



Analysis  
As of: Dec 05, 2012

**Evelyn Cooperman, Plaintiff, v. Alvin Cooperman, Defendant**

**[NO NUMBER IN ORIGINAL]**

**Supreme Court of New York, Special Term, New York County**

**62 Misc. 2d 745; 309 N.Y.S.2d 683; 1970 N.Y. Misc. LEXIS 1770**

**March 27, 1970**

**DISPOSITION:** [\*\*\*1] Accordingly, this application is denied and the cross motion granted, both, however, without prejudice to the institution of a proper proceeding in this court or an appropriate proceeding in the Family Court.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** After defendant former husband failed to make alimony payments awarded by a court in Mexico, plaintiff former wife filed a motion to enforce the Mexican judgment and sought to punish the husband for contempt. The husband filed a cross motion to vacate the court's subsequent order to show cause and filed a motion to dismiss for lack of jurisdiction over the parties' divorce.

**OVERVIEW:** The court first considered whether it had jurisdiction to enforce a foreign court's divorce decree. *N.Y. Fam. Ct. Act § 466(c)* had been amended to permit the family court and the state supreme court to entertain applications to enforce and modify the alimony and support provisions of foreign decrees, regardless of the grounds on which the decrees were granted. Thus, the court had jurisdiction to consider the wife's application to

enforce or to modify the alimony provisions of the Mexican divorce decree. However, the court noted that the wife had not complied with other procedural prerequisites to obtain relief. *N.Y. Dom. Rel. Law § 245* provided that when a husband defaulted in making alimony payments under a divorce decree rendered in another state, and when it appeared presumptively that the payments could not be enforced otherwise, then the court had the discretion to order the husband to show cause why he should not be punished for failure to make the payments. Civil contempt proceedings could then ensue if appropriate. Under § 245, the remedy of contempt was available to the judgments of other states only after they had been reduced to judgments in the New York courts.

**OUTCOME:** The court denied the wife's application for contempt and granted the husband's cross motion to dismiss, without prejudice to the wife's refileing an appropriate pleading with the court or with the family court.

**CORE TERMS:** contempt, decree, alimony, divorce, disobedience, matrimonial, divorce decrees, contempt proceedings, entertain, modify, foreign judgment, failure

to comply, directing, punish, sister, jurisdiction to enforce, proper proceeding, competent jurisdiction, irrespective, predecessor, prescribed, empowered, punished, altered, exempt, ensue

#### **LexisNexis(R) Headnotes**

***Civil Procedure > Remedies > Provisional Remedies > Sequestrations***

***Civil Procedure > Sanctions > Contempt > General Overview***

***Criminal Law & Procedure > Trials > Judicial Discretion***

[HN1] *N.Y. Dom. Rel. Law* § 245 provides: Where the husband, in an action for the enforcement in this state of a judgment for divorce rendered in another state, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced, by means of the sequestration of his property, or by resorting to the security, if any, given as prescribed by statute, the court, in its discretion, may make an order requiring the husband to show cause before it at a time and place therein specified why he should not be punished for his failure to make the payment; and thereupon proceedings must be taken to punish him, as prescribed in *N.Y. Jud. Law art. 19* for the punishment of a contempt of court other than a criminal contempt.

***Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend***

***Family Law > Marital Termination & Spousal Support > Spousal Support > Jurisdiction***

***Family Law > Marital Termination & Spousal Support > Spousal Support > Modification & Termination > General Overview***

[HN2] *N.Y. Fam. Ct. Act* § 466(c) provides in part that the family court may entertain an application for the enforcement or modification of an order or decree granting alimony or support entered by a court of competent jurisdiction not of the state of New York.

***Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Jurisdiction > General Overview***

***Family Law > Marital Termination & Spousal Support > Spousal Support > Enforcement > General Overview***  
***Family Law > Marital Termination & Spousal Support > Spousal Support > Jurisdiction***

[HN3] Both the family court and the supreme court, by virtue of *N.Y. Const. art. VI*, are empowered to entertain applications to enforce and modify the alimony and support provisions of foreign decrees, irrespective of the grounds upon which such decrees were granted.

***Civil Procedure > Judgments > Entry of Judgments > Enforcement & Execution > General Overview***

***Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review***

***Family Law > Marital Termination & Spousal Support > Spousal Support > Enforcement > General Overview***

[HN4] Although *N.Y. Fam. Ct. Act* § 466(c) enlarges the jurisdiction of the state supreme court so as to include all foreign matrimonial decrees among the class of judgments subject to enforcement, it is *N.Y. Dom. Rel. Law* § 245 that governs the procedural format which must be pursued in order to effect such enforcement by way of contempt.

