which has come to their Lordships' attention by way of the letter written to you by Mr Philip E Davis and copied by him to the Court.
>
> Members of the Court are distressed and disturbed by the defamatory, indeed contemptuous comments which, assuming the accuracy of the transcript of proceedings in the court in Nevada, were made by Mr. Christopher Weber.
>
> While their Lordships, of course, attribute no fault whatever to you in respect of the behaviour of the attorney who represents your client in the proceedings in Nevada, their Lordships have every reason to expect that, as a Counsel and Attorney in good standing in The Bahamas, you would make every reasonable effort to convey to the courts outside The Bahamas your own anxiety as to Mr. Weber's alleged conduct and to correct and dissociate yourself from remarks such as have been attributed to him.

> Their Lordships view the matter to be of importance and would request that you timeously inform the Court of the steps taken by you to comply with this request.
>
> Faithfully,
>
> Donna D. Newton
>
> Deputy Registrar
>
> cc: Mr. Philip E. Davis
>
> Clerk to the Hon. The Chief Justice
>
> Clerk to Hon Mr. Justice Lyons
>
> Clerk to Hon. Mr. Justice Moore"

25 It is not known what if any responses were made either by Ms. Bridgewater or by Mr. Weber. There is certainly none on record or which has come to my notice. What is beyond dispute however, is that by every cannon of courtesy and propriety, the situation cried out for a fitting response from Ms. Bridgewater and Mr. Christopher Weber, to the concerns expressed by their Lordships of the Court of Appeal.

26 Mr. Weber's kindred excesses against Mr. Gray Grande were met by a swift riposte by his Attorney Morton R. Galane, Esq. at page 27 lines 9 - 15:

> "May it please the court. I heard the gentleman who just spoke make a representation to a federal judge that Judge Voy of the Clark County family court was about to rule that Mr. Grande participated in an allegedly fraudulent scheme to enable the husband to hide his assets. He did say that on this record. That is a gross misrepresentation."

27 At page 28 lines 12 - 22 Mr. Galane countered powerfully:-

> "Thirdly, sir, this was a not too subtle effort to engender a mind set in Your Honor as a federal judge prejudicial to a party who's not even involved in today's motion. That is the most unfair thing I've ever heard an attorney do and before he - - and he's ready to take an oath. I'd be - - I'd suggest that the speaker be more careful before he raises his hand on the Holy Bible. How can you try to instill a bias in a federal judge against Mr. Grande by holding up U.S.A. Today, a new form of judicial notice I've never heard of, against a stranger to the very motion that Your Honor wanted heard?"

28 And finally, at page 29 lines 17 - 21 Mr. Galane, with a telling thrust of his forensic rapier, administered a fitting *coup de grace:*

> "It would be inappropriate for me to dignify the repeated denigration of a man who's not involved in the motion and we, too, we ask simply nothing more than an open mind as to any further proceedings where Gary R. Gande is involved."

29 If there had been any suggestion, and there could be no reasonable suggestion, that their Lordships of the Court of Appeal were unduly sensitive in instructing the Deputy Registrar to write in the terms she did, their stance is eminently vindicated by the curialistic flagellation so justifiably applied to Mr. Weber by Mr. Morton R. Galane in the face of the Nevada Court where these baseless slanders against The Bahamas were so recklessly uttered in a lamentable abuse of advocatory privilege.

30 It is not very often that a judge is able to speak in his own defence or in defence of the judicial system of which he is a member. From the very nature of their office, judges are precluded from entering into matters of public controversy, or to respond publicly to attacks launched against them from any quarter. Their own proper conduct must be its own vindication. It is therefore cowardly for anyone to level accusations against a person or a system from a quarter where he is immune from an appropriate response. Or against the judges of a jurisdiction who are in essence unable to defend themselves in the forum where the attacks are mounted.

31 What I believe that I may be allowed to do however, within permissible limits, is to attempt some correction of the many inaccuracies contained in Mr. Weber's remarks, and to characterise the judicial system of The Bahamas by reference to its nature, and to some of the outstanding judicial personages who have graced and enhanced our system over the years.

32 To begin with, the Commonwealth of The Bahamas is a parliamentary democracy within the British Commonwealth of Nations. It is, as is the United States of America and many other countries where the English settled, a former colony of the United Kingdom of Great Britain and Northern Ireland. It is therefore, an inheritor of the British system of law and of Government which has evolved in Britain and in her overseas possessions for over a thousand years.

