



[2012] JMSC Civ 56

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010HCV 03675

BETWEEN DIEDRE ANN HART-CHANG APPLICANT

AND LESLIE CHANG RESPONDENT

D. Kitson, S. Ridsden-Foster and T. Gibbs instructed by Livingston Alexander & Levy
for the Claimant

G. Steer and B. Hinds for the Defendant

Heard: May 8 and 11, 2012

*Disclosure - Property (Rights of Spouses) Act-
meaning of "property"- property outside of the
jurisdiction - property acquired after separation*

Lawrence-Beswick J.

[1] This is an application by Mrs. Hart-Chang for Mr. Chang, the respondent, to disclose and provide information to her about properties which he owns or jointly owns or in which he has an interest beneficially or legally. They are married but are now separated and are concerned with a division of property.

[2] The purpose of this request is stated to be to provide information to the Court to allow the determination as to whether Mrs. Hart-Chang has an interest in any of the properties and if so the extent of such interest.

[3] Counsel for both parties agree that the issue of disclosure is governed by Part 28 of the Civil Procedure Rules. Part 28.4(1) provides that "where a party is

required by any direction of the Court to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.” Part 28.6(5) concerning specific disclosure, also restricts disclosure to those documents which are directly relevant to the issues.

[4] I need therefore to determine if the information which is being requested is directly relevant to the matters in question.

[5] The main application before the Court is for division of property under section 13 of the Property (Rights of Spouses) Act (PROSA) which allows a spouse to apply for the division of property to which the other spouse is entitled. Section 14 provides that the Court may order the division of the family home or other property as it thinks fit, taking into account specified factors. One such factor is the contribution, financial or otherwise, directly or indirectly, of the applicant spouse, to the acquisition, conservation or improvement of the property in question.

[6] It follows from this that as it concerns each of the properties about which disclosure is sought, where there is evidence that Mrs. Chang made a contribution to each, that evidence would support her application for a portion of Mr. Chang’s property when the application is heard in a trial.

[7] **BACKGROUND AND ARGUMENTS**

Mr. and Mrs. Chang were married in 1995 and have lived separate and apart since January 10, 2008. Mrs. Chang asserts that when they lived together she looked after their home and child thereby allowing Mr. Chang to develop his businesses and prosper. She says that she gave up her career in order to do this and further, she contributed to him as his confidante, giving him her opinion of his ideas for his business.

[8] She specifies particular properties about which she wishes information but extends the enquiry generally to his relevant property or assets. I now refer to the individual properties which she has identified.

[9] TOWNHOUSE AT 1 LANDS CREEK

This is acknowledged as being the home which was purchased three (3) years after they were married and in which she now lives.

[10] APARTMENT AT BRAEMAR HOUSE, 1 NORBROOK ROAD

Mr. Chang lists this as his current address.

APT AT MANOR COURT TOWERS

34C MANOR PARK COURT

In her affidavit, Mrs. Chang says she is aware of Mr. Chang having an interest in these properties. For his part Mr. Chang says that they are owned by a company. He exhibited a copy of the Certificate of Title of 1 Norbrook Rd which showed that on February 15, 2010, it was transferred to a company registered in St. Lucia and that consideration for it was "in pursuance of the Order of the Supreme Court of Judicature of Jamaica..."

The other copy title exhibited refers to land at One Constant Spring Estate, registered at Volume 1380 Folio 598 being transferred to another St. Lucian company on July 7, 2008. No civil address is given.

[11] 1 HARBOUR VIEW DRIVE

Mrs. Chang acknowledges that this property was acquired after their separation but states that she and her husband had looked at it together and it was she who asked him to purchase it for them to live there. She asserts that the funds for it came from an account in St. Lucia. Her husband states that the property is owned by a company and the money for its purchase came from his inheritance from his parents.

[12] COFFEE FARM

She is aware of his interest in this.

[13] BUILDING AT MAIN STREET, OCHO RIOS

She is aware of his interest in this.

[14] SHARES IN SURREY PAVING

Mrs. Chang exhibits a copy of the annual returns of this company indicating that her husband owns 47.9% of it. She alleges that she set up its current office and was very interested in being a part of the company. Mr. Chang acknowledges that he has not disclosed the extent of his interest in this company and agrees to do so whilst indicating that his wife never showed interest in it.

