IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Thor v. Thor, 2005 NSSC 139

Date: 20050601
Docket: 1207-002460(26953)
Registry: Truro

Between:

Anne Marie Thor

Petitioner

v.

Ake Helge Thor

Respondent

Judge:	The Honourable Justice Charles E. Haliburton
Heard:	May 2, 2005, in Truro, Nova Scotia
Supplemental to Oral Decision:	June 1, 2005
Counsel:	Lloyd I. Berliner, for the Petitioner Karen J. Killawee, for the Respondent

By the Court:

[1] These comments are written further to an oral decision given at Truro on May 2, 2005 in which I declined jurisdiction in this divorce proceeding upon finding that the country of Sweden was the "forum conveniens". The wife, Anne-Marie Thor had petitioned in Nova Scotia while the Respondent husband has commenced divorce proceedings in Sweden.

BACKGROUND:

[2] The parties were married in Sweden June 19, 1976. It was a second marriage for both parties who had previously divorced. The husband's age was 55 and the wife's 29. They separated June 1, 2003.

[3] The husband had five children with his first wife, to whom he was married for 22 years. He is paying $25,000.00 per year spousal support to her. Before entering into this marriage the parties executed a marriage settlement agreement preserving their separate property for each of them respectively together with any inheritance or gift they might receive. I would infer, although it is not clearly stated that any after acquired property would be marital property, jointly owned. There is a limiting proviso with respect to insurance policies maturing during the lifetime of the owner.

[4] The extent of the husband's assets at the time of the marriage is unstated. It is submitted on behalf of the husband that the wife had little or no money or assets except a half interest in the home in which her parents resided.

[5] Shortly after the marriage, Mr. Thor's employer was amalgamated or taken over by Stora Forestry and he was offered a position in Port Hawkesbury. The couple relocated there in 1977 and have lived continuously in Nova Scotia from that time until their separation in June of 2003. During the marriage, Mrs. Thor did not work outside the home, although she was called upon to entertain extensively, apparently in their home at Port Hawkesbury, including overseeing the preparation and serving of a large number of meals for corporate visitors. Throughout the marriage his was the sole source of income.

[6] The husband's initial contract to come to Nova Scotia was for three years. However, the couple remained until he retired from Stora in 1987 after which they moved to Truro, where he operated "Interforest". He sold his interest in that business to his partner in 1991.

[7] Mrs. Thor has been engaged in the business of restoring old homes since 1991. She presently claims a ½ interest with a business partner in a home in Brookfield, Colchester County.

[8] The plans or intentions of the parties obviously diverged at some point and in 1986 Mrs. Thor became a Canadian Citizen. It had always been the intention of Mr. Thor that they would ultimately return to Sweden where he would spend the last few years of his life enjoying the company of his children and grand children. In 2003, for him, the time had come to return to Sweden. Mrs. Thor did not accompany him on one particular trip and when he returned two months later, she moved out of the matrimonial home, effectively ending their matrimonial relationship. Later that year he returned to Sweden where he intends to remain. He is now 83 years of age and she 58. She was apparently trained as a teacher. She attained a B.A. from the University of Stockholm with a major in Russian language. She is said to speak eight languages and "is a talented interior designer" (Mr. Thor). Before their marriage, she had worked at her parents hotel and convention centre which apparently equipped her well for the role of entertaining visitors.

[9] The Respondent husband was solely responsible for the family finances, earning, saving and investing. It may even be that he was secretive with respect to finances since his failure to share financial information and plans with his wife is presented as an issue. ("Tight fisted")

[10] Both parties suffer some problems with health. I have inferred, whether rightly or wrongly, that Mr. Thor is elderly and frail. Two letters or certificates from Doctors in the file indicate that they advise against him travelling to Nova Scotia to participate in a trial. He is said to have a serious heart condition and he has been treated for prostate cancer in 1998. Mrs. Thor also experienced some difficulties with her heart health at or about the time she decided to abandon the marriage, according to medical information which she has filed.

