

CANADA / JUDGMENT

Hormandinger v. Bender- Hormandinger

2007 BCSC 949

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hormandinger v. Bender-Hormandinger,

2007 BCSC 949

Date: 20070629

Docket: E061942

Registry: Vancouver

Between:

Rudolf Greg Hormandinger

Plaintiff

And

Christa Bender-Hormandinger

Defendant

Before: The Honourable Mr. Justice Kelleher

Reasons for Judgment

Counsel for the Plaintiff:

Jeremy S. Sheppard

Counsel for the Defendant:

Roy M. Kahle

Date and Place of Hearing:

May 22, 2007

Vancouver, B.C.

- [1] This is a property dispute between two residents of Germany, who were married in 1985 and divorced in 2006. The property in dispute is located in British Columbia.
- [2] The plaintiff brought a motion before me for an order pursuant to Rule 60E(3) dispensing with a judicial case conference, and an order to produce certain documents relating to bank accounts in British Columbia. The defendant's motion seeks a dismissal of the action based on Rule 14(6)(a), (b) or (c) and Rule 14(6.1) on the basis that the court has no jurisdiction, or, if it does, ought not to exercise its jurisdiction in this action. There is no real dispute about the necessity of a judicial case conference or about the production of documents. This judgment therefore addresses the defendant's motion.
- [3] The plaintiff and the defendant were married in 1982. They are 61 and 58 years old, respectively. They have no children.
- [4] The parties have always been residents of Germany. They are citizens of Germany. They were partners in a human resources consulting business in Germany.
- [5] In 2000, the parties were visiting British Columbia. The defendant decided to purchase a lot near Bridge Lake in the Cariboo Region of British Columbia. The defendant put up the purchase price from an inheritance. She paid \$170,000 plus, she says, an extra \$10,000 in cash.
- [6] The plaintiff, with the defendant's agreement, built a home on the defendant's lot. According to the defendant, the plaintiff paid approximately \$90,000 to a contractor in Kamloops.
- [7] In June 2003, the plaintiff started an action in Germany, in the Family Court of Mettmann, seeking a divorce and division of family assets.
- [8] The law of Germany regarding marital property disputes is based on monetary compensation rather than division of physical property. The law contemplates the equalization of the value of the spouses' property on marriage breakdown.
- [9] A calculation is made of the net worth of each spouse at the time of marriage and at the time the divorce commenced. The difference between these two figures for each party is the surplus or "zugewinn".
- [10] The spouse with the lower zugewinn is entitled to a payment of half the difference. This is calculated by subtracting the lower amount, the smaller surplus, from the higher amount and dividing by two. That amount is then paid from one spouse to the other.
- [11] The date for determining the parties' zugewinn is the date the divorce petition was served. Here, that occurred on June 16, 2003.

- [12] The difficulty this creates for the plaintiff is first, that he wishes to have an interest in the land. He seeks to persuade a court that the appropriate disposition of this land is a partition. He argues that it could be subdivided and each spouse could have half the lot. He says that the courts in Germany have no ability to provide such a remedy. The plaintiff argues that the Partition of Property Act, R.S.B.C. 1996, c. 347, and the Family Relations Act, R.S.B.C. 1996, c. 128 enable a British Columbia court to do that.
- [13] Second, the property has increased in value. It was appraised as being worth \$215,000 on the effective date. An appraisal in November 2006, estimated the value as \$390,000. Under German law the plaintiff does not share in this increase.
- [14] The Mettmann Family Court considered the issue of ownership of the Canadian property where the defendant owned the land and the plaintiff built the building. The court ordered a legal opinion from the University of Cologne on this question. The question posed by the court was as follows:

An expert opinion from the Institute for International Private Law at the Cologne University should be rendered whether the ownership in real property and in the constructed building can be divided pursuant to Canadian property law or whether the property owner is also the owner of the constructed building pursuant to German law. In this case, the wife acquired the real property with her financial means whereas the husband built the house on the wife's real property with his financial means.

