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**IN THE FAMILY COURT
AT BLENHEIM**

**FAM-2015-006-000095
[2016] NZFC 2555**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	JAMIE NORTON Applicant
AND	BRONTE NORTON-FRANCIS Respondent

Hearing: 23 March 2016

Appearances: J A Eves for the Applicant
D P Neild for the Respondent

Judgment: 23 March 2016

ORAL JUDGMENT OF JUDGE R J RUSSELL

Introduction and background

[1] These are proceedings under the Property (Relationships) Act 1976 between Jamie Norton and Bronte Norton-Francis. In particular it is an application by Mr Norton seeking orders enforcing the provisions of a relationship property agreement which was signed on 28 January 2011.

[2] Ms Norton-Francis has been served with the proceedings. She moved from New Zealand to [name of country deleted] in 2011. She has filed a notice of defence but no further affidavit evidence setting out her case. She has instructed Gascoigne Wicks as her counsel and Mr Neild has appeared today for her and I have heard submissions from him.

[3] Judge Ellis considered the proceedings and made directions for the filing of affidavit evidence. He recorded on 2 December that Mr Norton would be within his rights to seek a formal proof hearing but adjourned the proceedings in order to give Ms Norton-Francis time to file affidavit evidence. Judge Ellis directed a fixture be allocated. In the event Ms Norton-Francis has filed no further affidavit evidence setting out what her case is and so this hearing has been scheduled for today.

Submissions and evidence

[4] I have heard submissions from both counsel. I have heard evidence from Mr Norton who has confirmed the contents of his affidavit evidence. In summary, the parties married in November 1999 and separated in March of 2010. They have two children. Following separation they negotiated and entered into a relationship property agreement. That agreement provided for what was to become of the business which was run as a company known as [name of company deleted]. The parties were both directors and joint shareholders. This business comprised a [company details deleted].

[5] In essence the agreement provided for Mr Norton to continue operating the business for a two year period unless a sale for the business could be achieved at \$850,000. He was to oversee the running of the business and each was to receive

payments from the business of \$100 per week. In the event no offer for the business was received, and pursuant to cl 4.7 of the agreement, the business was to be sold at the expiration of the two year period and the agreement noted a valuation will be obtained by the parties at that time. On the sale of the business the net proceeds together with any costs of sale was to be divided equally between the parties.

Discussion

[6] The parties have attempted to negotiate terms of settlement following the two year period but this has been unsuccessful and so Ms Eves, who is counsel for Mr Norton, brought this application. What is sought is to enforce the terms of the relationship property agreement. I note there is two possible ways of effecting enforcement of relationship property agreements. The first is using the provisions of s 21L utilising the civil remedies within the Court's jurisdiction. The second alternative is to use the provisions of s 25 and s 33 of the Act. There is conflicting commentary and case law on this issue. Fisher at para (5.14) notes the issue and the author's view states:

There is authority to the contrary, the better view seems to be the enforcement of proceedings under the Act is permissible at least where property is in question.

There are cases which are referred to by the authors which shows circumstances where agreements have been enforced by the Family Court using ss 25 and 33.

[7] My own view is the Family Court, having jurisdiction to make orders under the Act, should also be in a position to enforce agreements which are made pursuant to the provisions of the Act, namely under s 21. This is not a case where there is any serious injustice alleged about the implementation of the provisions of the Act and no assessment of the s 21J issues is required. The important point to note is that the Family Court has jurisdiction to determine the validity of agreements. It logically follows the Family Court should also be able to enforce the terms of an agreement using the powers in ss 25 and 33 of the Act.

