

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(Family and Children Division)**

**FH00908/2017**

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**BETWEEN**

**T A D**

**PETITIONER**

**AND**

**A M S**

**RESPONDENT**

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**Before the Hon. Madam Justice A. Ramkerrysingh**

Date of Delivery: August 8<sup>th</sup> 2018

**Appearances:**

Ms Sydelle Johnson for the Petitioner

Ms Sasha Singh for the Respondent

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**REASONS**

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## PROCEDURAL HISTORY

1. The Petitioner/Wife filed a petition for divorce on the 13<sup>th</sup> April 2017 relying on the unreasonable behaviour of the Respondent/Husband. Along with her petition, she filed a Statement of Arrangements for the child of the family B, then 18 years old. The Husband in turn filed an Answer and Cross-Petition in which he alleged unreasonable behaviour on the part of the Wife. At the Directions Hearing on the 4<sup>th</sup> January 2018, mutual decrees nisi were pronounced.
2. The Wife filed her Application for Financial Relief with Evidence (*Form 8*) on the 3<sup>rd</sup> January 2018 seeking orders for maintenance pending suit, property settlement and a periodical or lump sum payment for herself and the child of the family. In addition to this application, she filed a Notice of Application (*Form 12*) and Affidavit in Support on the 4<sup>th</sup> May 2018 seeking an order that the Husband be restrained from alienating any of his assets until the hearing and determination of the application for ancillary relief.
3. On the 14<sup>th</sup> May 2018 an order was made with the consent of the parties in respect of maintenance for B, as well as expenses in relation to tuition and other school related expenses and medical expenses. Additionally, both parties, again by consent gave mutual undertakings not to alienate any of the assets until the hearing and determination of the application for ancillary relief.
4. The Husband filed his Evidence of Financial Position (*Form 9*), Notice of Application and Affidavit in Response on the 21<sup>st</sup> May 2018 and on the following day the Wife filed her Affidavit in Reply. By his Form 9 the Husband countered for orders that:
  - i. The Wife do disclose all her bank accounts (also joint accounts), pension contributions, bank account

statements and credit card statements, payslips and tax returns for the period 2010 to 2016;

- ii. The Wife do forthwith return to the parties' TECU Credit Union Account the sum of Eight Hundred and Sixty Thousand Dollars (\$860,000.00) which she wrongly removed and that such accounts be frozen pending the determination of applications for financial relief;
  - iii. The Wife do forthwith return to the parties' Republic Bank US Dollar Account the sum of Twelve Thousand Five Hundred United States Dollars (US\$12,500.00) which she wrongfully removed; and
  - iv. K H and J S be summoned to court to give evidence regarding the sum of Twelve Thousand Five Hundred United States Dollars (US\$12,500.00) held by the wife and Thirty-Three Thousand United States Dollars (US\$33,000.00) previously held by both parties on trust.
5. On the 22<sup>nd</sup> May 2018 after giving the Attorneys an opportunity to be heard leave was granted to file further evidence in relation to large withdrawals allegedly made by the Wife from the parties' joint accounts. Further directions were given on the 10<sup>th</sup> July 2018 and the Wife was ordered to re-deposit the monies remaining from the substantial sum of \$860K she withdrew and orders were made restraining both parties from interfering with the accounts without the leave of the court.
6. The Husband's father, [REDACTED] filed a Notice of Application and supporting affidavit on the 23<sup>rd</sup> July 2018 seeking leave to intervene and to file an affidavit in opposition to the Wife's substantive application, on the ground that he is the owner of properties, which

are subject of her financial application. Mr. [REDACTED] was granted leave on the 26<sup>th</sup> July 2018.

7. The Application that is the subject of these Reasons (“the said Application”), was filed by the Wife on the 30<sup>th</sup> July 2018, as an ex-parte application. By it she is seeking orders that:

- i. The Husband replace her name on (1) the TECU Credit Union Account in which the remaining sums from the 860K were to be re-deposited by her; and (2) Republic Bank Limited US Dollar Accounts;
- ii. The Husband be prohibited from removing any of the sums held in the aforementioned TECU account pending the hearing and determination of the ancillary relief proceedings herein;
- iii. The Husband replace all the monies withdrawn from the TECU and Republic Bank Limited US Dollars accounts; and
- iv. She be granted leave to withdraw the sum of Four Thousand Dollars (\$4,000.00) monthly from the TECU account to meet rental expenses for herself and B, pending the hearing and determination of the ancillary relief proceedings herein.

