

ROYAL COURT
(Matrimonial Causes Division)

15th July, 1994. 146.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff, and
Jurats Le Ruez and Herbert

<u>Between</u>	Mrs L	<u>Petitioner</u>
<u>And</u>	Mr L	<u>Respondent</u>

Advocate S. E. Fitz for the Petitioner
Advocate G. Le V. Fiott for the Respondent

JUDGMENT

THE LIEUTENANT BAILIFF: This hearing results from matrimonial proceedings which first came before this Court on 8th February, 1993.

5 As the course of events is unusual, we think it best to set them out in some detail.

10 The proceedings arose from a petition for judicial separation on the ground of cruelty brought by the wife, which had been consolidated with an Order of Justice under which the husband had been ousted from the matrimonial home, which was a house which he had bought.

15 The wife Petitioner gave evidence for two days and at the end of the second day (as described in Mrs L -v- Mr L (30th April, 1993) Jersey Unreported) the Court had become extremely concerned about the proceedings and suggested to the parties that they should seek to compromise.

20 Negotiations then took place between the parties and at the end of the week the Respondent's Advocate advised the Court that he considered an agreement had been reached while the Petitioner's Advocate stated that it had not.

The hearing was then adjourned, and the Respondent's Advocate, on 16th February, 1993, took out a summons in the following terms:

5 "LET the Petitioner or her Advocate attend the Royal Court to show cause why:-

10 1. THE hearing of the Petitioner's evidence and the evidence of other witnesses should not be stayed until the determination of 2 and 3 hereof and upon such stay;

15 2. THE Order of Justice (formerly case number 057/92 but now consolidated with this action) should not be dismissed and the injunctions contained therein raised; and

20 3. THAT the Petition for a judicial separation should not be either stayed or dismissed upon terms;

25 AND this on the ground that the actions have been compromised on the eleventh day of February, 1993, at approximately 13.30 hours when the Petitioner and the Respondent reached an oral agreement or compromise on terms which the parties agreed would be set out in writing to be ratified by the Royal Court.

30 4. THE costs of and incidental to this application should not be paid by the Petitioner on a full indemnity basis.

(Signed) Advocate for the Respondent

35 A copy of this summons has been filed this day.

(Signed) Greffier Substitute

DATED: the sixteenth day of February, 1993."

40 The question as to whether an agreement had been reached then went before a different Court for decision. On 30th April, 1993, that Court found that an agreement had been reached and remitted the proceedings to the Court as presently constituted.

45 The Court described the course of negotiations at p.p. 1 & 2:

50 "At the close of the hearing on Tuesday, 9th February, 1993, the Court saw both counsel in chambers and suggested that in view of the financial circumstances of the parties it might be more appropriate if they could seek a compromise rather than continue with prolonged and necessarily expensive proceedings. The Court was asked not to sit on Wednesday and Thursday, and negotiations were started. There was some discussion on the Wednesday

5 between Advocate Fiott, acting for the Respondent, and Mrs. Whittaker, acting for the Petitioner, about the possibility of the Petitioner's acquiring a house, either by renting, or purchasing, and leaving the matrimonial home for the Respondent.

10 These discussions did not come to anything, mainly because a suitable property could not be found, but also because the Petitioner was worried about the security of a proper home for her children. On the Thursday morning, the Petitioner went to Court No. 2 where the action was taking place, and met with Mrs. Hart, a Children's Officer, who had been asked to visit the family, in relation to the custody of the children. She was due to give evidence in 15 the trial but was not aware that the Court had made the suggestion which we have mentioned. In the end, she agreed to assist the Petitioner who went into one of the adjacent rooms with her and the Respondent went into another room. Mr. Fiott and Mrs. Whittaker, with the assistance of Mrs. W, a Solicitor who was one of the employers of the Respondent, discussed a possible settlement and, partly Mr. Fiott, but mainly Mrs. W, put the suggested terms to the Respondent and Mrs. Whittaker put them, in turn, to the Petitioner. The 25 whole morning was taken up with these discussions until about 1.30 p.m. At that time a number of matters had been discussed, and it is said by the Respondent, agreed to, and all that remained to be done was for Mrs. Whittaker to set down in formal language the terms to which the parties had consented and which would be presented to the Court on 30 Friday morning when it resumed".

Finally, at p.5, the Court found:

35 "Accordingly, the Court finds that there was an agreement, that it is enforceable according to the law of Jersey and remits the matter to the Court before which the consolidated actions came on 8th February, 1993".

40 The effect of this was discussed in Le Geyt -v- Mallett (8th July, 1993) Jersey Unreported, where the learned Bailiff said at p.5, para. 2:

45 Mrs L -v- Mr L was a decision only about whether an enforceable agreement had been concluded between the parties. It did not deal with the merits of that agreement; nor with whether that agreement should be ratified by the Matrimonial Causes Division, which had heard the original proceedings. In fact it went to great 50 lengths to refer its judgment and its decision back to that Court in order for it to decide whether it would nor not ratify the agreement. Therefore that case has no bearing, strictly speaking, on the question of ratification of agreements between the parties".

5 The Petitioner then appealed but withdrew her appeal before the hearing and the parties then sought to come back before this Court. After delays which do not lie at the door of the parties, we have at last reconvened.

10 Although the summons is that of the Respondent, the parties agreed that Miss Fitz, acting for the Petitioner, should put her case first.

On behalf of the Petitioner she submitted that the agreement, though reached as found by the Court, should not be ratified.

15 In this it was accepted by both counsel that the real concern of the Petitioner was that she would have to leave the matrimonial home and that she considered that it would be to the advantage of the children to stay there with her.