***Civil Procedure > Judgments > Entry of Judgments > Enforcement & Execution > Foreign Judgments***

***Civil Procedure > Sanctions > Contempt > General Overview***

***Family Law > Marital Termination & Spousal Support > Spousal Support > Enforcement > General Overview***

[HN5] Under *N.Y. Dom. Rel. Law* § 245, the judgment, disobedience of which would warrant punishment by contempt, is not the judgment entered in the other State, but the judgment or order in the New York action for the enforcement of the former. In other words, the remedy of contempt extended by § 245 is held available to the judgments of other States only after such judgments had been reduced to judgments in the courts of New York State, this expressly being the means provided by the legislature for enforcement by contempt.

***Civil Procedure > Judgments > Entry of Judgments > Enforcement & Execution > Foreign Judgments***

***Civil Procedure > Sanctions > Contempt > General Overview***

***Family Law > Marital Termination & Spousal Support > Spousal Support > Enforcement > Contempt***

[HN6] Although the amendment of *N.Y. Fam. Ct. Act* §

466(c) broadens the class of non-New York judgments to which enforcement relief can be extended by the state supreme court, it in no way alters, amends or abrogates the procedures mandated by *N.Y. Dom. Rel. Law § 245* as a prerequisite to achieve such enforcement by way of contempt. As a result of the amendment of *N.Y. Fam. Ct. Act § 466(c)*, all foreign judgments now occupy the same position as was previously accorded only to the judgments of sister States entered on grounds recognized in New York. But there is nothing contained in that amendment which exempts all, or any, of such judgments from the unaltered requirement of *N.Y. Dom. Rel. Law § 245* that before enforcement by contempt proceedings may ensue there must first be disobedience of a judgment or order in an action for the enforcement in New York of a judgment for divorce rendered in another state.

#### HEADNOTES

**Husband and wife -- enforcement of alimony provisions of foreign divorce decrees -- Supreme Court now has jurisdiction to enforce alimony provisions of Mexican divorce decree granted to defendant husband -- under Domestic Relations Law ( § 245) enforcement cannot be by direct contempt proceedings as here, but first there must be disobedience of order or judgment in action in this State for enforcement of judgment for divorce rendered in another State; application here denied and cross motion to dismiss is granted without prejudice.**

1. As a consequence of the amendment in 1965 of subdivision (c) of *section 466 of the Family Court Act* both the Family Court and the Supreme Court (by virtue of article VI of the Constitution) were empowered to entertain applications to enforce and modify the alimony and support provisions of foreign divorce decrees irrespective of the grounds upon which such decrees were granted. The Supreme Court therefore has jurisdiction to enforce [\*\*\*2] or modify the alimony provisions of a Mexican divorce decree granted to defendant husband.

2. The amendment of *section 466 of the Family Court Act* did not exempt such judgments from the requirement of *section 245 of the Domestic Relations Law* that before enforcement by contempt proceedings may ensue there must first be disobedience of a judgment or order "in an action \* \* \* for the enforcement in this state of a judgment for divorce \* \* \* rendered in another

state". Since in this case plaintiff has moved directly to punish defendant for contempt for his failure to comply with the alimony provisions of the Mexican decree, her application is denied and defendant's cross motion to dismiss is granted without prejudice to plaintiff's institution of a proper proceeding.

**COUNSEL:** *Booth, Lipton & Lipton (Thomas C. Lambert of counsel)*, for plaintiff.

*Becker & London* for defendant.

**JUDGES:** Harry B. Frank, J.

**OPINION BY:** FRANK

#### OPINION

[\*745] [\*\*684] This is a novel application brought on by order to show cause wherein plaintiff seeks to have defendant punished for contempt for his failure to make alimony payments alleged to be due under a judgment of divorce granted to the defendant [\*\*\*3] in Chihuahua, Mexico, on May 24, 1968.

Defendant cross-moves to vacate the order to show cause and to dismiss the application for failure to state a claim upon which relief can be granted on the ground that there is neither a pending matrimonial action between the parties nor an underlying decree "made by a court of competent jurisdiction" directing payment by defendant of a specified amount in which he has been adjudged in arrears.

Plaintiff contends that *section 245 of the Domestic Relations Law* and *section 466 (subd. [c], pars. [i], [ii]) of the Family Court Act*, as amended in 1965, invest this court with the power to directly enforce, by way of contempt proceedings, the alimony provisions of a foreign judgment or decree of divorce.

*Section 245 of the Domestic Relations Law* provides as follows: [HN1] "Where the husband, in an action \* \* \* for the [\*746] enforcement in this state of a judgment for divorce \* \* \* rendered in another state, makes default in paying any sum of money as required [\*\*685] by the judgment or order directing the payment thereof, and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced, by means of the [\*\*\*4] sequestration of his property, or by resorting to the security, if any, given as prescribed by statute, the court,

in its discretion, may make an order requiring the husband to show cause before it at a time and place therein specified why he should not be punished for his failure to make the payment; and thereupon proceedings must be taken to punish him, as prescribed in article nineteen of the judiciary law for the punishment of a contempt of court other than a criminal contempt". (Italics added.)

