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**IN THE FAMILY COURT
AT DUNEDIN**

**FAM-2013-012-000230
[2016] NZFC 2165**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	JAZZ SHELTON Applicant
AND	CHARLIE WATKINS Respondent

Hearing: 11 March 2016

Appearances: R Crossman for the Applicant
No appearance by or for the Respondent
J Guest as Counsel to Assist

Judgment: 11 March 2016

ORAL JUDGMENT OF JUDGE M B T TURNER

Introduction

[1] These proceedings are under the Property (Relationships) Act 1976. The applicant is Ms Shelton; the respondent Mr Watkins. The proceedings were commenced in 2013 and are before me today by way of a formal proof hearing.

Timeline

[2] It is useful to set out a summary of the timeline in this case. The proceedings were initially filed on 27 March 2013. They were not able to be served on Mr Watkins and, accordingly, in May 2013 an application for substituted service was filed. An order was made on 16 May and substituted service was effected on Mr Watkins on 24 May.

[3] He took no steps. On 26 June a notice of formal proof hearing was issued. Mr Watkins advised the Court on 12 July that he was acting for himself and had only recently been released from prison. No further steps were taken by him but the formal proof hearing was vacated.

[4] A direction was made on 31 July that Mr Watkins attend for examination and the file was transferred to the Auckland Family Court for that purpose.

[5] Nothing further was heard from Mr Watkins, resulting in Ms Shelton making an interlocutory application for inspection of documents so as to advance the case. Orders were made in September 2013.

[6] On 18 September a further notice for examination was issued. Mr Watkins failed to appear at the hearing on 28 November and the file was returned back to the Family Court in Dunedin.

[7] In April 2014, at a judicial conference, various directions were made, including that Mr Watkins attend for examination and counsel to assist the Court, Mr Guest, was appointed. The examination scheduled for 17 June had to be abandoned as Mr Watkins had not been served with the minute requiring his attendance.

[8] At a further judicial conference an application for substituted service to advise Mr Watkins of the examination was made and a new date, 19 August 2014 was set. On that date he failed to appear. Further steps were then taken by Ms Shelton to advance matters by seeking orders for the inspection of documents held by an accountant.

[9] A further hearing for the examination of Mr Watkins was then set. He failed to appear. Subsequently, the Court was advised that he was subject to an electronically monitored sentence and a warrant for his arrest was issued. Police were directed to arrest him for the purpose of examination. That did not occur and as a consequence the examination scheduled for 24 August 2015 did not take place.

[10] On 28 August the Court made an order for interim distribution of assets in favour of Ms Shelton.

Hearing

[11] On 5 February the Court advised counsel of a formal proof hearing for 15 February. Unfortunately, that date was not suitable and the matter was adjourned to today's date.

[12] Mr Watkins was advised of today's hearing by notice sent to an address in Howick, Auckland. He is not at Court this morning. The notice advised him that the hearing was at John Wickliffe House and not the current temporary Court buildings. I arranged for the registrar to check John Wickliffe House and have been advised that he is not there. Enquiries have also been made with the Auckland District Court this morning to ascertain whether Mr Watkins is at that Court; I am advised that he is not. Accordingly, I have decided to proceed to hear this matter by way of formal proof.

Evidence

[13] Ms Shelton has given evidence and confirmed the contents of the affidavits she has filed throughout these proceedings.

[14] In very general terms the evidence discloses that the parties commenced a relationship when she was 15 years of age and Mr Watkins about 26 years of age. She moved in with him in or about June 1990, having turned 16 in May 1990. They remained living together, except for a few weeks apart during 2009 and 2010, until 14 March 2011. There are two children of the relationship, Gerard now 24 years and Red now 16 years, 17 in [date deleted].

[15] At the time the parties commenced living together Mr Watkins carried on the business of a property developer. The evidence discloses that initially he ran the business as a sole trader but it seems as a consequence of advice from his accountants, a company known as [name of company deleted] was incorporated, as were two trusts, the [name of trust 1 deleted] and the [name of trust 2 deleted]. Throughout the relationship he was involved in property development; successfully it seems as at one point 15 rental properties were “on the books”.

[16] Ms Shelton was actively involved in the business, attending to a number of administrative matters, for example doing the bookkeeping, making enquiries with local councils, undertaking project management in respect of building development and, from time to time, on site and physically assisting in the development of properties.