- [15] In 2005, the University rendered its opinion. A Professor Mansel, the Director of the Institute for International and Foreign Private Law, analyzed the issues extensively and reached these conclusions:
1. Under the conflict-of-law provisions of the Canadian province British Columbia, the *lex rei sitae* is applicable; as a result the property relations regarding the property in dispute are to be assessed on the basis of the law of British Columbia.
 2. According to British Columbia law, structures and buildings permanently connected with the property constitute essential parts of the property. Land ownership extends to essential parts of the property. Consequently, the wife is the owner of the house built on the property by the husband.
 3. A different ownership situation could result if the matrimonial property regime is taken into consideration. A prerequisite for that is the applicability of Canadian law. This is the case in two possible scenarios:
 - a) British Columbian law applies for the property if the matrimonial property regime is also subject to this law. This is the case if the requirements for such a reference pursuant to art. 15 EGBGB are met.

- b) If the matrimonial property regime was governed by German law, special reference to the law of British Columbia can be considered based on art.3 (3) EGBGB. Under international private law, the property is subject to the law of the province of British Columbia, including in cases where no marriage contract was concluded and where the spouses' last joint domicile was located outside of British Columbia. For such cases, properties located within British Columbia are governed by the *lex rei situ*, according to the conflict-of-law provisions of this province. If a marriage agreement had been contracted, the choice of law for the matrimonial property regime is governed by the proper law of the marriage contract, according to the international private law of British Columbia.
4. The expert does not have any further information regarding a marriage contract possibly concluded by the parties. If neither a marriage contract nor a divorce agreement were concluded, and, as a result, the *lex rei situ* applies for the property in dispute, each spouse will accrue according to the Family Relations Act of British Columbia with regard to the family assets not only an entitlement to a claim under the law of obligations, but also an undivided half interest in the amount of half of the property's value.

[translation]

- [16] As this litigation was proceeding at the Mettmann Court, the plaintiff commenced a separate civil action in the Regional Court of Wuppertal. This litigation related to the termination of the parties' business relationship.
- [17] After Professor Mansel's opinion was received, the plaintiff asked the Wuppertal Court to find that he was a co-owner of the Bridge Lake property. He sought a "temporary injunction" presumably to restrain the defendant from selling or dealing with the property.
- [18] The Wuppertal Court wrote to the plaintiff's lawyer on February 22, 2006. That court urged the plaintiff to withdraw the application for an injunction. That was because the court felt that since the land was registered in a Canadian land registry, it falls to be determined under the law of Canada. The court stated it would not proceed further unless the plaintiff showed that the Canadian state would recognize a temporary injunction of judgment issued by a German court.
- [19] In February 2006, the Mettmann Court rendered a decision, granting the divorce. The Mettmann Court now has an appraisal of the Bridge Lake property. When the litigation in the Wuppertal Court has been decided, the Mettmann Court can finalize the *zugewinn* issue.

Jurisdiction Simpliciter

- [20] In any dispute about jurisdiction, there are two separate questions: whether this court has jurisdiction simpliciter and whether British Columbia is the appropriate place to hear the matter - *forum non conveniens*. See the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28. The defendant's objection is that there is no jurisdiction simpliciter to deal with the matrimonial claim under the Family Relations Act because the parties do not have a

real and substantial connection to the Province of British Columbia in relation to matrimonial issues. See *Furlan v. Shell Oil Co.* (2000), 77 B.C.L.R. (3d) 35, 2000 BCCA 404; *Roth v. Interlock Services Inc.*, (2004), 33 B.C.L.R. (4th) 60, 2004 BCCA 407.