[11] Mr. Thor presented his wife with a second marriage settlement agreement to be signed in January of 1987. That agreement provided that "Swedish Law is to govern the financial circumstances of our marriage". This document purported to add to their joint property, property previously held separately by the husband. This included real property and furnishings in Sweden and a number of enumerated classes of property outside Sweden. It also designated property of Mrs. Thor to be marital property. This appears to list the same property as that referred to in the agreement as property of the Husband. The effect appears to be to render joint, virtually all the after acquired properties of the couple. Such an interpretation is consistent with what I understand to be the terms of the pre-nuptial agreement.

[12] On the 15th of March, 2004 the Swedish Court suspended proceedings to await the result of this application.

WHAT IS THE FORUM CONVENIENS:

[13] For the purpose of this application, I find the following to be the facts:

1. Mr. Thor is elderly and frail. His Doctor's have advised that he not travel to Nova Scotia for a trial. Whether travel is prohibitive for him may be in doubt. He has however expressed his determination that he will not attend trial here. Mrs. Thor has disclosed in her financial statement plans to visit Sweden from time to time as she has done in the past. It would clearly be possible for her to attend court proceedings there. No hardship in doing so is apparent.

2. Divorce proceedings have been initiated in Nova Scotia by Mrs. Thor and in Sweden by Mr. Thor. Both parties are represented in each jurisdiction by lawyers. There is no evidence with probitive force as to the value of properties of either party in Sweden. The value of and entitlement to Swedish properties or the proceeds therefrom is an issue which must necessarily be determined in order to effect a fair settlement between the parties. This will obviously require that the property be identified and appraised. Swedish Law will determine entitlement, and a Swedish Court would have to enforce any order for its division. The value of Canadian properties are established and/or agreed upon. Mr. Thor has identified a private company which the couple own, and a private loan. While not quantified this worth should be readily determined. Bank accounts and investments are identified, although their value is not documented. The agreement executed in 1986 specifically provides that Swedish Law will apply to the property rights of the parties. This could arguably affect Canadian assets, but there is no evidence nor any representation as to whether that law differs significantly or at all from Nova Scotian law.

[14] It having been indicated that Mrs. Thor would be the sole witness at this hearing caused me to be particularly concerned about:

> 1. The expense and delay in having Mr. Thor and other Swedish witnesses testify by way of commission.
>
> 2. The evidence that will be required to resolve the issue of the value of the couple's Swedish assets, whether real or personal, and the extent of her entitlement.
>
> 3. Establishing the extent of the wealth of the parties respectively is an essential preliminary to a determination as to whether and to what extent spousal maintenance is appropriate.
>
> 4. Mr. Thor's pension is Swedish. No order granted in Nova Scotia would be effective to transfer any of that income to Mrs. Thor.

[15] The absence of documentation to establish the value of deposits and investments in Canada raised the question of whether the Petitioner was actually ready for trial in any event. The respective statements of property are not supported by the usual documentation. There are very significant discrepancies in the valuation of many of the assets as reported respectively by the parties.

[16] In an affidavit filed August 11, 2004, Mr. Thor made a proposal for settlement. His valuation of assets within his knowledge are in some cases in Swedish krona and in other cases in dollars. No documentary evidence has been produced to identify the assets and securities he proposes to divide, nor is any valuation furnished. While his proposed division appears to be grossly unequal it is not possible to actually determine that is so

without further evidence, either from him or from Swedish sources with knowledge.

[17] During the course of the appearance in court I suggested it might be possible to deal with the divorce and division of matrimonial property since any order I might make regarding spousal support could not be enforced. Counsel did not wish to proceed on that basis and sought a ruling on the "forum" issue.

ISSUES:

[18] In the brief filed on behalf of the Petitioner August 27th, 2004 the following **procedural** issues were raised:

> - Does this honourable court have jurisdiction over the divorce proceeding?
> - Should this honourable court decline to exercise its jurisdiction based on "forum non conveniens'?
> - What effect, if any, do the documents dated June 15, 1976 and November 29, 1986 have on this court's jurisdiction over the proceeding?

[19] In the brief filed on behalf of the Petitioner on April 28th, 2005 in anticipation of the hearing scheduled for May 2nd, the procedural issues were again raised as well as substantive ones. In this brief the issues are enumerated as follows:

- Are the documents dated June 15, 1976 and November 29, 2986 valid as marriage contracts?
- Does Swedish Law apply to the present divorce proceeding?
- What is an appropriate division of the parties matrimonial property?
- Is the Petitioner entitled to spousal support and if so to what quantum?