8. On the 8<sup>th</sup> August 2018 I made an order restraining the Husband and/or an agent acting on his behalf from withdrawing funds from the said TECU Credit Union Account. Until the issues could be fully ventilated at trial, and rather than allow the Wife to withdraw funds from the very account she admitted removing money from to pay the rent, I ordered the Husband to pay or cause to be paid directly to the Wife’s landlord the sum of Four Thousand Dollars (\$4,000.00) for rent of her accommodation commencing the 1<sup>st</sup> September 2018. This

order is to remain in effect until the hearing and determination of the Wife's ancillary relief application.

#### **DISCUSSION & FINDINGS**

9. The Wife has filed an Avoidance of Disposition Application which by its very nature means that I ought ideally to deal with the substantive application for financial relief at the same time as the avoidance application. In pursuance of the obligation to adhere to the rule for full and frank disclosure and in order to encourage the observation of this Rule, I gave very comprehensive directions for further evidence, on the 23<sup>rd</sup> May 2018, with a deadline to comply by 22<sup>nd</sup> June 2018.
10. By the Wife's application filed on the 4<sup>th</sup> May 2018 she had simply asked inter alia, that the Husband be restrained from alienating his assets and that he fully disclose all of his assets. In her narrative filed in support of the said Application as well as in support of the substantial financial relief, and particularly as it relates to the said Application (paras 33 to 38), the Wife alleged that sometime after the separation, the Husband withdrew all the money standing to the credit of Republic Bank Limited (USD) Joint Account [REDACTED] and removed her name from the account. The Husband's response to this statement was that the money in the account did not belong to the parties. He alleged that he and the Wife were entrusted with those funds on behalf of a family friend of his parents, who after discovering that the Wife allegedly retained for herself sums meant to be deposited into the account complained to him about the misappropriation. According to him it was in those circumstances that the amount in the account was transferred to the family friend.
11. I find that timing is crucial in this scenario. The Wife said that the money was withdrawn and her name removed after the separation "*on or about October 2016 to April 2017*". In fact, her petition refers to October 2016 as being the date when she left the matrimonial

home. The bank statement [TD7] that she exhibits in support of her claim that after the separation the Husband withdrew the money from this account and removed her name in an attempt to dispose and/or hide the sums in this account, is dated 28<sup>th</sup> June 2015 and gives a summary of transactions on the account for the period 29<sup>th</sup> March 2015 to 28<sup>th</sup> June 2015, which falls outside the timeframe under consideration. It certainly does not corroborate her own assertion.

12. Moreover, the statement covers a period before the separation and even then the statement is addressed to the Husband alone, which suggests that he is either the sole holder of the account or the principal holder. This may give more credibility to the evidence as presented by the Husband, but I hasten to add that I have and cannot make a determination on either of these versions based on the evidence presented.

13. I mention this account because although the Wife has made this part of her relief of the said Application, that is, that her name be replaced on the account and the monies allegedly withdrawn by the Husband be replaced, she did not make that part of her relief in the Avoidance Application filed more than a month earlier.

14. It is to be noted that the other relief sought by the said Application form part of the Wife's substantive application which are yet to be determined and while I appreciate that time is of the essence in these cases, I also think that it is imperative that all the financial information is fully disclosed before moving forward. It would be imprudent to proceed without giving each party an opportunity to produce the required financial supporting documentary evidence. Collecting of this vital information often requires time-consuming effort, hence my usual allowance for four to six weeks for compliance of my directions for further evidence and although it may seem time consuming, I have found that these directions when genuinely complied, often obviates

the time-consuming and costly need for Production Hearings and provides both sides with all the tools required for meaningful settlement talks.