- [21] The fact that the parties have no connection to the jurisdiction distinguishes the cases relied on by the plaintiff: *Tezcan v. Tezcan* (1987), 20 B.C.L.R. (2d) 253, 11 R.F.L. (3d) 113 (C.A.) and (1992), 62 B.C.L.R. (2d) 344, 38 R.F.L. (3d) 142 (C.A.); *Shokohyfar v. Sotoodeh*, 2006 BCSC 891; *Ratzlaff v. Ratzlaff* (1999), 49 R.F.L. (4th) 148 (B.C.S.C.); and *Chou v. Chou* (1996), 27 B.C.L.R. (3d) 58, 26 R.F.L. (4th) 302 (S.C.). In all of those cases, one or more of the parties was or had been resident in British Columbia, and the issue of the division of real property situate in British Columbia had not or could not be determined in another jurisdiction.
- [22] However, I do not agree that there is no real and substantial connection in relation to the claim for a proprietary entitlement to the Bridge Lake property under the Family Relations Act. Section 3 of the Court Jurisdiction and Proceedings Transfer Act addresses jurisdiction simpliciter and codifies the "real and substantial connection" test from the common law. A real and substantial connection is presumed under s. 10(a), where the court action:
- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in British Columbia that is immovable or movable property.
- [23] An action to determine the plaintiff's interest in the Bridge Lake property under the Family Relations Act would fall within this description of seeking an interest in property in British Columbia. Therefore, a real and substantial connection to British Columbia is presumed.
- [24] Further, *Shokohyfar v. Sotoodeh* confirms that the courts of British Columbia retain jurisdiction over the resolution of property issues on application by a "spouse" under a foreign divorce (at para. 20). The Family Relations Act does not impose any residential requirements before the court may take jurisdiction, unlike the Divorce Act, and simply applies to a "spouse" as defined in that Act.
- [25] Under the Family Relations Act, a "spouse" includes a person who applies for a division of family assets within two years of a dissolution of the marriage. Here, the divorce was granted February 22, 2006, and comes within the two year limitation.
- [26] The Family Relations Act is unique because it not only grants matrimonial rights between divorcing spouses but also creates an interest in real property. This is unlike statutes in other jurisdictions where only a payment obligation exists. Germany is an example of the latter. See also *Tezcan v. Tezcan* (1992), 62 B.C.L.R. (2d) 344 at para. 40 (C.A.). This court has jurisdiction under s. 66 of the Family Relations Act to determine "ownership, right of possession and division of property", including "partition or sale of property".
- [27] Thus, the property provides the real and substantial connection to British Columbia, even for the Family Relations Act claim.

[28] The defendant concedes that the plaintiff's claim based on principles of constructive trust relating to the property is one in which this court has jurisdiction simpliciter. The property is located in British Columbia. However, the defendant argues that jurisdiction should be denied on the basis of forum non conveniens.

Forum Non Conveniens

The Arguments of the Defendant

[29] The defendant relies on 472900 B.C. Ltd. v. Thrifty Canada Ltd. (1998), 57 B.C.L.R. (3d) 332, 168 D.L.R. (4th) 602 (C.A.) in support of her argument that the court should decline jurisdiction. In that case, Mr. Justice Esson established:

- The right of a plaintiff to sue in the court of its choice is not a significant factor in determining the appropriate jurisdiction in which a dispute should be litigated.
- A primary purpose of the Rule is to avoid two actions proceeding in different jurisdictions with the attendant risk of conflicting decisions.
- Comity is now the governing principle when determining whether to decline jurisdiction over a proceeding. The level of comity will be higher if the competing jurisdiction is another Canadian province rather than another foreign jurisdiction.
- The existence of a clause attorning to a particular jurisdiction is an important circumstance in determining the appropriate jurisdiction.
- Overall the doctrine of forum non conveniens will form the foundation for determination of the appropriate forum.

[30] The relevant factors include the residence and place of business of each party, the locus of the cause of action, the locus of the damage or loss, juridical advantages/disadvantages, convenience and inconvenience to witnesses, cost and applicable substantive law. See *Stern v. Dove Audio Inc.*, [1994] B.C.J. No. 863, aff'd, 1994 B.C.J. No. 2608 (C.A.) (QL), considering several authorities including *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897, 77 B.C.L.R. (2d) 62.

[31] The defendant argues that both parties are citizens and permanent residents of Germany. Both parties are partners in an enterprise in Germany. The cause of action is based on a break-up of the marital relationship. The break-up occurred in Germany.

[32] Counsel argues that the matter of division of matrimonial property is already before the Mettmann Municipal Court. The court has assumed jurisdiction over the property by obtaining an appraisal of it.

