



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2017 No: 155

BETWEEN:

E.V.

Petitioner

And

F.V.

Respondent

RULING

Date of Application: 1 October 2019

Date of Ruling: 9 October 2019

Petitioner: Mrs Simone Smith-Bean, Smith-Bean & Co.

Respondent: Mrs Alma Dismont, Marshall Diel & Myers Limited

Requests for disclosure under Rule 77(4) of the Matrimonial Causes Rules 1974 – Directions hearing before the Registrar in accordance with Rule 77(4) of the Matrimonial Causes Rules 1974

RULING of Cratonia Thompson, Acting Registrar

Introductory

1. On an application by the Respondent dated 7 February 2019 (the “Application”), the Respondent sought directions from the Registrar in relation to disclosure requested from the Petitioner under Rule 77(4) of the Matrimonial Causes Rules 1974. Rule 77(4) provides as follows:

“Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the registrar for directions.”

2. Disclosure under Rule 77(4) was sought further to an order of the Court dated 18 April 2018, which provided, *inter alia*, that all requests made under Rule 77(4) of the Matrimonial Causes Rules 1974 shall be made within 14 days receipt of the relevant affidavit and shall be responded to within 14 days of the receipt of the request.
3. The Respondent made its request for disclosure under Rule 77(4) by letter dated 24 August 2018. The Respondent contends that while certain of those requests were complied with, other requests were not complied with either satisfactorily, or at all. Thus the Respondent filed its application for a hearing before the Registrar, in accordance with Rule 77(4).

The Present Application

4. It was common ground between the parties that some of the disclosure sought by the Respondent had been provided by the Petitioner; a portion of which, it should be noted, was provided to Counsel for the Respondent on the morning of the hearing.

5. What remained to be determined by the Registrar was whether any outstanding items sought by the Respondent under Rule 77(4) should be disclosed, and if so, the time frame in which those items should be provided. The Respondent sought disclosure of the following:

- (1) Copies of the Petitioner's passports detailing travel during the period January 2016 to date.
- (2) Any outstanding bank statements relating to the Petitioner's HSBC US credit cards during the period January 2016 to April 2016 and to date.
- (3) Any outstanding bank statements relating to the Petitioner's HSBC Bermuda credit card during the period January 2016 to date.
- (4) Unredacted bank statements relating to the Petitioner's bank accounts held at HSBC Bank Bermuda during the period January 2015 to March 2017 and to date, together with a response to the list of queries made by the Respondent's Counsel in respect of those statements detailed in the Respondent's letter dated 20 September 2018, as well as any relevant documentary proof.
- (5) Official bank statements relating to the Petitioner's HSBC US bank account during the period January 2015 to date.
- (6) Documentary proof relating to the Petitioner's bank account in St. Lucia confirming that the closing balance in that account was transferred to the Petitioner's Mother.
- (7) Documentary proof relating to the lump sum of money received by the Petitioner from Colonial in relation to the Petitioner's pension, together with proof of payments made out of that lump sum.

- (8) Documentary proof that the companies in which the Petitioner held shares are dormant; documentary proof confirming any dividend payments made to the Petitioner in respect of those companies; and copies of any share certificates.
 - (9) Information concerning the relationship between the Petitioner and persons residing in the Petitioner's home, as well as details of any financial contributions made by those persons to the household expenses.
6. The matters in dispute between the parties in relation to the requests detailed above were as follows:
- (1) Whether the Petitioner should be compelled to provide up to date disclosure.
 - (2) Whether the Petitioner should be compelled to disclose copies of her passports.
 - (3) Whether the Petitioner should be compelled to disclose unredacted copies of the bank statements relating to her accounts held at HSBC Bank Bermuda, together with a response to the list of queries made by the Respondent's Counsel in respect of those statements detailed in the Respondent's letter dated 20 September 2018, as well as any relevant documentary proof.
 - (4) Whether the online bank statements provided by the Petitioner in relation to her accounts held at HSBC US are acceptable.
 - (5) Whether the Petitioner should disclose additional documentary proof concerning the lump sum of money received by the Petitioner from Colonial in relation to the Petitioner's pension, together with proof of any payments made out of that sum.
 - (6) Whether the Petitioner should disclose personal information relating to any persons residing in the Petitioner's home.