15. Turning now to the TECU name replacement, which is the only live issue to be determined on the said Application at this time: The Wife was directed to re-deposit the \$860k which she readily admitted to not having all of that sum. In that regard, I agree with Ms Singh's statement that the person who has come to court with unclean hands is the Wife herself, who not only withdrew a substantial sum from this account but who has also spent approximately  $\frac{1}{4}$  of it, for which she has given no account.
16. The holder on the account has been rectified as being the Husband and the Wife's rationale that she needs her name replaced so that she can give the court a proper account of the transactions made on the accounts holds no merit. That information can be obtained from other sources.
17. If the account is frozen then the money would be preserved, which would achieve the same result that the Wife is hoping to obtain. I see no benefit arising, nor prejudice to her, if her name were replaced on the account. At the same time I am not of the view that refusing to replace her name hurts the status quo. Indeed, it is she who had upset the status quo by withdrawing the \$860K and spending a great portion of it.
18. The Wife is also asking the court to make an order that the Husband deposit any money he withdrew from the TECU account, but unlike her withdrawal, the Wife's accusation of the Husband, is based on speculation. As to her request for him to replace sums she alleges he removed from Republic Bank Limited Accounts number [REDACTED]

█ and █ she has presented no evidence of such removal. Those aspects of the said Application are dismissed.

19. Having said all of the above however, I am concerned about the ability of the Wife to keep a roof over her head in the meantime and I am minded to deal with that here, although it is my view that she could have channelled that request by a simple Form 12 Notice and affidavit served on the other side, or perhaps by holding discussions and presenting a consent position. This would certainly have lessened the hostility and encouraged and strengthened cooperation between the parties. It is unfortunate that the Wife chose this vehicle to make her request. Although it is my view that this was not the best way to approach the Wife's request for a contribution towards rent, it is unjust that she should be penalised by disabling her efforts to afford temporary rental accommodation. It is evident that she needs a place to stay until the substantive issues are determined and \$4000 for rent in the circumstances is not an unreasonable sum.

### **Conclusion and Order**

20. The said Application on the whole is oppressive and could have been avoided altogether. The Attorneys were in communication with each other throughout the proceedings. Ms Singh had written an email saying that she agreed that the funds in the TECU account should be frozen. That email was sent to the court's Judicial Support Officer and copied to Ms. Johnson at 3:13 pm on the 30<sup>th</sup> July 2018. The said Application was filed in court on the said 30<sup>th</sup> July 2018 at 3:17 pm and heard today. Even if the email and the filing had unknowingly crossed paths, or the Wife wanted to protect her position in the event that talks broke down, there was still enough time between the afternoon of the 30<sup>th</sup> July and the date of hearing for the Wife to approach the other side to settle the issue about the TECU account and to withdraw the said Application. I agree with Ms Singh that there was no

emergency situation that necessitated the filing of the said Application. The only additional relief being sought by the said Application was the request for the \$4000 for rent, which could have been discussed.

21. More worrying is the fact that even though these parties are before me in on-going applications, Ms Johnson confirmed in open court that she had intended for the said Application to be heard ex-parte and did not have it served on her friends on the opposing and intervening sides. They were unaware of the said Application until I directed my Judicial Support Officer to inform them late yesterday morning. Whether or not this was a deliberate effort on the part of the Wife to steal a march on the Husband I cannot say, but I do wonder why she chose to proceed in this manner.

22. On a final note, the said Application was filed after mutual undertakings were given to the court by both sides that neither of them would withdraw or otherwise interfere with any money they held in the various joint accounts and there is no evidence that those undertakings have been breached. The only new event was that the Wife encountered difficulties in trying to re-deposit the money into the TECU account. In those circumstances it is my judgment that but for the Wife's request for rent the said Application ought not to have been filed.

23. It is therefore ordered that:

- i. The Respondent is forbidden whether by himself or by instructing or encouraging any other person to withdraw funds from Account Number [REDACTED] [REDACTED] with TECU Credit Union;
- ii. The Respondent do pay or cause to be paid to the Petitioner's landlord [REDACTED] the sum of Four

Thousand Dollars (\$4,000.00) representing the  
Petitioner's rent for premises at 7 Main Road [REDACTED]  
[REDACTED] commencing the 1st September 2018;

- iii. Paragraphs 2, 4, 5, 6, 7, and 8 of the Application filed on the 30th July 2018 are dismissed; and
- iv. This order shall remain in force until the hearing and determination of the Application filed on the 3rd January 2018
- v. The Petitioner do pay the Respondent's costs of the Application filed on the 30th July 2018.

Allyson Ramkerrysingh  
Judge