[17] She received no income for her efforts. In fact it appears that Mr Watkins had a conservative approach to finances within the relationship; he expected Ms Shelton to pay him rent for the house they lived in, around \$200 to \$270 per week, which she paid throughout save for the last five years.

[18] There was no intermingling of income from the business insofar as the parties were concerned. In fact Ms Shelton’s evidence is that Mr Watkins required her to receive a benefit from the Government so as to fund the living costs of the family – the payment of rental to him, and the costs of day-to-day living including groceries, power, clothing for the children and alike. He, it seems, paid for rates and other outgoings.

Separation

[19] Separation occurred when Ms Shelton left the home following a domestic violence incident, leaving with essentially what she stood in. Following Mr Watkins' arrest by police a week or so later, she returned to the family home and uplifted a Toyota Estima motor vehicle (which she sold about four months later for \$2000) and her personal possessions along with the children's personal possessions. The only family chattel she took was a slow cooker. The balance of the family chattels, including a near new lounge suite, remained in the family home.

Family Home

[20] The family home is situated at [address 1 deleted]. It had been purchased by Mr Watkins about five years prior to separation. He also purchased neighbouring properties, [address 2 deleted] (which ultimately had two dwellings on it) and [address 3 deleted]. [Address 2 deleted] was purchased through the [name of trust 2 deleted].

[Name of trust 2 deleted]

[21] This trust was established during the course of the relationship, Ms Shelton believing that they had been together about five years when it was formed. At that point one child had been born.

[22] The evidence suggests that some accounting advice had been given to Mr Watkins about setting up various entities through which he could develop properties and minimise tax obligations. The [name of trust 2 deleted] appears to be one such vehicle.

[23] The trust document, a copy of which has been produced in evidence, records that Mr Watkins is a trustee along with a colleague. Mr Watkins is the sole appointor of the trust. He is described as "the parent", which affords him certain rights. The final beneficiaries of the trust are his children but he is a discretionary beneficiary. Mr Watkins, as appointor, has the power to remove and appoint trustees and although

there is a requirement that there be no fewer than two trustees the clause is drafted in such a way as to permit a company controlled by him to act as the second trustee. The trustees have power to settle or resettle the whole or any portion of the trust on any discretionary beneficiary, including Mr Watkins and the trustees have the power to pay the whole or any part of the trust fund on any parent of any discretionary beneficiary who is a minor; i.e. Mr Watkins.

[24] In terms of the operation of the trust, there is a shortage of information before me. Accounts from the trust are not available, but Ms Shelton's evidence is that despite the existence of this trust, the [name of trust 1 deleted] and the company, Mr Watkins operated those entities as if they were his. He would shift money around. Ms Shelton, as bookkeeper, attended to some of those transfers but only at Mr Watkins' direction. He made all of the decisions concerning the operation of this trust. Although it was for the benefit of the children, I accept Ms Shelton's evidence that no advances or payments were made by the trust to benefit her or the children directly. I also accept her evidence that prior to the creation of the trust Mr Watkins said words to the effect that there was no way that she would get her hands on his money, nor would she benefit from his will. I accept her evidence that he repeated such sentiments from time to time, including the children in those remarks, saying that he would leave everything to his dog in preference to his partner or children.

Family Vehicles

[25] During the course of the relationship a number of motor vehicles, including motorcycles, were acquired.

[26] Without doubt the Toyota Estima, which Ms Shelton retained on separation, was used for family purposes and is a family chattel. It has a value, which I accept, of \$2000 as at the date of separation. It is appropriate to value the vehicle as at that date.

[27] At separation Mr Watkins retained a number of vehicles:

- (a) *1995 Toyota Hiace*. The evidence satisfies me that this was used as a family car. In any event, it is relationship property by reason of s 8(1)(e) of the Act as it was purchased during the course of the relationship. Evidence adduced by Ms Shelton suggests that the Toyota Hiace has a current value of \$6400. I am prepared to accept that as the value of the vehicle.

- (b) *Dodge Ram*. This is relationship property as it was acquired during the course of the relationship. Section 8(1)(e) applies. I accept the evidence adduced by Ms Shelton that it has a current value of \$16,200.