7. I will deal with each of these in turn.

Up to date Disclosure

8. The Respondent submitted that it is an established practice that where disclosure has been provided under Rule 77(4) of the Matrimonial Causes Rules 1974, and there is a passage of time between that disclosure and the hearing of the ancillary relief application, the parties should endeavor to provide updated disclosure.
9. Given the fact that the hearing of this Application was now over a year after the Respondent's first request for disclosure under Rule 77(4) had been made, and that the need for this contested hearing had arose, in order to ensure the Petitioner's compliance with the established practice the Respondent sought to make what is already an established practice an order of the Court. I find the Respondent's concerns are reasonable. In the circumstances, I will order disclosure to be provided to date.

Disclosure of the Petitioner's Passports

10. The Respondent sought disclosure of the Petitioner's passports detailing any travel taken by the Petitioner during the period 2016 to date. The Petitioner objected to this request on the basis that any travel by the Petitioner, and the expenses associated with that travel, can be gleaned from the Petitioner's bank statements.
11. The Respondent refuted that submission, and indicated that copies of the passports were requested due to the Petitioner's evidence in these proceedings that her standard of living had declined as a consequence of the parties' divorce. Counsel then referred the Court to Section 29 of the Matrimonial Causes Act 1974 (the "Act"), and argued that the Petitioner's passports will evidence the Petitioner's actual travel, which relates specifically to the standard of living that the Court must consider when exercising its discretion under Section 29 of the Act in relation to the parties' respective ancillary relief

applications. Counsel argued further that the Petitioner's bank statements alone were not sufficient evidence concerning all travel the Petitioner may have taken during that period.

12. I accept the submissions made by the Respondent, and accordingly order that copies of the Petitioner's passport during the period 2016 to date are to be disclosed to the Respondent.

Disclosure of the Unredacted copies of the Petitioner's Bank Statements

13. It is common ground between the parties that the Petitioner has disclosed to the Respondent certain copies of the Petitioner's bank statements relating to the accounts held by her with HSBC Bank Bermuda. However, those statements have been redacted. The Respondent argued that the redactions are improper, and sought an order that the Petitioner be compelled to disclose copies of the unredacted statements. The Respondent argued, that in pursuing an application for ancillary relief, the Petitioner has a duty to provide full and frank disclosure.
14. The Petitioner objected to the Respondent's assertion that the redactions were improper on the basis that the only redactions made were to remove the preceding numbers of the Petitioner's own banks accounts into which certain funds were transferred. The Petitioner arguing further that all corresponding transactions could be gleaned from the banks statements. I do not accept this position. The Petitioner has a duty to provide full and frank disclosure. That being the case, the Petitioner is to provide the unredacted statements relating to the bank accounts held by her with HSBC Bank Bermuda during the period January 2015 to date.
15. The Respondent also argued that the Petitioner had failed to respond to queries made in a letter to the Petitioner dated 20 September 2018, such queries relating to the nature of certain incoming and outgoing funds, as well as requesting documentary proof relating to the outgoing funds. I have accepted that Petitioner has a duty to provide full and frank

disclosure. In light of that duty, the Petitioner is to provide a response to those queries, together with any documentary proof.

Disclosure of the official statements in relation to Petitioner's HSBC US bank account

16. The Respondent also took issue with the bank statements disclosed by the Petitioner in relation to the accounts held by her with HSBC in the US. It was submitted that the Petitioner should provide official statements for those accounts, and that the bank statements provided were not acceptable as it was not certain from what source they were obtained.
17. The Petitioner refuted this submission on the basis that the statements provided were procured online, and are acceptable given the fact that the financial information sought (i.e. transactional history) is properly identifiable.
18. Having reviewed the bank statements in question and agreeing that the statements provided appear, on their face, to have been procured online, I accept the submission made by the Petitioner that the statements are acceptable on the basis that the statements properly provide the necessary financial information sought.

Disclosure of documentary proof concerning the Petitioner Pension

19. The Respondent sought disclosure of documentary proof concerning the lump sum received by the Petitioner in relation to her pension, as well as documentary proof concerning the sums spent out of that lump sum. The Petitioner argued that the information pertaining to the Petitioner's use of the funds she received from Colonial in respect of her pension had already been provided to the Respondent as the way in which the monies were spent can be gleaned from the Petitioner's bank statements. I do not accept that position, and in light of the Petitioner's duty to provide full and frank disclosure order the Petitioner to provide documentary proof of the sums spent.