Mrs. Chang is also aware of her husband establishing Surrey Paving and Aggregate Co. (Caribbean) Ltd. in 2006.

[15] SHARES IN ASPHALT EMULSION LTD

Mrs. Chang alleges that Surrey Paving owns 99.8% of this company. Counsel for Mr. Chang alleges that Mrs. Chang makes no claim to shares standing in his name.

[16] ACCOUNT AT Jamaica Money Market Brokers (JMMB), GUARDIAN ASSET, National Commercial Bank (NCB)

Mr. Chang asserts that he has no money at JMMB or Guardian Asset Management though he has accounts at NCB and the Bank of Nova Scotia (BNS).

[17] PROPERTY OUTSIDE JURISDICTION

Mr. Chang states that the only asset he has in the USA is a stock portfolio which he and his siblings inherited from his mother when she died in 1991 before he had met Mrs. Chang. He never added money to the portfolio. He disputes this Court's jurisdiction to hear matters concerning foreign immovables and does not submit to this Court's jurisdiction to do so. Further, he maintains that there is no evidence in any affidavit to support a claim to property outside of Jamaica.

ANALYSIS

[18] TOWNHOUSE AT 1 LANDS CREEK

The evidence is that the Changs had lived together as a family at this address. Section 14 of PROSA provides that the Court may make an Order

for the division of the family home. The Act recognises a family home as one that is wholly owned by either spouse and used habitually by the spouses as the only or principal family residence and which is used wholly or mainly for the purposes of the household.

As regards this property, Mrs. Chang in my view has the right to the details of the property and such information would be relevant to her claim under the PROSA.

[19] As it concerns the APT AT BRAEMAR HOUSE, 1 NORBROOK ROAD, the APT AT MANOR COURT TOWERS and the property at 34C MANOR PARK COURT there is no challenge to Mr. Chang's assertion that the properties are not owned by him but rather by companies. Counsel for Mr. Chang relies on **William Clarke v. Gwenetta Clarke**¹ to support his argument that they should therefore not be considered as relevant to the claim as the properties could not fall under PROSA since they do not belong to him personally and therefore information about them ought not to be disclosed.

[20] PROSA defines property as including "any real or personal property, ...or interest in real property, any money....debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled". [Emphases mine]

[21] **Clarke's** case concerned the issue as to whether Mr. Clarke's settlement/retirement package was a chose in action. Only if it were a chose in action would the package fall within the meaning of "property" as defined in PROSA and be subject to an order to disclose its terms to Mrs. Clarke.

[22] The situation here differs from **Clarke's** case. There could hardly be credible argument raised as to whether or not these properties said to be owned by others, are real property whereas with **Clarke**, the issue of whether the settlement/retirement package was a chose in action had been capable of robust and credible debate.

¹ [2012] JMCA App.2

[23] In my view, these properties which Mr. Chang asserts do not belong to him can accurately be described as real property and would fall clearly within the definition of “property” within PROSA.

[24] If it can be shown that it is in fact accurate that the properties are owned by companies, not by Mr. Chang personally, then the next question must be as to whether Mr. Chang has a right himself through the company to any interest in the property. The resolution of that question would be the task of the trial judge and if it be determined that such be the case then Mrs. Chang would be entitled to raise the issue as to whether she is entitled to a portion of the property. I therefore regard information concerning Mr. Chang’s interest in these properties as being relevant to Mrs. Chang’s claim under PROSA.

[25] 1 HARBOUR VIEW DRIVE

It is agreed that this purchase occurred after the Changs separated. Here too there is the assertion that a company owns it. Section 14 of the PROSA empowers the Court to divide property other than the family home and “property” is defined as property to which either spouse is entitled. The Act does not appear to place any limit on the time within which the entitlement would have had to have arisen though no doubt that would be a factor to be considered in determining the entitlement of a claimant.

[26] It may be argued that Mrs. Chang does not become entitled to a portion of 1 Harbour View Drive simply because she visited the premises with her husband before their separation and asked him to purchase it for the family to live in. However, it would be for her to argue her case of entitlement before the trial judge and await that determination. Information about Mr. Chang’s interest in this property is therefore relevant to Mrs. Chang’s claim which is to be determined at trial.

