

Judgment 49/2005

G v. G – Royal Court – 5 August, 2005 – Royal Court – 5 August, 2005 [Refer to Divorce file 4493]

Action for recovery of debt – order in 1997 by Matrimonial Causes Division for payment of lump sum by the wife – became payable in June, 2005 – application for wife to vary the 1997 order now pending – held that the two cases do not raise the ‘same issues’ – application for stay dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of August, 2005 before John Russell Finch, Esquire, Lieutenant Bailiff; sitting alone.

G

Plaintiff

and

G

Defendant

IN THE MATTER OF the application by the Defendant to stay an action by the Plaintiff for the recovery of the sum of £80,000 pursuant to an order of the Matrimonial Causes Division of 24th March, 1997.

THE COURT, on the 29th July, 2005, having heard Advocate J. B. Green and Advocate C. M. Fooks for the Plaintiff and Defendant respectively RESERVED JUDGMENT.

THE COURT, this day handed down Judgment in the terms attached hereto.

C. S. WEETMAN
Her Majesty’s Deputy Greffier

The Lieutenant Bailiff set out the relevant legal principles as follows: -

Legal Principles

9. I have had recourse to the White Book, current edition, at pp 2190-1, paragraph 9a-168 “Concurrent civil proceedings.” The position set out here is helpful and I quote it (omitting case references) as far as I have found it relevant:

“Circumstances can arise in which it becomes apparent that two (or possibly more) separate sets of proceedings (perhaps in the same court perhaps in different courts) are related in some material way and that it is just and convenient that one (or some) should be stayed pending the final determination of the other (or others).”

The note then deals with situations where the parties agree but goes on:

“In the absence of agreement amongst the parties to the effect that one set of proceedings should be stayed whilst another proceeds the question may arise whether on the application of a party (or parties) or of its own initiative the court order such a stay. The question may arise in many different circumstances and procedural settings consequently, it is not possible to state general principles as to the exercise of the discretionary jurisdiction to stay proceedings in this context. Further special consideration may arise in particular jurisdictions...”

10. Having dealt with the general principles the note then offers more detailed guidance (my numbers inserted for ease of reference):
- (i) Perhaps the clearest example of a situation in which the Court might be persuaded to order a stay would be where the several sets of proceedings involve the same parties and raise the same issues..... The advantages to be gained in avoiding a duplication of proceedings are obvious; they include the avoidance of unnecessary costs and delays and of a party being vexed more than once with, in effect, the same claim.
 - (ii) The case for a stay is less strong where there is merely a considerable degree of common ground between the two claims.
 - (iii) Some of the early authorities suggest a stay will not be granted if the issues in the several proceedings are not the same.... But this cannot be stated as a strict rule. If there are two courts faced with substantially the same question or issue, it is desirable the question or issue should be determined in only one of those two

courts if by that means justice can be done, and the court will if necessary stay one of the actions.

- (iv) A second action dealing with the same events as in the first action but alleging a different contract with different terms will not be stayed.

11. I have considered the case of ROYAL BANK OF SCOTLAND LTD v. CITRUSDAL INVESTMENTS LTD. [1971] 1 WLR 1469, which applies THAMES LAUNCHES LTD v. TRINITY HOUSE CORPORATION (DEPTFORD STROND) [1961] Ch. 197. The observation in the earlier case, which Plowman J. approved, came from Buckley J. and was:

“As I understand it, the principle is that if two courts are faced substantially with the same question, it is desirable to ensure that that question is debated in only one of those two courts if by that means justice can be done.”

In the THAMES LAUNCHES case there were concurrent civil proceedings on the construction of Acts of Parliament and a prosecution in respect of their alleged contravention. The criminal proceedings were stayed, as “the substantial point in these proceedings is the same.”

Conclusion

12. The sum became due and payable on 25th June, 2005, in accordance with a Bond dated 17th July, 1997, and an Order of the Matrimonial Causes Division dated 24th March, 1997. The wife’s application to vary this 1997 Order was dated 22nd July, 2005.
13. There may be a degree even possibly (to use the words in the White Book) a “considerable degree” of common ground between the two claims, but it is evident that the two cases do not raise the same issues or substantially the same question. The facts here do not begin to approach e.g. the situation in the THAMES LAUNCHES case.
14. In addition, the case for a stay, to my mind is less persuasive when one considers that a variation is only now sought in 2005 for matters set out clearly and unambiguously in 1997. Even taking a step back and assessing what might be termed the “broad justice” of the situation, it appears to me that no substantial grounds have been established to merit a stay of the Royal Court civil action in respect of the £80,000. I am further satisfied that justice can be done between the parties without a stay. Put shortly, the two cases under consideration plainly do not raise the “same issues” whatever the factual nexus between them.

Decision

15. The application for a stay is refused. Costs reserved.