- [33] Insofar as juridical advantage is concerned, the defendant argues that the only advantage claimed is the increase in value after the triggering date. This is not recognized under German law. Counsel argues that if the plaintiff were to succeed in this action, he will have received everything to which he was entitled under German law and in addition, an interest in British Columbia land granted him by this court. That would be unfair to the defendant.
- [34] Insofar as convenience to witnesses and costs are concerned, the defendant argues that the parties are residents of Germany and only the witnesses relevant to the purchase are in British Columbia.
- [35] The defendant emphasizes the difficulty of parallel proceedings. It is important to avoid having two actions proceeding with the inherent risk of conflicting decisions. Here, both parties have submitted to the jurisdiction of the German courts. The plaintiff began the action in Germany in June 2003, and it is ongoing. The British Columbia property is but one component of what is before the German court.
- [36] Another factor is the evidence of Joachim Fuss, a retired judge of the Cologne Family Court, who has given evidence on behalf of the defendant. According to Judge Fuss, the parties do not have a right to bring an additional legal action abroad when they are already the subject of proceedings before a German court. The compensation calculated under German law is intended to deal with all of the couple's property.

The Arguments of the Plaintiff

- [37] The plaintiff's argument is that this court has jurisdiction, both under the Family Relations Act and under the Partition of Property Act. As well, the plaintiff argues that the principles of unjust enrichment permit the court to grant the plaintiff an interest in the Bridge Lake property. The plaintiff argues that failure to accept jurisdiction will prejudice the plaintiff: first, only the courts of British Columbia have the power to grant partition. Second, he otherwise would not share the increase in the value of the property since the triggering event.
- [38] Counsel for the plaintiff argues that only the British Columbia courts have jurisdiction to entertain a claim for an interest in land that is situate in the Province, relying on *Tezcan v. Tezcan*. See also *Ratzlaff v. Ratzlaff* and *Shokohyfar v. Sotoodeh*.

Analysis - Forum Non Conveniens

- [39] The common law for determining forum conveniens has been superseded by the Court Jurisdiction and Proceedings Transfer Act, proclaimed in force in May 2006, which now governs jurisdictional disputes in British Columbia. See *Cresbury Screen Entertainment Ltd. v. Canadian Imperial Bank of Commerce* (2006), 53 B.C.L.R. (4th) 40, 2006 BCCA 270 at para. 43.
- [40] Section 11 of the Act sets out the factors to be weighed in the forum non conveniens inquiry:

11(1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
- (b) the law to be applied to issues in the proceeding,
- (c) the desirability of avoiding multiplicity of legal proceedings,
- (d) the desirability of avoiding conflicting decisions in different courts,
- (e) the enforcement of an eventual judgment, and
- (f) the fair and efficient working of the Canadian legal system as a whole.

[41] The plaintiff argues that a review of these factors militates that the courts of British Columbia take jurisdiction.

[42] Section 11(2)(a) refers to the comparative convenience and expense for the parties and their witnesses in litigating in the court or in an alternate forum. The fact that both parties reside in Germany is a reason against taking jurisdiction. However, the cost is not prohibitive for the parties to travel here and two important witnesses reside here: the contractor who built the cabin and the expert land surveyor. Therefore, this is a neutral factor.

[43] The next factor under s. 11(2)(6) is the law to be applied to the issues in the proceeding. The choice of law issue is not exactly clear on the evidence before the court. While the German expert concluded that the law of British Columbia applied to the Bridge Lake property, it is possible that German law might apply if a German court would consider the marriage of the parties to create an implied contract as to the distribution of their property upon the breakdown of their marriage.

[44] While the issue of implied contract was not fully addressed by the parties, I think it relevant to make some comments on that issue here. The Tezcan decision clarified some of the principles relevant to the conflict of laws problem presented by a case like the one at bar. In that decision, Cumming J.A., writing for the Court of Appeal, clarified that the claim at issue for the division of three properties under the Family Relations Act where the parties had been married and divorced in Turkey was a claim relating to property, and not a matrimonial claim. Thus, the choice of law rules to be applied to such a claim are those relating to property claims (at para. 26).