33 The people of The Bahamas are justly proud of their fine British heritage. They have preserved many of the ceremonies and celebrations inherited from England. But more important within the present context, is its preservation of the English Common law which is the Common law of The Bahamas, together with the amplitude of British legal practices and procedures. Many of our statutory provisions are based upon English precedents. It is therefore no exaggeration to say that the laws and legal systems of The Bahamas bear close resemblance to those existing in England and the rest of the British Commonwealth.

34 The Bahamas is geographically, the closest off shore neighbour of the United States of America. There is a strong affinity between The Bahamas and the United States. In this part of the world, only Canada and Mexico with land frontiers are physically closer. But together with Canada, we in The Bahamas are part of the English-speaking world. Sir Winston Churchill in his seminal Work, **"The history of the English speaking Peoples"** describes the unique characteristics of the Anglophone peoples and of their unique contribution to the continuing evolution of humanity.

35 Many of the earliest Bahamian migrants were part of the exodus from Europe and Africa. Some came here directly while others came via the colonies which now form part of the United States. So there has always been close kinship between the people of The Bahamas and the people of the United States. Both countries are free democracies governed under the rule of law. The Bahamas is an unwavering ally of the U.S.A. Most of the tourists who visit these islands come from our esteemed neighbour to the North West. The economies of the two nations are closely integrated.

36 One of the major products which The Bahamas offers to the world is the product of financial services. Mr. Weber berated The Bahamas because of the then impending blacklisting. Perhaps he will now applaud the removal of The Bahamas from the dreaded blacklist. The removal was not by accident. It was as a result of a critical examination of the weaknesses in our arrangements coupled with a vigorous, skilful and determined correction of such loopholes as may have existed in our laws.

Within a relatively short time span, by a forced march of legislative activity, the relevant statutes and administrative arrangements were swiftly put into place with such telling effect that, as everyone in the Commercial world would now know, the sojourn of The Bahamas on that baleful blacklist was mercifully short and The Bahamas has re-emerged as a fully respected member of the International Financial Community.

THE COURTS OF THE BAHAMAS

37 Something must now be said about the Courts and the judges of The Bahamas. The Courts at every level are fully free open and public forums which operate with open doors through which the media (including the International news Media) and representatives of public, civic and non governmental organisations may enter without hindrance. The proceedings of our Courts may be freely and fully reported.

38 In addition to the summary courts presided over by fully trained and legally qualified Magistrates, there is the Supreme Court, or High Court, as it is called in some sister jurisdictions in the Commonwealth Caribbean, and the Court of Appeal which hears appeals from the Supreme Court, and in some instances, from the Magistrate's Court. The Courts so far mentioned are situated within The Bahamas.

39 At the apex of The Bahamian Court system is Her Majesty's Privy Council which, though the Highest and final Bahamian Court, normally sits in London England. It is manned in the main by the same Law Lords of the House of

Lords which is the Highest Court in the United kingdom hearing appeals from the Courts of England and Wales, Scotland and Northern Ireland. But eminent Caribbean judges have been members of Her Majesty's Privy Council. Among them are Justice Telford Georges, a former Chief Justice of The Bahamas, and Justice Edward Zacca, a former President of the Court of Appeal of The Bahamas.

40 The slanders levelled against The Bahamian judiciary by Mr. Weber are neither warranted nor precedented. Up to the time of her Independence, most of the judges of The Bahamas were of English origin. They brought with them and exercised here all of the virtues of the English judiciary. They established an atmosphere of judicial propriety and uprightness which still pervades the judicial system here up to the present day.

41 Since Independence, non-English judges have been amongst those donning the robes of the Supreme Court Justices and Justices of the Court of Appeal. All of our Chief justices, from Sir Leonard Knowles to Sir Burton Hall the present incumbent, have been without exception, judges of the highest personal and judicial integrity, and of the finest scholarship, who have enriched our law reports with judgments of the highest quality. I have so far spoken in gender neutral terms because the immediate past Chief Justice Dame Joan Sawyer, D.B.E is the first Lady to hold the office of Chief Justice. She has since gone on to record an historic double first, so to speak, by becoming the first lady to hold the Presidency of the Court of Appeal which is the office that she currently graces. In this regard, she has achieved the same distinction as earned hitherto by Sir Joaquim Gonsalves-Sabola.