[27] Mrs. Chang may well be correct that her husband has an interest in a COFFEE FARM and a BUILDING AT MAIN STREET, OCHO RIOS. He must, in my view, provide her with information concerning his interest in these properties

so that a determination can be made as to whether he does have an interest at all and if so, whether Mrs. Chang is entitled to any portion of the properties.

- [28] As it concerns SHARES IN SURREY PAVING, Mrs. Chang supports her assertion of Mr. Chang's interest by exhibiting a copy of the Company's returns. The connection which she alleges exists between Surrey Paving and ASPHALT EMULSION LTD makes it clear that she would be entitled to information concerning both in order to seek to support her claim for a portion of that property.
- [29] Mr. Chang acknowledges that he has not told his wife the amount that is in his National Commercial Bank account and no doubt he recognises that she needs that information. He says he had money in the Bank of Nova Scotia. Though his wife had not specifically sought information on that, he would also need to give her that information. Where he says he has no accounts in particular financial institutions, the bald assertion by his wife that he does have some, would not be sufficient to cause a specific order to be made for information. There would have to be more information provided in order for the Court to be assured that it does not act in vain.
- [30] PROPERTY OUTSIDE JURISDICTION has attracted the attention of Mrs. Chang. As I interpret the definition of "property" in the PROSA it appears that the alleged inheritance from Mr. Chang's mother would also fall under that definition because of the absence of time limit stated within which the property which may be subject to being divided, should have been acquired.
- [31] Mr. Chang disputes this Court's jurisdiction to hear matters concerning foreign immovables. Counsel for Mr. Chang argues that the fulsome submissions by Counsel for Mrs. Chang that this Court does not have jurisdiction over foreign immovables are premature. I agree that the submissions are premature. In this application the concern is with disclosure. The question as to whether a Court in Jamaica can effectively make an Order concerning foreign immovables either directly, affecting the land, or indirectly, by making Orders

concerning the owner personally, is not within the ambit of an application for disclosure.

- [32] Even if it is true that this Court cannot adjudicate on foreign immovables, nonetheless if it is shown that Mr. Chang has an interest in them, that very fact may provide material for submissions as to the extent of any division of the property within the jurisdiction.

CONCLUSION

- [33] I must emphasise that the purpose of disclosure in this matter is to provide relevant, accurate information which may be submitted to the trial judge to assist to determine in the most informed way if Mrs. Chang is entitled to any portion of her husband's properties and if so, in what proportion.
- [34] I am mindful of the arguments that Mrs. Chang did not contribute to the acquisition, conservation or improvement of the properties and indeed that some were acquired before Mr. and Mrs. Chang even met and at least one after they had gone their separate ways. I am also mindful of the submissions that Mrs. Chang's contributions to assisting her husband succeed are grossly exaggerated.
- [35] However, the law mandates the trial judge to weigh varied factors, including Mrs. Chang's contribution, in coming to the proper ultimate decision as to the extent of her entitlement, if there is any entitlement at all. The determination of the truth of the divergent assertions is not within my purview as I seek in this application only to determine if the information to be disclosed is relevant to the issues.
- [36] It is my view that the information concerning properties owned by Mr. Chang either personally or otherwise, here or abroad, must be relevant to the claim being mounted by his wife, that she is entitled to a portion of his properties.

[37] It follows from the above discussion that the Orders I make are in accordance with paragraphs 7 of the Further Amended Notice of Application for Court Orders, filed October 7, 2011, to wit.

That the defendant do file and serve on the claimant's attorneys-at-law an affidavit disclosing and identifying full particulars of Mr. Chang's property, the nature and full value of assets both real and personal whether within the jurisdiction, or outside and their whereabouts and whether the same are held in his own name or held jointly with others or held by nominees or otherwise on his behalf and without prejudice to the generality of the foregoing specifying:

The identity of all bank accounts in his sole name or jointly held or held by nominees or otherwise on his behalf and the sums standing to his credit in such accounts; and

Any real property or personal property or other assets monetary or goods, owned by Mr. Chang and the whereabouts of the same and the names and addresses of all persons who have and may be in possession or custody or control of any such assets, money or goods at the date of this Order.

The information required herein is to be furnished by the defendant to the claimant's attorneys-at-law on or before May 24, 2012 at 4:00p.m.

[38] No order as to costs.