[45] For real property, Cumming J.A. noted that the choice of law rule applicable to proprietary claims for immovable property arising from marriage is *lex situs*, unless any marriage contract (express or implied) provides otherwise (at para. 34). In that case, although the Turkish Code provided for a regime of separation of assets, the trial judge concluded on the basis of the expert evidence that there was no implied contract under Turkish law. Cumming J.A. confirmed that the issue of whether there is an implied contract is a question of substantive law, and went on to note at para. 68 that:

Finally, even if an implied contract were found to exist, it would not assist the appellant's case in respect of the determination of the disposition of these immovable properties. As Dicey and Morris (11th Ed.) at 1057 note,

If parties marry under some foreign system of community property, the content of that system, including the question whether it is regarded by the law of the foreign country as applying to immovables situated outside that country, is of course a question of fact requiring proof of that foreign law in an English court. [Callwood v. Callwood, [1960] A.C. 659 (P.C.)].

[46] Thus, a person asserting that a law other than *lex situs* should be applied to immovable property situate in British Columbia must prove not only that there is an implied contract under the foreign law, but also that the foreign law would be applied by the foreign court to immovables situate outside that jurisdiction.

[47] On the basis of the expert German legal opinions provided to the Court, it appears that the German regime provides a comprehensive and equitable scheme for the resolution of property disputes upon marriage breakdown. Dr. Heinz-Peter Mansel, who provided an expert opinion to the Mettmann Court on the law of British Columbia, concluded that the law of British Columbia applied to the Bridge Lake property. However, he assumed that the parties had not concluded a marriage contract, and further, appears not to have considered whether the marriage of the parties under German law could have created an implied contract, which would displace the *lex situs* with the proper law of the contract. Therefore, the court is left without the benefit of a full analysis on the basis of implied contract.

[48] It is not clear whether the German law would consider that British Columbia would apply the proper law of the contract if indeed the marriage of the parties in Germany could be viewed as creating an implied contract for the disposition of their property upon marriage breakdown. However, the fact that the Mettmann Court has obtained a valuation of the Bridge Lake property for the purpose of calculating the compensation to be paid between the parties suggests that German matrimonial law is viewed as applying to immovables situate outside of Germany.

[49] The court in Tezcan at para. 58 affirmed that an implied contract can arise as a result of the law under which the parties have been married, relying on the House of Lords decision in *De Nicols v. Curlier*, [1900] A.C. 21 (H.L.). In that case, their Lordships held that the marriage of two persons in France resulted in an implied contract that the disposition of their common property would be dealt with under the French community of property regime,

and that a change in their domicile to England did not change this position. While that decision dealt only with moveables, as explained above, the Court of Appeal in *Tezcan* made clear that it is the law of British Columbia that the proper law of the implied contract would be applied with respect to the determination of the entitlement of spouses to an interest in real property situated in British Columbia, provided that the court of the foreign jurisdiction would apply its law to immovables situate outside its jurisdiction.

- [50] In *Tezcan*, the court looked to expert evidence of Turkish law to reach a conclusion that the substantive law of Turkey would not purport to apply the Turkish regime to immovables situate outside Turkey. In the case at bar, the German expert legal opinion did not consider the possibility of whether the German property equalization scheme could be regarded as creating an implied contract between the two parties, which would override the application of the *lex situs*. Therefore, the choice of law issue cannot be determined by the court on the basis of implied contract. However, even assuming that British Columbia law would apply to determine the plaintiff's entitlement to the Bridge Lake property, this fact would not change my decision.
- [51] Section 11(2)(c) and (d) address the desirability of avoiding multiplicity of legal proceedings and avoiding conflicting decisions. Under this category, it is noteworthy that having two actions in different jurisdictions dealing with the same subject matter is not per se objectionable: *Thrifty Canada*, supra, at para. 63. Moreover, the plaintiff argues that it is not forum shopping when a party whose case has a real and substantial connection to British Columbia has a legitimate claim to the advantages provided by that forum: *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, supra.
- [52] However, as explained above, it is not clear that British Columbia law applies so as to grant the plaintiff the proprietary remedy he can only receive from this court. Further, the potential for conflicting decisions is high where the German court has clearly taken jurisdiction and intends to grant a remedy in respect of the subject matter of this proceeding. Thus, this factor does not favour taking jurisdiction.
- [53] The next factor is s. 11(2)(e) - the enforcement of an eventual judgment. This weighs in favour of British Columbia since only the courts of this jurisdiction have the power to subdivide the property or order a sale or buyout. This is enough to grant jurisdiction of itself: *Chou v. Chou* at para 34 and *Ratzlaff v. Ratzlaff* at para 18.
- [54] The final factor is s. 11(2)(f) - the fair and efficient working of the Canadian legal system. The plaintiff argues that it is a reasonable inference that foreign persons purchasing property in British Columbia are aware that their rights are going to be subject to the law of British Columbia including marital property law. However, the court should carefully consider whether foreign persons who have consented to be bound by one particular matrimonial property regime should have their rights altered in respect of assets held in British Columbia.