42 Not all of the fine judges of the Bahamas have been of Bahamian birth. The Commonwealth of The Bahamas has succeeded in attracting to the Supreme Court and to the Court of Appeal some of the most eminent judges of the Caribbean Region and beyond. High among these must stand Sir Joaquim Gonsalves-Sabola who, having served with high distinction as Director of Public Prosecutions, Justice of the Supreme Court, Solicitor General, and Member of the Court of Appeal in his native Guyana, joined the judiciary of The Bahamas as a justice of the Supreme Court and, having risen to the pinnacle office of Chief Justice, assumed the Presidency of the Court of Appeal upon retiring as Chief Justice.

43 The Presidency of the Court of Appeal has been held by the finest legal luminaries of the Caribbean Region if not of the Common law world. In addition to Sir Joaquim Gonsalves Sabola and Dame Joan Sawyer whose names I have already mentioned, Justices Edward Zacca and Boyd Carey of Jamaica and Justice Kenneth George a former Chancellor of The Judiciary of Guyana have also adorned that office.

44 Speaking at the opening of the legal year 2002, Sir Burton Hall, the incumbent Chief Justice said:

> "Especially, but not exclusively, in the areas of financial services and shipping, the courts of The Bahamas are required to relate to and interact with courts and lawyers from around the world and this Bench should take the benefit of judges whose broader experiences enliven and enrich its talent pool. Apart from contributions from those judges whose origins lie beyond our borders who are a permanent feature of the Bench, we are joined from time to time by Professor David Hayton, a practitioner and an academic and the author of a leading textbook on the law of trusts. I favour the use of the term

"cross-fertilisation" to describe this process. I believe the view of most persons is that, while the Bench should be overwhelmingly manned by Bahamians, it need not be exclusively Bahamian".

THE INTERIM INJUNCTION

45 In the light of the foregoing circumstances, as disclosed by him in his affidavit, the applicant prayed:

> "1. That an injunction be granted restraining the Defendant her servants or agents from commencing or continuing or taking steps in any legal proceedings in any other jurisdiction in connection with the recognition enforcement or otherwise seeking to execute upon the orders contained in the Default Final Decree of Divorce dated 1 December 1997 granted by the Bexar County Court in Texas U.S.A. without leave of the Court.
>
> 2. That an injunction be granted restraining Christopher Webber (sic) his servants or agents from commencing or continuing or taking steps in any legal proceedings in any other jurisdiction in connection with the recognition enforcement or otherwise seeking to execute upon the orders contained in the Default Final Decree of Divorce dated 1 December 1997 granted by the Bexar County Count in Texas U.S.A. without leave of the Court.
>
> 3. That the costs of and or occasioned by this application be provided for."

46 The basic rule of Bahamian law is that no order may be made against a person or party to any proceedings unless that party or person was given a full opportunity of being heard by the Court or other Tribunal making the order. This is the *audi alteram partem* rule which lies at the very bedrock of our jurisprudence. There are, however, exceptions to this rule and, in appropriate circumstances, the law allows for the making of *ex parte* orders, that is to say, orders based upon the hearing of only one party to the dispute in the absence of the other party who would have had no opportunity of being heard before the making of the order. But the party against whom an *ex parte* order is made may apply to have it set aside at short notice and is entitled to an expeditious hearing.

47 An applicant seeking an *ex parte* injunction is obliged to give full and frank disclosure of all material facts. The affidavit in support must give a reasonably detached appreciation of the case: per Potter J in **Sumitomo Heavy Industries Ltd v Oil and Gas Natural Commission [1994] 1 Lloyd's Rep 45 at 62.** It follows that an ex parte order may be discharged upon application by the Respondent for material non-disclosure. **Kensington Income Tax Commissioner**, *ex parte* **Prince Edmonde de Poliznac [1917] 1 KB 264.** In **Brinks-Mat Ltd v Elcombe [1985] 3 All**

ER 188, the relevant principles were articulated by Ralph Gibson LJ. All relevant facts including those unfavourable to the applicant or favourable to the Respondent must be fully set out if they are known to the applicant after he has made all necessary inquiries: for he will not be allowed to contend that he was innocent of all facts which he could have ascertained upon making full and proper investigations. All relevant facts must be disclosed in the affidavit and not in the exhibits. In **National Bank of Sharja v Dellborg [1931] 2 Bank LR 109 at 112** per Lloyd LJ noted that:-

> "...the place to disclose the facts, both favourable and adverse, is in the affidavit and not in the exhibits. No doubt it will usually be convenient to exhibit a few key documents where it is necessary to do so to explain the case. But the recent tendency to overload the case at the *ex parte* stage and to burden the Judge with masses of documents in case something is left out, ought to be firmly resisted. If the facts are not fairly stated in the affidavit, it will not assist the Plaintiff to be able to point to some exhibit from which that fact might be extracted. If they are fairly stated then it should not avail the Defendant to show that some document, relevant on discovery, has been omitted. At the *inter partes* hearing it is different. But even at that stage, restraint must be exercised....."