Disclosure of personal and financial information relating to persons residing in the Petitioner's home

20. The Respondent sought disclosure concerning certain persons that were now residing in the Petitioner's home. The Respondent argued that the Petitioner should disclose to the Respondent details concerning the nature of the relationship between the Petitioner and those persons, as well as any financial contributions made by those persons to the household expenses. The Respondent argued further that the relationships between the Petitioner and any persons residing in her home was relevant on the basis that the nature of those relationships, whether categorized as partner, family or tenant, would directly relate to any financial contributions made by those persons to the household expenses.
21. The Petitioner accepted that any financial contributions made by persons living in the Petitioner's home was relevant to these proceedings. The Petitioner objected however to the provision of any personal information relating to those persons, arguing that their personal information and the nature of their relationship to the Petitioner was irrelevant on the basis that the parties have now divorced, and the Petitioner's subsequent personal relationships are not a matter for the Respondent.
22. I accept the Respondent's submission that the nature of the Petitioner's relationship with any persons residing in her home is relevant to these proceedings, in that the nature of those relationships directly relate to any financial contributions those persons may make. For instance, if the persons residing in her home are tenants the Respondent might reasonably deduce that those persons are making financial contributions to the home and require documentary proof, which would then fall to be considered by the Court in exercising its discretion at the hearing of the parties' respective ancillary relief applications.
23. Accordingly, the Petitioner is to disclose to the Respondent the nature of her relationship to any persons residing in her home, together with documentary proof of any financial contributions made to the Petitioner by those persons. For the avoidance of doubt, the

information pertaining to the Petitioner's relationship with such persons is to be limited to the nature of their relationship (i.e. whether tenant, partner, family, or otherwise).

Costs

24. The Respondent sought an order for costs against the Petitioner on the basis of the Petitioner's refusal to provide the disclosure sought in a timely fashion, which resulted in the parties having to appear at a contested hearing. The Petitioner refuted the Respondent's application for costs on the basis that, save for the matters in dispute between the parties, the balance of information requested by the Respondent had already been disclosed.

25. While the parties agree that the Petitioner provided some disclosure, it is also accepted that some of that disclosure was provided shortly before the hearing of the Application leaving Counsel for the Respondent in the unfortunate position of having to quickly digest a significant amount of documents in short order.

26. That said, it was well within Counsel for the Respondent's power to suggest, either in advance of or at the start of the hearing, that the hearing be adjourned to allow Counsel to properly ascertain between them any requests which remain outstanding and therefore limit the matters still in dispute further. In the circumstances, I will order costs in the cause.

Timeframe

27. It was agreed between the parties that the time frame in which any outstanding documents would be provided would be 21 days from the date of this Ruling, and I so order.

Conclusion

28. I therefore make the following Order in respect of the Application:

- (1) Petitioner to provide a letter from her employer detailing her monthly compensation during the period September 2018 to date.
- (2) Petitioner to provide any outstanding bank statements relating to her HSBC USA credit cards during the period January 2016 to date.
- (3) Petitioner to provide any outstanding bank statements relating to her HSBC Bermuda credit cards during the period January 2016 to date.
- (4) Petitioner to provide unredacted copies of any outstanding bank statements relating to each of her bank accounts held with HSBC Bank Bermuda Limited during the period January 2015 to date, together with a response to the list of queries made by the Respondent's Counsel in respect of those statements detailed in the Respondent's letter dated 20 September 2018, as well as any relevant documentary proof.
- (5) Petitioner to provide documentary proof confirming that the closing balance in the Petitioner's bank account in St Lucia was transferred to the Petitioner's Mother.
- (6) Petitioner to provide documentary proof relating to the lump sum received by the Petitioner from Colonial in relation to the Petitioner's pension, together with documentary proof of any payments made out of that lump sum.
- (7) Petitioner to provide documentary proof confirming that any companies in which the Petitioner held a shareholding are dormant; documentary proof confirming any dividend payments made to the Petitioner in respect of those companies; and copies of any share certificates.

(8) Petitioner to disclose the nature of the relationship between the Petitioner and any persons residing in the Petitioner's home, together with documentary proof relating to any financial contributions made to the Petitioner by those persons.

(9) All outstanding requests ordered above to be complied with within 21 days.

(10) Costs in the cause.

29. Counsel to prepare an Order in terms.

9 October 2019

CRATONIA THOMPSON, ACTING REGISTRAR