Section 466 (subd. [c]) of the Family Court Act, as amended in 1965, [HN2] provides in pertinent part that the Family Court may entertain an application for the enforcement or modification of an order or decree granting alimony or support entered by "a court of competent jurisdiction not of the state of New York".

Prior to the amendment of section 466, as above set forth, the enforcement provisions of *section 245 of the Domestic Relations Law* (and its identical predecessor, Civ. Prac. Act, § 1172) were held to have no application to the matrimonial decrees of foreign countries (*Boissevain v. Boissevain*, 252 N. Y. 178), and could be used to enforce the decree of a sister State only [\*\*\*5] if such degree had been entered on a ground which was recognized as a valid basis for divorce in this State (*Matter of Seitz v. Drogheo*, 21 NY 2d 181).

This limited applicability of *section 245* was, however, markedly altered by the afore-noted amendment of subdivision (c) of *section 466 of the Family Court Act*. As a consequence of such amendment [HN3] both the Family Court and the Supreme Court (by virtue of article VI of the Constitution) were empowered to entertain applications to enforce and modify the alimony and support provisions of foreign decrees irrespective of the grounds upon which such decrees were granted (*Matter of Seitz v. Drogheo*, *supra*). In light of such result, there is no question that this court now has the requisite *jurisdiction* to enable it to entertain an application to enforce or modify the alimony provisions of a foreign matrimonial decree such as that asserted by the plaintiff.

The critical question in this case, however, is whether plaintiff has proceeded properly in order to obtain such enforcement by way of contempt.

[\*747] [HN4] While the amendment of *section 466* (subd. [c]) of the Family Court Act had the effect of enlarging the jurisdiction [\*\*\*6] of this court so as to include all foreign matrimonial decrees among the class of judgments subject to enforcement, it is *section 245 of*

*the Domestic Relations Law* which governs the procedural format which must be pursued in order to effect such enforcement by way of contempt.

[\*\*686] As previously noted, *section 245* authorizes the punishment for contempt of the husband for the disobedience of a judgment or order "in an action \* \* \* for the enforcement in this State of a judgment for divorce \* \* \* rendered in another State", directing the payment of money. The precise meaning of this provision becomes clear upon reference to the manner in which it was applied prior to the amendment of *section 466* (subd. [c]), when it was not available to all foreign matrimonial judgments but only to those of sister States entered on grounds recognized in New York. At that time, when the contempt provisions of *section 245* (or its predecessor) were resorted to for the enforcement of an appropriate sister-State decree, it was held that such section did not grant power to proceed directly for contempt upon a failure to comply with the out-of-State decree but, by its very language, required in [\*\*\*7] the first instance that there be an order or judgment in an action in this State for the enforcement of the foreign judgment. It was made very clear that [HN5] the judgment, disobedience of which would warrant punishment by contempt, was not the judgment entered in the other State, but the judgment or order in the New York action for the enforcement of the former. In other words, the remedy of contempt extended by *section 245* was held available to the judgments of other States *only* after such judgments had been reduced to judgments in the courts of this State, this expressly being the means provided by our Legislature for enforcement by contempt (*Griffin v. Griffin*, 275 App. Div. 541; *Smith v. Smith*, 249 App. Div. 660; *Chamberlain v. Chamberlain*, 32 Misc 2d 308).

[HN6] While the amendment of *section 466* (subd. [c]) of the Family Court Act broadened the class of non-New York judgments to which enforcement relief could be extended by this court, it in no way altered, amended or abrogated the procedures mandated by *section 245* as a prerequisite to achieve such enforcement by way of contempt. As a result of the amendment of *section 466* all foreign judgments now occupy [\*\*\*8] the same position as was previously accorded only to the judgments of sister States entered on grounds recognized in New York, but there is nothing [\*748] contained in that amendment which exempts all, or any, of such judgments from the unaltered requirement of *section 245*

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that before enforcement by contempt proceedings may ensue there must first be disobedience of a judgment or order "in an action \* \* \* for the enforcement in this state of a judgment for divorce [etc.] \* \* \* rendered in another state". Since such requirement still prevails, the procedure followed by plaintiff in this case -- i.e., moving directly to punish defendant for contempt upon his failure to comply with the alimony provisions of the Mexican decree -- cannot be sustained.

Of course, while the instant procedure is improper

insofar as this court is concerned, it may be otherwise in the Family Court which has [\*\*687] its own rules and forms pertaining to enforcement proceedings (see *Matter of Seitz v. Drogheo, supra*).

Accordingly, this application is denied and the cross motion granted, both, however, without prejudice to the institution of a proper proceeding in this court or an appropriate [\*\*\*9] proceeding in the Family Court.