[8] In his evidence Mr Norton has produced a valuation of the business from Mr Forrest of Winstanley Kerridge Accountants. This may be set out as follows:

Valuation of Properties

[Address 1 deleted]	277,500	
[Address 2 deleted]	287,500	
	<hr/>	565,000

ANZ Debt at 18 May 2015

Loan in partnership's name	(132,606)	
Total company loans (x4)	(286,754)	
	<hr/>	419,360

Net property value		145,640
Tax and depreciation recovery \$46,171 @ 28%	(12,928)	
Other assets ⁽¹⁾		46,265
Other liabilities ⁽¹⁾	(49,152)	
Vehicle & office equipment & fittings at book value	13,663	

Net assets at 18 May 2015 before sale costs		143,488
Allowance for sale costs 5%		(28,250)

Net assets after sale costs		<hr/> \$115,238
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(1) As per 2015 draft financial statements, other liabilities include shareholder current account as follows:

Jamie	59,026	
Bronte	(9,874)	(overdrawn)
	<hr/>	
	\$49,152	
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[9] Ms Norton-Francis has an overdrawn current account of \$9874 and the evidence I have is that this was paid for by an ANZ loan specifically taken out for the purpose. Mr Norton has said Ms Norton-Francis was paid this sum as she left for [name of country deleted] in 2011. The company has still continued to pay her loan since that time.

[10] Ms Eves has agreed with my calculations which are that the net asset value of the business is \$143,488, that no deduction of the sale costs should be made as proposed by Mr Forrest (\$28,250) because no actual sale has been incurred and that the sum of \$9874, being the amount Ms Norton-Francis was paid, should be deducted as part payment of her entitlement. This leaves the asset position as follows:

Net asset value	143,488
One half share	71,744
Less paid to Ms Norton-Francis on account	9,874
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Balance due	\$61,870
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[11] Mr Neild jointly raised another issue and that is the property at [address 1 deleted] is owned by the parties as opposed to the company, [name of company deleted]. I carefully examined this issue with Mr Norton when he gave evidence. It appears the company owns [address 2 deleted] and the parties jointly own [address 1 deleted]. The property the parties jointly own is leased to the company. [Company details deleted] occupy the dwellings on both titles. The interest of the business as owner of [address 2 deleted] and as lessees of [address 1 deleted], both titles are an integral part of the property notwithstanding the titles are registered in different ways.

[12] I do not see that Ms Norton-Francis' interests are prejudiced in any way. The value of the property at [address 1 deleted] which she personally owns has been properly valued by a registered valuer and has been incorporated into the calculations which I have set out in this judgment. It is part of the business referred to in para [4] of the partners' property relationship agreement.

[13] My task this afternoon is to implement the provisions of the agreement. I am not going to entertain any other proposed adjustments to the figures for that would be straying outside the terms of what the parties have agreed to.

Outcome and orders

[14] Against this background, and subject to the authority issue referred to in para [15] being clarified, I make the following orders and directions:

- (a) Upon payment to Ms Norton-Francis of the sum of \$61,870 the following is to vest in Mr Norton:
 - (i) All of the shares held by Ms Norton-Francis in [name of company deleted].
 - (ii) The undivided one half share of the property which she owns at [address 1 deleted] being that contained in Certificate of Title [number of title deleted].
- (b) Ms Norton-Francis is to resign as a director of [name of company deleted] upon payment to her of the \$61,870. In the event there is issue or difficulty with this then further application can be made to have the registrar appointed to sign the necessary documents to give effect to this order on her behalf.
- (c) When payment of the sum of \$61,870 is made, Mr Norton is to provide to Ms Norton-Francis either evidence of the release of her personal covenants under [mortgage number deleted] to the ANZ National Bank or alternatively, if the bank will not release Ms Norton-Francis' covenants, a indemnity is to be provided by Mr Norton to Ms Norton-Francis indemnifying her from any costs, claims or damages which may arise in respect of any default under the mortgage.
- (d) Costs are reserved.

[15] Finally in this judgment I have recorded there are four company loans owed to the ANZ amounting to \$286,754. It is not clear to me whether in this figure is the amount already paid to Ms Norton-Francis for which I have deducted \$9874. I direct the registrar to delay the sealing of this judgment until such time as this issue is clarified by Mr Forrest. If there is an element of "double-counting" then my calculations are to be amended accordingly. If there is not, then the figures I have put in this judgment will be included in the sealed order to be signed by the registrar.

R J Russell
Family Court Judge