- (c) *Cadillac stretch limousine*. The evidence is that Mr Watkins purchased this during the course of the relationship. He said to Ms Shelton that he thought it would be good to take to Pak'nSave to buy the groceries. It does not appear to have been used as a family car but it is relationship property by reason of s 8(1)(e) of the Act. The evidence before me indicates the limousine has a value of around \$15,500 and I attribute that figure to this vehicle.

Motorbikes

[28] There are four motorbikes to be considered. All were purchased during the relationship. All are in Mr Watkins' name and all were retained by him on separation. Ms Shelton's evidence is that the motorbikes were occasionally used by her. She did not ride them but she rode as a pillion. They were not used as family vehicles but they are relationship property by reason of s 8(1)(e) of the Act.

[29] In relation to the 1997 Harley-Davidson Dyna Glide, I accept the valuation evidence that it is currently valued at \$11,100.

[30] In respect of the 2010 Harley-Davidson Chopper, I accept the valuation evidence that it has a current value of \$30,000.

[31] In respect of the 1990 Harley-Davidson Fat Boy, Ms Shelton claims it has a current value of \$35,000. I require further evidence in respect of this. A brief perusal of the Internet suggests that a new or near new “Fat Boy” has a value of around \$34,000. There may be a reason why this particular bike is said to have a higher value, but further evidence will need to be given in respect of it.

[32] In respect of the 2007 Harley-Davidson Road King, I accept this has a current value of around \$18,000.

[Name of company deleted]

[33] This company was established or incorporated in 1996, during the relationship, apparently on the advice of the accountant, for tax purposes. The evidence establishes Mr Watkins is the sole shareholder. He is also the sole director. His shares in the company are relationship property by reason of s 8(1)(e) of the Act. There is no evidence before me as to the value of the company. It appears that the company failed to file annual returns from about 2012 and has been or is in the process of being struck off the Company’s register. Little is known about the company except around the date of separation there was \$36,919.19 in the company’s ASB account. The account was later closed. There is no evidence as to what happened to those moneys.

[34] The company is also the registered owner of a Toyota Camry motor vehicle. The evidence indicates that its current market value is in the order of \$5000.

[35] Mr Watkins retained the shares in the company on separation and the car. Doing the best I can with the limited evidence available, I value his shares in the company as the sum of the ASB account and the current value of the Camry, a total of \$41,919.19.

Orders and Directions

[36] I direct that Mr Watkins not be permitted to continue in these proceedings without leave of the Court, r 401(3) Family Courts Rules 2002.

[37] I declare the following property to be relationship property:

- (a) The former family home at [address 1 deleted].
- (b) The household chattels. All of the chattels, save for a slow cooker, have been retained by Mr Watkins. The value of those chattels is not currently known. Ms Shelton estimates \$20,000 but that is a “guesstimate”. Further evidence needs to be adduced before I can determine this issue beyond declaring that the family chattels are relationship property and each party is to share equally in their value.
- (c) The property at [address 3 deleted] was purchased during the relationship in Mr Watkins’ sole name. It is relationship property by reason of s 8(1)(e) of the Act. It was sold post-separation as a consequence of a mortgagee sale. Most of the sale proceeds were paid to a creditor of the [name of trust 2 deleted] as this property had been used as a security for trust debt. The net proceeds after repayment of that debt amounted to \$7026.93. I vest those proceeds in Ms Shelton on account of her relationship property entitlements.

[38] The amount paid from the sale of [address 3 deleted] to the creditor to satisfy the trust’s debt was \$523,334. I declare that the debt from the trust to Mr Watkins, he being the sole owner of [address 3 deleted], is a relationship property asset. On the face of it each party has received \$15,000 from the trust in partial satisfaction of this debt, leaving a balance owing by the trust to Mr Watkins of \$493,333.98. I vest that debt in Ms Shelton on account of her relationship property entitlements.

[39] The Toyota Estima motor vehicle is relationship property, a family chattel. It has a value of \$2000. I vest that vehicle in Ms Shelton.

[40] I vest the following vehicles, which I classify as relationship property by reason of s 8(1)(e) of the Act or as a result of their use as family chattels, in Mr Watkins: the 1997 Harley-Davidson Dyna; the 1997 Dodge Ram; the 2010 Harley-Davidson Chopper; the 1990 Harley-Davidson Fat Boy; the 1986 Cadillac

limousine; the 2007 Harley-Davidson Road King and the 1995 Toyota Hiace. In respect of all vehicles, save for the “Fat Boy”, their values are set out above.

