

IN THE HIGH COURT OF BELIZE, A.D. 2023

ACTION No. 9 of 2022

IN THE MATTER of an Application by TRACEY ANN NICHOLAS-HANSON under Section 16 of the Married Women's Property Act (Chapter 176 of the Laws of Belize, RE.2020) AND IN THE MATTER of Section 148 of the Supreme Court of Judicature Act

BETWEEN

TRACEY NICHOLAS-HANSON

APPLICANT/RESPONDENT

AND

GEORGE HERBERT HANSON

RESPONDENT/APPLICANT

BEFORE The Honourable Madam Justice Patricia Farnese

Hearing Date: March 9, 2023

Appearances

Darinka Muñoz, for the Applicant/Respondent

Robertha Magnus-Usher SC, for the Respondent/Applicant

SUMMONS FOR PERMISSION TO CHANGE VALUATOR AND OTHER RELIEFS

[1] On December 7, 2022, Shoman J. ordered Mr. Armin Cansino be appointed as an expert valuator to assist the Court with a valuation of real property assets related to this dispute. Mr. Cansino was appointed after the Parties failed to agree as to who the Court should appoint. Unfortunately Mr. Cansino is no longer able to complete the valuation. Mr. Hanson has applied for permission to change the expert to Mr. Glenroy Ferguson Sr. Dr. Nicholas-Hanson agrees that the Court must appoint a new expert to complete the valuation, but opposes the appointment of Mr. Ferguson. Familiarity of some of the procedural history of this matter is helpful to understand the nature of Dr. Nicholas-Hanson's opposition to who Mr. Hanson seeks the court to appoint.

[2] On September 26, 2022, Shoman J provided the Parties with 30 days to agree to a valuator and ordered that, if an agreement was not reached, they could apply to the Court to

make the appointment. The Parties did not agree and each proposed to Shoman J a person to be appointed. Mr. Hanson put forward Mr. Ferguson to be appointed. Dr. Hanson-Ferguson proposed Mr. Sheldon Mahuang. Shoman J. considered the Parties' submissions and chose to appoint Mr. Cansino.

[3] Dr. Nicholas-Hanson argues that it is improper to now ask that I appoint Mr. Ferguson as he was considered and rejected by Shoman J when she appointed Mr. Cansino. Mr. Hanson disputes this characterization of Shoman J's actions. He argues that Shoman J did not consider Mr. Ferguson's suitability for appointment when she appointed Mr. Cansino. Rather, Shoman J decided to reject the persons the Parties proposed and appoint Mr. Cansino merely because the Parties could not agree.

[4] Generally, I am reluctant to revisit a previous order unless there has been a material change in circumstances or evidence that the court was, innocently or purposefully, misled as to the correct facts before it.¹ Mr. Cansino's inability to complete the valuation is a material change that requires that I revisit Shoman J's order. Shoman J did not provide written reasons for her decision to appoint Mr. Cansino. The preamble to her order appointing Mr. Cansino provides the only explanation for her decision:

UPON THE MATTER having come up for Hearing of Summons (2) filed by the Respondent/Applicant;

AND UPON hearing Counsel for the Respondent and the Applicant;

AND UPON THE COURT appointing a real estate valuator (Expert), the parties having failed to agree on the selection of an Expert.

The preamble states that the order is made after both *hearing* from the Parties and upon the Parties *having failed to agree*. This explanation provides little assistance to the question of whether Mr. Ferguson's was considered and then rejected for appointment.

[5] Knowing that submissions were made about Mr. Ferguson's proposed appointment, however, I cannot preclude that Shoman J's order reflects a finding that Mr. Ferguson should not be appointed in this matter. Given the history of this dispute, especially the Parties' failure to agree, Shoman J may have reasonably concluded that the Parties had legitimate reasons to reject each other's proposed experts. As there was another qualified expert, she may have justifiably chosen to appoint Mr. Cansino to avoid any perception of unfairness.

¹ *Carenso Trading Limited v. Cinsten Investments Limited*, H.C. Claim No. 726 of 2018 at para 16.

[6] While there is nothing improper about putting Mr. Ferguson's name forward as it is unclear that Shoman J rejected his expertise, I decline to appoint Mr. Ferguson on the sole ground that to do so risks undermining the Court's overriding objective to justly deal with matters. For the same reason, I will not appoint Mr. Mahaung, Mr. Hanson's choice.

[7] As outlined in CPR Rule 32.2, the purpose of expert evidence is to assist the court with resolving proceedings justly. CPR Rule 1.1(2) defines what dealing with justly requires including:

...

- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to-
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that the case is dealt with expeditiously; and
- (e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The appointment of an expert in this case has already involved multiple, contested applications and the use of court resources in a matter that is not overly complicated. This case requires an expert to assist the Court with valuing real property and other assets subsequent to the breakdown of a marriage. While I am mindful that to the Parties this is an important and sensitive task, for the Court this is a routine matter. Disputes of this nature are frequently resolved among the Parties without the assistance of an expert or the Court. To proceed in light of the Parties' disagreement over the appointment of Mr. Ferguson, where other qualified experts are readily available, may unnecessarily invite challenges to the expert's report that would require the allocation of a disproportionate share of the court's resources to this case.

Disposition

[8] It is hereby ordered that:

- (1) The expert witness is changed from Mr. Armin Cansino, real estate appraiser, to Mr. Talbert Bracket Sr., valuation surveyor, to assist the Court in this action.
- (2) If Mr. Talbert Bracket Sr. declines or is otherwise unable to assist the Court with this action in the time specified, Mr. Herman Castillo, District Land and Survey Officer, be appointed to assist the Court.

- (3) That the Respondent/Applicant's proposed Terms of Reference in the terms exhibited to the Affidavit of Jasnique Smith herein is approved by the Court. The Respondent/Applicant shall provide the Terms of Reference to the expert by 30 June 2023.
- (4) That the Expert Report shall be submitted to the Court and the parties within 50 days from the date of the receipt of the Terms of Reference.
- (5) That the parties may put questions in writing to the Expert on his report within 28 days of receipt of the report, to which the Expert shall reply in writing within a further 28 days.
- (6) That all other consequential orders made on September 26, 2022, and December 7, 2022, in this matter stand.
- (7) No costs are awarded.

Dated 12 June 2023

Patricia Farnese
Justice of the High Court