[20] The Respondent's brief in preparation for trial enumerates the same issues in an abbreviated fashion:

- Are the marriage contracts valid?
- If the marriage contracts are valid, then what is Swedish Law?
- What is the appropriate division of assets?
- Is the Petitioner entitled to spousal support?
- If so, what is the appropriate quantum of support?
- Costs.

[21] In sum, the substantive issues are the usual which I would state simply:

1. Divorce.

2. Division of Matrimonial Property.

3. Spousal Support or Alimony.

[22] The file discloses that this matter has been before the Court on at least 5 occasions with lengthy briefs filed. These contests resulted in four orders securing interim spousal support and ordering production, but adjourning determination of the procedural issues.

[23] At the commencement of the hearing I sought the views of counsel with respect to whether we were to proceed with the substantive issues or

whether the procedural arguments continued to be advanced. It was my understanding that indeed, the court was expected to rule on and resolve the procedural issues before dealing with the substantive. It was the apparent absence of reliable and definitive information (not to mention **evidence**) with respect to the extent of matrimonial property, the extent of the separate property of the respective spouses, and the absence of any evidence with respect to the nature of Swedish Law that prompted my conclusion that the courts of Sweden would provide a "forum more convenient and appropriate for the pursuit of the action and for securing the ends of justice".[1] In contemplating whether Nova Scotia is a "forum non conveniens" a consideration of the results of the litigation and the effectiveness of any order the court might make are important and relevant considerations. The cases enumerate a number of considerations including the "convenience" to the respective parties of a particular forum, their ability to effectively advance their positions, the fullness of the evidence which would be available in one forum or other, and the ability of the court (this court) to

[1]Ritchie J. speaking for the majority in Antares Shipping Corp. v. The Ship "Capricorn" 1977 2 SCR 422

enforce its order. This is not a complete list of all the considerations that have been cited in the cases.

[24] A language translation problem adds to this difficulty of providing the better forum here. It was argued by Ms. Killawee that the nuances of language could be more adequately understood when those involved would have facility in both languages.

[25] The ability to require the production of evidence and ensuring the ability of the parties to enforce full production is essential to a "**fair adjudication**". Furthermore it would be pointless to go through the trial process to obtain an order for judgment, which would leave the successful party **unable to enforce** the remedy granted. These seem to me to be the two points most relevant in this proceeding. This action has been pending in our court for nearly two years with a demand outstanding on the part of the Petitioner that the Respondent husband produce full and verified financial information. In spite of court orders issued by our court supporting that position, the Petitioner has been unable to achieve that result. Furthermore, the Respondent who according to the information in the file, has returned to Sweden two years ago, has expressed a determination to not return to Nova Scotia for a trial. While he has produced a good deal of information with

respect to his financial affairs it is the position of the Petitioner that it is incomplete.

[26] The information provided by the Petitioner, as disclosed in the file, is not without its problems. Indeed, the appearance that she may not have fully disclosed her own finances leading up to the intended trial underlines the risk of unfairness in any result that might be achieved in our court. While some informational problems have been cured in the meantime, the Petitioner obtained a spousal support order in 2003 while failing to report very substantial assets of her own. If the financial information now disclosed by the file and largely reported by the Respondent can be relied upon (much of which can't be tested in Nova Scotia) the Petitioner in seeking interim support failed to disclose the following assets which Mr. Thor attributes to her in whole or in part: TD Bank RRSP $89,608.00; TD Bank RRSP $36,274.00; Dominion Securities Account of unknown value; Central Trust Deposits and Ferona Loan $800,000.00; Petro Can and Lac Mineral Shares $13,000.00; AMA Holdings 49% interest of unknown value; loan to Interforrest of unknown value; jewellery and cameras $18,000.00; bank deposits in Sweden of unknown value; stocks and securities in Sweden $51,000.00; interest in Swedish Properties unvalued in

her earlier application are said by the Respondent to have a value to Mrs. Thor of $200,000.00 or more. I note that her tax return for 2003 reports the sale of corporate shares for $57,000.00 and Swedish property for $224,000.00.