[41] I classify the shares in [name of company deleted] as relationship property. I value those shares at \$41,919 and vest the shares in Mr Watkins.

[42] Mr Watkins had personal bank accounts at the ASB at date of separation. They are relationship property by reason of s 8(1)(e) of the Act. The net value of his accounts at separation is \$4074. It is appropriate to value this relationship asset at the date of separation. I vest the proceeds of the accounts in that sum in him.

[43] Ms Shelton had one bank account at the date of separation. Her evidence is it had a credit of \$200 or thereabouts in it. That is also relationship property. I vest the proceeds of that account in that sum in her.

[44] [Name of trust 2 deleted] I am satisfied on the evidence I have heard that this trust was established by Mr Watkins during the relationship. The assets of the trust as at the date of separation appear to be the properties at [address 2 deleted] and at [address 4 deleted], that address being the former family home.

[45] It appears that the [address 4 deleted] address was sold post separation. It is not known what happened to the sale proceeds, but as at the date of separation the ANZ was owed around \$340,000; the debt was cleared by December 2013. Ms Shelton believes the sale proceeds must have cleared the debt.

[46] The [address 2 deleted] property was sold at mortgagee sale, achieving a sale price of just over \$1 million. From that, a debt owed by the trust to Westpac was paid, leaving \$843,840. I have previously referred to a debt the trust owes Mr Watkins of \$523,334, which by reason of an interim payment is now reduced to \$493,333.98 (see para [38]). On the face of it, the trust has net assets of \$320,506.67.

[47] The evidence before me satisfies me that the properties were purchased in the trust’s name in order to defeat any claim that Ms Shelton may have under the Act. In

that regard I specifically refer to her evidence that on a number of occasions, particularly prior to the trust being established, Mr Watkins told her that there was no way she or the children would get her hands on his money.

[48] Further submissions are necessary before the Court can finally determine the appropriate way of dealing with this trust and I direct submissions be filed by counsel within 21 days. In my view it is clear that the trust was established, and the properties purchased in its name, for the purpose of defeating Ms Shelton's entitlements. It is also clear that the trust was created and operated by Mr Watkins in such a way that he effectively maintained sole control over its functioning and the evidence suggests he paid little, if any, regard to the legal distinctions between himself and the trust.

Family Home – order for sale

[49] I make an order for the sale of the property at [address 1 deleted]. That is to be effected by the Registrar who is appointed to carry out the sale. I make an ancillary order that if Mr Watkins is in possession of the property he is to give up possession. If the property is tenanted, the Registrar has authority to bring that tenancy to an end so as to achieve the expeditious sale of the property which the Court now expects.

Other Orders

[50] Walker & Co Chartered Accountants Limited, the accountants for the [name of trust 2 deleted], is to provide to Ms Shelton (via her counsel) copies of all documents and files held by them, including in electronic format, relating to the financial affairs of the trust from the date of creation in 1996 to the present time.

Adjournment

[51] I adjourn the hearing to a date fixed by the Registrar as soon as practicable after the sale of the former family home to make final orders for division of property and, in particular, to address the [name of trust 2 deleted]. I record that Ms Shelton has abandoned her claim in respect of the [name of trust 1 deleted].

Other issues to be resolved

[52] There are other outstanding issues to be resolved: Ms Shelton's claim under s 18C in respect of [address 3 deleted], rental claims in respect of both [address 1 deleted] and [address 3 deleted] and the question of costs and interest.

Final Matters

[53] Leave is reserved to counsel to seek the Court's further orders or directions to implement the terms of this interim judgment.

[54] Mr Guest's appointment as counsel to assist the Court is continued in the interim. In the absence of Mr Watkins playing any active role in these proceedings, Mr Guest's involvement is necessary. In particular, I ask Mr Guest to file submissions in respect of the trust issue, also in respect of the claims under s 18C and for rental.

[55] I direct a copy of this judgment be forwarded to Mr Watkins at his last known email address, [email address deleted], and that the Registrar and counsel undertake enquiries to locate an actual address for him. If one is found, I ask that best endeavours be made to personally serve this judgment at that address.

MB T Turner
Family Court Judge