48 Once an injunction is granted, it remains in force and must be obeyed until it is discharged or set aside by the Court. **Isaacs v. Robertson [1985] AC 97.** This is so even though the order should not have been made in the first instance. **Johnson v Walton [1990] 1 FLR 350; M v Home Office [1994] 1 AC 377.** The course open to a party who is aggrieved by the grant of an ex parte injunction is to apply to set it aside or to have it discharged. Nor should he have to wait unduly long to have his application to discharge heard.

49 That is why in the instant case the order enables the Respondent **to apply for the discharge of the order upon giving 48 hours notice to the applicant.** And since the court heard the applicant at short notice and found time to hear the *ex parte* application, it will treat any application to discharge as being of equal urgency and will carve the necessary time out of the existing court schedule however crowded it may be. See **Re Capital Expansion and Development Corp Ltd (1992) The times, 30 November, per Millet J.**

50 Mr. Davis cited a number of authorities in support of his application for what he called an anti-suit injunction. In **Beasant v Wood Vol XII [1878 B.415] the Law Reports Division 1 - Chancery p. 605** Jessel, M.R. identified the issue before him thus at p. 619:

> "the whole question before me is whether I ought to restrain the suit for the restitution of conjugal rights which has been threatened on behalf of Mrs. Beasant, and which would fail if it was instituted, and which I am equally well satisfied the wife did not intend to institute."

51 There had been a separation agreement between the Reverend Frank Beasant and his wife Annie Beasant. The learned Master of The Rolls thought at p. 622 that:

> "the law is therefore that a woman can contract to live separate and apart from her husband."

52 The wife was in undoubted breach of the agreement. The husband was also in breach but the court found at p. 628 that:

> "here again, if it was a breach it was a very trifling matter, and, whether it was a breach or not, it certainly in my opinion would not be a bar to the husband instituting a suit against the wife to restrain the wife from bringing an action for the restitution of conjugal rights."

53 And at p. 630:

> ".... And therefore I hold that the plaintiff has committed no material breach of the covenant."

54 And as to the injunction itself, Jessel MR declared at p. 630:

> "As regards the form of injunction in this case, I propose merely to grant an injunction to restrain Mrs. Besant from taking any action or other proceedings for the purpose of compelling her husband to cohabit with her. As regards the injunction, it must be remembered that you cannot restrain a pending motion, but you can restrain a person from instituting proceedings."

55 Though the facts in **Beasant** are by no means on all fours with the case at bar, it is none the less authority for the proposition that in an appropriate case, the court has jurisdiction to restrain a person from instituting proceedings or, if such proceedings have already commenced, to order a stay of such proceedings.

56 The present law is that there is no bar to an injunction being granted to restrain the institution of proceedings. This power is based upon the inherent jurisdiction of the Court to prevent abuses of its own process. **Forte (Charles) Investments Ltd. V. Amada [1964] Ch 240; [1963] 3 WLR 662; [1963] 2 All ER 940 CA.** This involves an exception to the general rule that there must be a substantive claim before an injunction can be granted.

RESTRAINT OF LEGAL PROCEEDINGS

57 The Court enjoys jurisdiction to restrain the institution of proceedings which are vexatious and an abuse of the process of the court. Such cases include those where a multiplicity of actions are launched which duplicate each other or which raise issues which have already been litigated before a court of competent jurisdiction. **Jacey Printers v Norton & Wright Group Ltd [1997] FSR 475; Essex Electric Ltd v. IPC Computers M.K. Ltd [1991] FSR 69.**

58 An injunction may be granted to restrain civil proceedings in jurisdictions abroad, provided that the defendant is properly amenable to the jurisdiction of the Courts of The Bahamas. In essence, the court restrains the litigant before it from commencing action abroad and can punish by contempt for a breach of its order.