[27] The attached schedule is an attempt to create a table incorporating the assets of this couple which now or recently existed. I would hasten to add that while there is information in the file with respect to these financial matters, there is scant proof. If it is ultimately supported by proof however, Mrs. Thor has or will have, very substantial assets, upon the determination of the net worth of the parties. A division of their matrimonial assets is an essential requirement before any consideration could be given to whether or not she is entitled to spousal support or alimony. The fact that she failed to report any income whatever from her substantial assets, and her renovation business heightens my concern about the fairness of proceeding with only one party participating.

[28] Included in the Swedish assets is real estate/real property of both parties. Without agreement as to the value of that property, appraisals will be necessary and evidence would likely be called. By the same token, if the

value of his pension is relevant the details of that pension, i.e. - residual value at death, survivor benefits, actuarial information - is all Swedish.

[29] It is the position of the Respondent, that his wife had little in the way of assets when they married and that he had "some". My understanding of their marriage contracts is that essentially all assets acquired during the marriage are to be treated as matrimonial property. It may be then that he has a claim on many of the assets enumerated in the previous paragraph. On the other hand it is just possible that he has substantial assets separate and apart from those identified in the file, perhaps predating the marriage. The Swedish Court would be in a much better position to require full disclosure and proof of this financial worth than is a court in Nova Scotia. Again, the fairness of the result will depend upon the ability of the court to know the relative wealth of the two parties upon divorce.

SPOUSAL SUPPORT:

[30] The REMAINING substantive issue is spousal support or alimony. As a general rule after a twenty year marriage with one party out of the work force, the other party would be obligated to provide a maintenance allowance which would afford the dependant party a lifestyle similar to that enjoyed during the marriage on an indefinite basis. Such result would be

limited by considering the means, primarily "income" of the supporting spouse and continue until one of the parties dies or the dependant spouse no longer requires support. Having not heard the evidence of the Petitioner, it may be that I have misunderstood what it is that she was seeking in the way of an order for spousal support. What I have heard however is that she claims support on the basis that she has no income, that her husband's income is in excess of $100,000.00 a year and that maintenance should be secured by distraining the assets of the Respondent in Canada. From these frozen assets spousal support would be paid on a monthly basis. In the alternative it is proposed that lump sum maintenance be ordered. A lump sum in lieu of maintenance would have the benefit of being enforcable against the Canadian assets.

[31] On this issue too the red flags go up.

[32] The parties, knowing their own circumstances, might be able to agree to a lump sum payment in lieu of maintenance that would be fair and equitable. If they were agreed it would be themselves who would take the risk of miscalculation. For the Court to order such lump sum maintenance in lieu of any substantial spousal support would seem to me to carry a very high likelihood of substantial unfairness to one party or the other. Both the

extent of any allowance and the time over which it would be paid need be considered. The extent of the allowance I have already discussed in so far as it would be affected by the relative wealth of the parties. It would also be affected by the Petitioner's plans for her future, her ability to earn a salary, and her business success. She is said to have a prospective new domestic partner in the wings. She already has a business partner in the home renovation business and she has marketable skills. Her entitlement must be balanced against Mr. Thor's available income. While there is her affidavit evidence that his income is currently in excess of $100,000.00, his affidavit sets out his obligation to his first wife which reduces that by $25,000.00. Mrs. Thor failed to disclose that obligation of her husbands which must have been known to her when claiming support for herself.

[33] With respect to the temporal aspect of the order, he is 83, she is 58. How long will spousal support be payable if it is ordered? His income will terminate on his death and presumably his obligation to pay spousal support will terminate as well. His life expectancy is probably six or seven years so at the level of interim support which was ordered in 2003, $2,000.00 a month, one might argue that a lump sum of $120,000.00 or $140,000.00 could be justified.

[34] In this situation, where there is considerable uncertainty as to both the appropriate quantum of maintenance, and the time over which it will be paid, it would be dangerous and inappropriate to order a transfer of his capital to prepay maintenance to which the petitioner may never become entitled.

[35] An order for spousal support implies a continuing stream of money based upon the income of the payor spouse. The information with respect to his income is going to be in Sweden. The ability to enforce regular payments from his income will reside in Sweden, or with the Swedish court.

