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**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2013-004-002821
[2016] NZFC 1428**

IN THE MATTER OF PROPERTY (RELATIONSHIPS) ACT 1976

BETWEEN THERESA LAI FONG COSSIO
 Applicant

AND MATTHEW COSSIO
 Respondent

Hearing: 22 February 2016

Appearances: Mr R Knight for the Applicant
 Mr M W Vickerman for the Respondent

Judgment: 1 March 2016

RESERVED JUDGMENT OF JUDGE S J FLEMING

[1] An application for discovery against the respondent and against non-parties was filed at the end of August 2015. In the course of submissions the application for discovery against non-parties was withdrawn and Mr Knight instead made an oral application for discovery against an employee of, I assume, Permathene Limited. This person is described in the respondent's evidence as "the New Zealand based in-house accountant – Paramjit Grewal". With respect to that oral application I would have no objection to the application for non-party discovery being amended to seek an order against Mr Grewal, but it will need to be served on him before any order can be considered. In the end, as a result of these orders, it may not be necessary to make any application against Mr Grewal.

[2] Since the application was served more discovery has been provided by the respondent but further discovery is still sought. Submissions were filed by both Mr Knight and Mr Vickerman prior to the hearing with supplementary submissions being provided both in writing (in the case of Mr Vickerman) and orally at the hearing on 22 February 2016.

[3] There are a number of companies involved but the three principal companies are Permathene Limited, Permathene Pty Ltd and J Cossio Ltd. Two other companies (Blackdeblacks Pty Ltd and Dustbag Pty Ltd) were incorporated after the parties separated finally in August 2009 but some discovery has been provided even though their shares are claimed to be separate property.

[4] I have been referred to the decision of His Honour Kos J in *Dickson v Kingsley* (2015) NZFLR 101 2. As submitted by Mr Knight the principals for discovery in relationship property proceedings are:

- A robust approach should be taken to discovery consistent with the purposes and principles of the Act; the need for just division, but also inexpensive and efficient access to justice.
- Such discovery must not be unduly onerous.
- Such discovery must be reasonably necessary at the time sought.

- The scope of discovery should therefore be tailored to the need of the Court to dispose justly and efficiently of relationship property issues under the Act.
- More substantial discovery may well be ordered by the Court where it has reason to believe a party has concealed information or otherwise sought to mislead, either the other party, or the Court as to the scope of relationship property. But even here, the scope of discovery should be no more than is required for the Court to fairly and justly determine the relationship property rights. It is just that in such a situation, more is likely to be required to meet that requirement.

[5] In this case, the discovery sought against the three companies is as follows:

Permathene Limited

[6] Mr Lyne who is the accountant engaged by Ms Cossio to value the shares in the company requests:

- Journals or other documentation relating to the difference between the opening retained earnings as at 31 March 2015 and opening retained earnings at 1 April 2015.
- Copies of all GST returns from 1 April 2008 to today's date.
- Hard or soft copies of the general ledgers for the years ended 31 March 2009 to the present time.

[7] The financial accounts for this company have, as I understand it, been produced over the relevant period. In these circumstances there is no apparent need for the additional documentation required noting Mr Lyne in his affidavit sworn on 28 August 2015 said (at paragraph 24C) :

“It is not every valuation that I seek general ledgers but in the current situation where only management accounts have been supplied I consider that the provision of general ledgers will assist in providing insights as to the robustness of the management accounts.”

[8] Further, Mr Lyne said at paragraph 24B when explaining a request for management accounts, the following:

“If formal financial statements have not been prepared then a company’s management accounts provide the next best record of the historical performance of a company.”

[9] The financial accounts having been provided, I am not satisfied any further discovery is necessary to enable the valuations to be undertaken. In relation to any discrepancy between closing figures and opening figures for the following year then that is a matter which can be the subject of cross examination. The application for further discovery in respect of Permathene Limited is declined.

Permathene Pty Ltd

[10] Mr Lyne seeks copies of correspondence between the Australian Tax Office and Mr Cossio or his employees or agents; income tax returns; general ledgers, management accounts and copies of all GST returns over the period July 2008 to November 2015.

[11] The situation in relation to Permathene Pty Ltd is quite different from the company I have just considered. No financial accounts have been produced for that company. That is a situation which has been known to Mr Cossio, according to his evidence, since March 2013 – almost three years ago.

[12] As is conceded by Mr Cossio, records “which ought to have been generated in the normal course of business had not been”. The applicant did not know that until the affidavit of Mr Cossio sworn by him in February this year, but he had known that to be the case since March 2013. In addition I do not accept any suggestion that documents in the possession of Mr Grewal, who is an employee of one of the relevant companies, are not properly discoverable by Mr Cossio.

[13] In these circumstances Mr Cossio cannot complain at the level of discovery being sought which would not be necessary if those accounts had been prepared as they ought to have been.

[14] I accept there needs to be a reasonable period allowed for the documentation to be produced as it does not exist, but there is also a need for Mr Cossio to remedy the situation as a priority, noting these proceedings have been before the Court since 2013.

[15] Accordingly the following documentation is to be provided within six weeks of the date of this decision:

- Copies of all correspondence between the Australian Tax Office and Mr Cossio or his employees or accountants.
- Copies of all correspondence with the Company's Tax Agent (if a tax agent has been appointed).
- Copies of the financial statements within 12 weeks or within 48 hours of their production if earlier.
- Income tax returns for the last year that has been completed.
- Hard or soft copies of Permathene Pty Ltd's general ledger for each financial year, from 2009 to present, or the alternative documentation used to summarise the accounting transactions before completing each BAS return.
- Management accounts for the periods for the year ending 2008 to 2014 and the management accounts provided by Mr Grewal to Mr Cosio in January 2013.
- Copies of all GST returns from 1 July 2008 to the present time.

Blackdeblacks Pty Ltd and Dustbag Pty Ltd

[16] Again it appears no financial accounts been produced for either of these companies. It is not clear to me the basis upon which the applicant claims an interest in the shares of either of these companies and I understand what financial documents

have been produced reveal relatively minimal income. In these circumstances I am not satisfied any further discovery in respect of those companies should be ordered without better evidence as to the basis for the claim of any interest in them.

Signed at Auckland this day of March at am / pm

S J Fleming
Family Court Judge