59 It is true that injunctions of this kind are granted sparingly and with extreme Caution: **Bank of Tokyo Ltd v Karoon [1987] AC 45.** In that case, sitting in The Court Appeal, Akner and Robert Goff L.JJ each delivered a separate judgment affirming the decision of Bingham J, as he then was, in which he refused to grant an injunction restraining one Mr. Karoon from taking any further steps in an action that he had begun in New York against B.T.T.C., or commencing or prosecuting any other proceedings relating to the same subject matter before any other court than the English High Court. His Lordship did however order that Mr. Karoon be restrained from continuing the proceedings against B.T., who had been joined as co-defendants with B.T.T.C. There was no cross-appeal against this decision. Thus Bingham J. decided that in an appropriate case the court could restrain the continuing of proceedings abroad or, where the circumstances warranted, refuse to grant an injunction restraining a party from commencing or continuing such proceedings.

60 In the matter of what have been called anti suit injunctions, Goff LJ referred to the approaches to the resolution of these questions in the jurisdictions of the United States and in England. This is what he observed at page 59 D to 60A.

> "I recoginse that it is not merely legitimate but desirable that courts in this country should pay due regard to developments in sister common law jurisdictions, notably the United States; this is especially desirable when the court is concerned with principles of law affecting the relationship between our two jurisdictions and when we are presented with an analysis as profound as that of Judge Wilkey in *Laker Airways Ltd. V. Sabena, Belgian World Airlines, 731 F. 2d 909.* Even so, we have to proceed with due caution. Not only do we have to operate within the confines of the doctrine of precedent in this country, but we have to bear in mind that the development of the relevant principles of law in our two countries may not be identical. Frequently, however, under the influence of history and of practical pressures to which both jurisdictions are subject, it transpires that there have taken place in our two jurisdictions parallel developments which, though neither simultaneous nor identical, reveal a very similar trend.
>
> This is just what we find in the case of what American lawyers call "antisuit injunctions." At bottom, the fundamental principles appear to have developed along similar lines. Thus, the jurisdiction is very wide, being available for exercise whenever justice demands the grant of an injunction. Again, the English court does not attempt to restrain the foreign court, but operates in personam, restraining a party from instituting or prosecuting the suit in the foreign jurisdiction; though an injunction will only be granted to

restrain a person who is regarded as being properly amenable to the jurisdiction of the English Courts. Furthermore, it has been repeatedly stated that the jurisdiction must be exercised with extreme caution, indeed sparingly: this is partly because concurrent proceedings in different jurisdictions are tolerated, but also because of a desire to avoid conflict with other jurisdictions. For it is accepted, as is indeed obvious, that courts of two different jurisdictions, one in this country and one in a foreign country can have jurisdiction over the same dispute. It is not prima facie vexatious for the same plaintiff to commence two actions relating to the same subject matter, one in England and one abroad; but the court may be less ready to tolerate suits in two jurisdictions in the case of actions in rem than it is in the case of actions in personam. All these principles are well-established, and indeed non-controversial, and appear to be common to both the English and the United States jurisdictions.

But the jurisdiction to grant such an injunction has only rarely been exercised in this country."

61 In what the Rt. Hon Lord Justice Potter described as "David Bean's excellent work on Injunctions", the writer set out portions of the law on Restraint upon litigation abroad thus at page 63 of the 7th Edition which I humbly accept or representing The Law of The Bahamas.

"An injunction to prevent forum shopping should not be granted unless the applicant shows that the case could be tried in England with substantially less inconvenience and expence and that the foreign proceedings would be vexatious or oppressive. *Societe Nationale Industrielle Aerospatiale v. Lee Kui Jak [1987] AC 871:*

> "If the facts alleged disclose no cause of action justiciable in an English court, an injunction will only be granted if it would be unconscionable on the part of the defendant to pursue the foreign litigation *(British Airways Board v Laker Airways Ltd [1985] AC 58);* it is unconscionable conduct which gives the plaintiff a right under English law not to be sued on that cause of action in the foreign court. In *Airbus Industrie GIE v. Patel (1996) The Times*, 12 August the Court of Appeal restrained English residents from seeking to litigate in Texas, rather than India, against the manufacturers of an aircraft which had crashed in India. The Court described the conduct of the claimants as *'clearly oppressive.'*"

62 Mr. Davis for the applicant set out his written submission in support of the grant of the Injunction with such clarity and economy of language and so succinctly that I can d no better than to reproduce it verbatim here:-

1. "By summons filed herein on the 13th day of December 2001 the Plaintiff herein seeks the following relief:-

a) That an injunction be granted restraining the Defendant her servants or agents from commencing or continuing or taking steps in any legal proceedings in any other jurisdiction in connection with the recognition enforcement or otherwise seeking to execute upon the orders contained in the Default Final Decree of Divorce dated 1 December 1997 granted by the Bexar County Court in Texas U.S.A. without leave of the Court.

b) That an injunction be granted restraining Christopher Webber (sic) his servants or agents from commencing or continuing or taking steps in any legal proceedings in any other jurisdiction in connection with the recognition enforcement or otherwise seeking to execute upon the orders contained in the Default Final Decree of Divorce dated 1 December 1997 granted by the Bexar County Court in Texas U.S.A. without leave of the Court.