THE LAW:

[36] Perhaps the leading case with respect to *forum conveniens* is *Amchem Products Inc.* v. *British Columbia (Workers Compensation Board)* [1993] 1 S.C.R. 897, 102, D.L.R. 4th 96; 1993 Carswell BC 47. While this was a case focused on an anti-suit injunction the comments with respect to *forum conveniens* are nonetheless applicable. At paragraph 21 of the Quicklaw version Sopinka J. in delivering the courts judgment observed

> "the choice of the appropriate forum is (still) to be made on the basis of factors designed to ensure, if possible, that the action is tried in the jurisdiction that has the closest connection with the action and the parties and not to secure a juridical advantage to one of the litigants at

> the expense of others . . . Often there is no one forum that is clearly more appropriate than others."

The judgment at Paragraph 24 goes on to say

> "In some cases both jurisdictions would refuse to decline jurisdiction as for example where there is no one forum that is clearly more appropriate than another . . ."

Paragraph 27

> "Earlier English cases . . . required a party to establish
>
> > (1) That the continuation of the action would cause an injustice to him or her because it would be oppressive or vexatious or constitute an abuse of the process and;
> > (2) That stay would not cause an injustice to the plaintiff.
>
> The foundation for this rule was not balance of convenience for the trial of the action but rather abuse of the rights of the parties . . . (and later he continues the words "oppressive and vexatious") . . . were discarded in favor of a more liberal and flexible test which required the defendant to establish
>
> > (1) that there is another forum to which the defendant is amenable in which justice can be done at substantially less inconvenience and expense, and;
> > (2) that the stay not deprive the plaintiff of a legitimate personal or juridical advantage if the action continued in the domestic court.

At Paragraph 28

> "So it is for connecting factors . . . that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction . . ."

At Paragraph 31 quoting an article from the UBC Law Review (Ellen L. Hayes)

> "The status of the doctrine of forum non conveniens in Canada is unclear. In general terms the Canadian Courts have looked to English authorities when considering forum non conveniens issues."

[37] The judgment next quotes from the decision of Ritchie J. in *Antares Shipping Corp.* v. *The Ship Capricorn* [1977] 2 S.C.R. 422

> "In my view, the overriding consideration . . . must however be the existence of some other forum more convenient and appropriate for the pursuit of the action and for **securing the ends of justice**. (My emphasis.)

[38] With respect to securing the ends of justice, Sopinka J. continues

> "There is no specific discussion of the second condition of the English rule but it is clear from the judgment that a principal factor in the determination that there was no alternative forum more convenient than Canada was the fact that **it was the only jurisdiction in which the plaintiff could obtain an effective judgment. (The ship had been arrested in Quebec and the bond posted as security for enforcement of any judgment.)** Accordingly Canada was the most convenient forum for both the "pursuit of the action" and "**for securing the ends of justice**".

[39] A portion of the head note (Carswell version) for this case is worth quoting

> "the test for inconvenient forum" is whether the defendant has clearly shown another forum to be appropriate for the pursuit of the action. If this first condition is established the plaintiff has the onus of showing that justice requires that the trial take place in its proposed forum. Juridical advantage should be weighed with the other factors in identifying the appropriate forum in the first condition. A party whose case has a real and substantial connection with a forum has a legitimate claim to the advantage that that forum provides."

[40] Two other cases cited to me relate to "forum conveniens". They are *Huber* v. *Huber* [1999] O.T.C. 31 (Sup. Ct.) and *Vladi* v. *Vladi* [1986] 73 N.S.R. 2ND 418 (TD). Determining the forum conveniens is a matter of fact and accordingly both those cases turn on their particular facts. In both cases, the trial judges decided to exercise jurisdiction in Canada. In *Huber*, the judge dealt with some but not all issues. A major factor seems to have been that the matrimonial property was all located in Ontario where any order "would have to be enforced". Perkins J. Also determined to hear the issue of custody. How an order for custody in favor of the Ontario resident might be enforced in Germany is not so clear, however other circumstances may have been the deciding factor in that case; in particular the fact that the custody issue had arisen in the context of an "international child abduction".