20 Her first submission was that the agreement should not be ratified on the grounds of public policy. It had been reached in haste and without reflection in the middle of contested proceedings; and that within two hours of agreement (as the Court subsequently found) she had advised her counsel that she was unhappy with it.

25 Furthermore, the Respondent had not acted on it.

30 It was not, she submitted, in the Petitioner's interest to rent a property and she and the children were better off where they were in the matrimonial home.

35 In her submission, the agreement sufficiently affected the interests of the children and was sufficiently prejudicial to the Petitioner that, given the way that the agreement was reached, the Court, on grounds of public policy, should not ratify the agreement.

40 She conceded however, as we think she had to do, that the issue of accommodation must have been central to the negotiations.

Finally, given the terms of Article 29 of the Matrimonial Causes (Jersey) Law, 1949, the relevant passage reading:

45 "**(1) Where a decree of divorce, nullity of marriage, judicial separation or restitution of conjugal rights has been made, the Court may, having regard to all the circumstances of the case including the conduct of the parties to the marriage and to their actual and potential financial circumstances, order:-**

50 (a) **that one party to the marriage shall pay to the other party to the marriage during their joint lives or for such term as may be specified in the order such annual or other periodic sum for the maintenance and**

support of that other party as the Court may think reasonable;

5 (b) that one party to the marriage shall pay to the other party to the marriage such lump sum or sums as the Court may think reasonable whether or not any sum is ordered to be paid under sub-paragraph (a) of this paragraph".

10 The only Court which could make an order for a lump sum payment was the Court which made the decree. This Court was not making the decree, indeed far from it, as it was, if it ratified the agreement, merely staying the proceedings presently instituted.

15 In answer Advocate Fiott submitted first that an agreement had indeed been reached and the Court had so found; and that where an agreement had been reached it should ordinarily be respected.

20 Second, that the Respondent must have taken advice before the proceedings; she was advised during the negotiations and that her then advocate, Mrs. Whittaker, was experienced in these matters, and would have been able to assess her client's evidence over the first two days in conducting the negotiations and advising on them.

25 Third, that, as conceded by Miss Fitz, the issue of accommodation was central. That the Respondent wanted to live at home arose from a simple financial requirement: the parties, although reasonably well off, are not wealthy; the Petitioner would get a considerable rent rebate (a point conceded by Miss Fitz) whilst the Respondent would not. We may say that we saw considerable force in this submission.

30 In his view there is an agreement which was reached which was the same as any other agreement. For this he relied on a dictum of Lord Atkin in Hyman -v- Hyman (1929) All ER 245 HL, at p.257:

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40 "It seems not out of place to make this obvious reflection, for a perusal of some of the cases in the matrimonial courts seems to suggest that at times they are still looked at askance, and enforced grudgingly. But there is no caste in contracts. Agreements for separation are formed, construed and dissolved and to be enforced on
45 precisely the same principles as any respectable commercial agreement, of whose nature, indeed, they sometimes partake. As in other contracts stipulations will not be enforced which are illegal as being opposed to positive law or public policy. But this is a common
50 attribute of all contracts, though we may recognise that the subject-matter of separation agreements may bring them more than others into relation with questions of public policy".

So far as the effect of Article 29 of the Matrimonial Causes Law was concerned, the position was quite straightforward. An agreement had been reached which should be ratified and acted on.

5 As and when divorce proceedings were finally heard and the decree pronounced, the Court which pronounced the decree would have the power to make an order at variance with the agreement if ratified, although of course the agreement would be before it. It would be the duty of the Court hearing the decree nisi to consider
10 all the circumstances and to decide what order to make.

As far as the point regarding pressure on the parties is concerned, this was dealt with by the Court when they found the agreement to have been made. At p.4 the Court said:

20 *"There was obviously some pressure on the parties but the Court is satisfied that that pressure was not such as to prevent an agreement's being reached. Mrs. Whittaker agreed that she and the Respondent had discussed fully the implications of each of the matters discussed and that negotiations had taken place in a calm atmosphere. The Court is satisfied that the main heads of agreement had been reached before Mrs. Whittaker attempted to qualify what had been agreed, notwithstanding that the Petitioner said that she had not committed herself".*
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Mrs. Whittaker was present and we find no substance in this submission.

30 So far as concerns the point raised by the terms of Article 29 of the Matrimonial Causes Law is concerned, we find that the submissions of Advocate Flott accurately represent the position so that whatever we decide, it will be for the Court pronouncing the decree to make such order as it thinks fit after considering all
35 the circumstances.

This does not, in our view, prevent us from ratifying an agreement at this stage if we think it right to do so.

40 It is clear that the question of accommodation was of central importance. Mrs. Whittaker is an experienced counsel and we find find it inconceivable that she should not consider the position.

45 In our view, on what is before us, the agreement was a sensible arrangement in what are very difficult circumstances and, although we realise that this is not, for the reasons adumbrated above, a final decision, we have no hesitation in ratifying the agreement. In doing so we note an undertaking by counsel for the Respondent that the Respondent will not require the Petitioner to
50 remove from the matrimonial home for three months from today.

It remains only to stay the petition for Judicial separation; to strike out the Order of Justice three months from today or

sooner should the Respondent regain possession of the matrimonial home before that date.

Authorities

Foskett: The Law and Practice of Compromise (1991; 3rd Ed'n):
p.p. 211: para. 16-03
p.p. 255-261: paras. 19-29 - 19-35.
p.p. 267-270: paras. 19-42 - 19-45.
p. 290: para. 19-77.
p. 33: paras. 3-26 - 3-27.

Hyman -v- Hyman (1929) All ER 245 HL.

Matrimonial Causes (Jersey) Law, 1949, as amended: Article 29.

Le Geyt -v- Mallett (8th July, 1993) Jersey Unreported.