2. The said application was supported by the Affidavit of the Plaintiff filed therewith which sets out the factual matrix for the grant of the relief.

Jurisdiction

3. The court has long recognized its power to restrain or injunct a party from commencing fresh or other proceedings against a party already joined in civil proceedings. Such power has long existed and predated the **Judicature Act, 1873**. It was then called the common injunction as opposed to the special injunction.

4. The remedy survived the Judicature Act of 1873 as in 1879 in the case of *Besant v. Wood (1879) 12 Ch. D. 605* the court restrained a Defendant a wife from commencing an action against her husband for the restitution of conjugal rights.

5. Lord Justice Robert Goff recited the history of the remedy in the case of *Bank of Tokyo Ltd. v. Karon 1987 A.C. 45, 60."*

6. Analogous to the American doctrine of the anti-suit injunction, *"The jurisdiction to grant the injunction is very wide, being available for exercise wherever justice demands the grant of an injunction"* per Goff LJ in *Bank of Tokyo Ltd. V. Karon supra, page 59.*

7. The Bahamian Court in granting of the injunction acts against the Defendant in personam and is not restraining the foreign court only the action of the person over whom it has jurisdiction. It follows therefore that the injunction will attach only to persons regarded as being properly amenable to the jurisdiction of the Court.

8. Although the Court has the power it is a jurisdiction exercised sparingly and cautiously partly because of the fact that concurrent proceedings are tolerated and partly because of the desire to avoid conflict with other jurisdictions.

9. The golden thread running through the rare case where the injunctions have been granted have been the protection of the Jurisdiction of the Courts as well as to prevent an invasion of the legal and equitable rights of the Plaintiff.

See Also South Carolina Insurance v. Assurate. 1997 A.C. 24

The Petitioner's case

10. That this is a proper case for the exercise of the jurisdiction of the Court as the protection of that jurisdiction is necessary as:

a) That although the Respondent has undertaken that she will abide the outcome of the hearing and the decision of the Bahamian Court, her actions indicate otherwise in that:

   i) The Respondent continues to engage the Petitioner in other jurisdictions on the strength of the Texas decree despite her declaration that she will abide the decision of the Bahamian Court. The decision of the Bahamian Court will be an adjustment of all property of the parties. Lately the Defendant has obtained a judgment in Switzerland in the amount of $7,000,000.00 Swiss francs based on the said Texas decree. The Defendant seeks to collect on the said foreign judgment and at the same time seeks a claim for adjustment of property against the Defendant herein.

   ii) The Respondent by her Counsel has indicated that she has no respect for the Courts of The Bahamas. The Respondent asserts in foreign proceedings untruths and disparaging assaults on our legal system which attack the integrity of the judiciary and attempt to bring the entire system and the Court of Appeal in particular into disrepute.

b) That the actions of the Respondent in pursuing the same claims against the Petitioner in the many jurisdictions and refusing to pay costs in those jurisdictions besides being vexatious is manifestly unfair. Unless restrained irreparable damage will be done to the Petitioner as he will have to continue to defend himself against all these attacks.

c) Actions instituted by the Respondent and continued by her whilst she pursues the Petitioner in The Bahamas for ancillary relief and invades the legal and equitable rights of the Petitioner in the action herein. The Bahamas is the proper forum for the determination of these issues and the others are all forum non conveniens.

d) The Respondent seeks to enforce against the Petitioner for the sums she claims to be entitled under the Texas Decree whilst at the same time she seeks to obtain an Order entitling her to property under Bahamian matrimonial proceedings. A clear case of having her case of having her cake and eating it to.

Conclusion

That in all the circumstances the Relief sought should be granted".

63 Mr. Davis prayed in conclusion that in all the circumstances, the Relief sought should be granted. Having considered all the material placed before me and applying the relevant law, I granted the injunction as prayed for with liberty to the Respondent to apply for its discharge or variation upon giving 48 hours notice to the applicant.