[41] The *Vladi* case offers a very useful review of the consideration of forum conveniens in the context of family separation and matrimonial property. In that case, the parties had already been divorced in Germany and the dispute related only to the division of matrimonial property some of which was located in Nova Scotia and some of which was not. Ultimately the determining factor cited by Glube C.J.T.D. was

> "The probability that a decision in Germany would invoke Iranian law which would probably offend against substantial justice as we know it in Nova Scotia."

CONCLUSION:

[42] In giving consideration/credence to all these concerns which have arisen from my perusal of this very thick file, and from hearing the representations of counsel, I wondered whether it would be appropriate to declare this a "forum non conveniens" without hearing actual testimony regarding that question. On subsequent review I am somewhat comforted by the comments of Sopinka J. In *Amchem* v. *British Columbia* paragraph 33 (supra) where the court relied upon "the material presented". Likewise in *Huber* v. *Huber* [1999] O.T.C. 31 (Sup. Ct.) it is clear that the decision was taken without hearing evidence.

[43] The cases speak of a consideration of Juridical advantage as a factor to be given weight. My understanding of the facts in this case is that neither party should gain an advantage at the expense of the other as a result of proceeding in Sweden, while Mr. Thor will suffer significant disadvantage if the matter proceeds here. Sweden is a country with a progressive and enlightened system of laws, and a high regard for individual rights. It will provide a forum in which both parties may fully pursue their rights.

[44] In summary then, the more appropriate forum for this matter is Sweden where unknown property is located, where any order made can be

effectively enforced and where the likelihood of a fair and equitable outcome is enhanced.

[45] To use the words quoted from some of the cases, it would be “clearly or distinctly more appropriate” that these parties proceed with their divorce in Sweden.

Haliburton J.

"SCHEDULE"

This Schedule reflects assets identified by one or other of the parties in documents filed or exchanged between parties.

SCHEDULE OF CANADIAN ASSETS

CANADIAN ASSETS	TOTAL VALUE	HIS	HERS
Real Estate			
• Truro	$227,000.00		
• Brookfield	60,500.00		
Contents	68,415.00		
Securities			
• TD Waterhouse RRSP	$ 89,608.00		$ 89,608.00
• TD Securities Acct.	36,274.00		36,274.00
• TD RIF	233,500.00		
• TD Investment Account #239212	2,000.00		2,000.00
Account #239213	15,000.00		15,000.00
• Petro Can Shares	3,000.00		
• Lac Mineral Shares	10,000.00		
Deposits/Cash			
• TD Savings 5371-6235436	$ 1,635.00		
5371-3162593(2)	8,000.00		
TD Bank other savings	83,000.00		
Spousal Loan		$148,000.00	($148,000.00)
Other Assets			
• Interforrest Loan *(1)	?		
• Central Trust			
• Ferona Loan	$800,000.00**(2)	51%	49%
• AMA Holdings			
Miscellaneous			
• Automobiles	$17,000.00(3)		
• Jewellery/Cameras	$18,000.00		
CANADIAN TOTALS			

(1)* Names as asset by Respondent in an earlier statement of their joint property. No Value assigned.

(2)**Again, these three items with global value assigned were identified in material originating with the Respondent in 1991.

(3) Value assigned by her, his value is $30,000.00

SCHEDULE OF SWEDISH ASSETS

SWEDISH ASSETS	TOTAL VALUE	HIS	HERS
Real Estate • Granön 13:59 • Westmann Home Södenhamn • Furnishings	 $250,000.00(1) $150,000.00(2) $20,000.00(1)		 $150,000.00
Securities • Scandifund	 ?		
Deposits/Cash • Proceeds of Sale of Swedish Home (Oct. 2003) • Money on Deposit Nordbanken #15445501779 • Föreningssparbanken #4482-5374 • Other Bank #3825-5801180	 $600,000.00	 $300,000.00 ? ? ?	 $300.000.00 ?
BY HIS AFFIDAVIT OF AUGUST 2004 Other Shares (Stock) • Billerud • Boliden • SCA • Telia-Sonera • Svea Skog • TietoEnator • Pfizer • Ismabolag His $ on Deposit His Shares	 $51,000.00	 $63,200.00 $7,359.00	
SWEDISH TOTALS			

(1) her valuation
(2) his valuation
*The only assets independently valued are Truro real estate with contents, and his R.I.F. No documentation is on file relating to other bank deposits and investment accounts.