- [55] I have concluded that the court should decline jurisdiction to deal with the claim under the Family Relations Act. The parties' rights are being determined by the Mettmann Municipal Court with respect to their matrimonial property. They are being determined according to German law. Surely that is appropriate given the fact that the parties are German residents and citizens and have lived in Germany throughout. Tezcan, *supra*, concerned a divorce decree in Turkey but the Turkish courts did not deal with the property of the parties and there were no other proceedings with respect to the property. Here, the German court has demonstrated that it will determine the respective pecuniary interests of each of the parties in the property by obtaining a valuation for it. Further, the defendant's German legal opinion suggests that German law does not permit such a parallel proceeding to be brought by the plaintiff, although there is no indication that the defendant has sought to obtain an anti-suit injunction in Germany.
- [56] Here, there are extensive proceedings in the Mettmann Municipal Court. That court has taken jurisdiction and has before it an appraisal of the property. My conclusion is that this court has jurisdiction simpliciter, but that jurisdiction should be declined on the basis of *forum non conveniens*. That will avoid the multiplicity of legal proceedings and avoid conflicting decisions in different courts. It is significant to me that both parties have already submitted to the jurisdiction of the German courts and that it was the plaintiff himself who commenced both the Mettmann and Wuppertal actions. Germany is the most appropriate forum to resolve this dispute.
- [57] In relation to the plaintiff's partition claim, this matter is more appropriately determined after the German court determines what, if any, portion of the property's value the plaintiff is entitled to. In the event his entitlement cannot be satisfied by the defendant, proceedings in this province on the basis of the judgment of the German court would be possible. Additionally, even if the German court decides according to German law that the plaintiff should receive no share of value in the property, as the defendant submits, any enrichment of the defendant would be according to German matrimonial law. It is therefore difficult to see how the absence of a juristic reason for the enrichment could be demonstrated by the plaintiff when his entitlement has been adjudicated according to German matrimonial law.

Conclusions on Comity

- [58] The only connection to British Columbia in this case is the ownership of the property by the defendant and the plaintiff's monetary contribution to it. All of the facts of the matrimonial dispute are now before the court in Mettmann.
- [59] The vast majority of the parties' assets are in Germany. The court is dealing with the division of those assets. It makes no sense to me that the division should be affected by the law of British Columbia. Comity demands a greater deference to the foreign proceedings in this case, where the foreign court is clearly adjudicating on the very issue which the plaintiff seeks to have resolved by this court.

- [60] Here, I note that, while the German court has no jurisdiction to affect title to real property located in British Columbia, it does have in personam jurisdiction over both parties. It is deciding the issue of the appropriate level of compensation to be paid from one to the other on account of their marriage breakdown, considering all of their assets. The expert evidence of the parties clearly indicates that the German scheme for equalization of marital assets by payment of compensation is intended to be comprehensive, and is not premised on the actual transfer of property between spouses in order to achieve equality, but rather on the payment of monetary compensation. The German court is considering the appropriate level of compensation which the plaintiff should receive, including in relation to the Bridge Lake property. This Court should not interfere with that process. To do so would be inconsistent with the principle of comity, and would demonstrate a lack of respect for the German legal process. This fact distinguishes this case from previous authorities, like *Tezcan*, which have considered property claims in relation to property situate in British Columbia under the Family Relations Act, where the property had not been dealt with by the foreign court.
- [61] In the result, I base my decision to decline jurisdiction on the principle of comity and respect for the German legal process. As explained above, it is not appropriate that this court should interfere with the equalization of assets to be effected by the German court.
- [62] The defendant's motion succeeds. The court declines jurisdiction regarding both the Family Relations Act and Partition of Property Act claims.

"The Honourable Mr. Justice Kelleher"

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