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*Protecting Your Assets
Outside Canada*

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This paper is intended to provide general comments on developments in the law. It is not intended to be a comprehensive review nor is it intended to provide legal advice. Readers should not act on information in the paper without seeking specific advice on the particular matter. Our firm would be pleased to provide additional details or discuss how this information is relevant to a specific situation.

Protecting Your Assets Outside Canada

by Grace Choi

April, 2004

Do you have assets in more than one country? Many of our clients are immigrants to Canada with assets in Asia and in Canada. Assets in Asia typically include businesses, real estate (such as residences, apartment buildings, commercial buildings and bare land), marketable securities (stocks and bonds) and bank accounts.

When these marriages break down and division of assets becomes an issue, it becomes important to know how the British Columbia Courts will likely deal with assets situated in other countries as well as assets in British Columbia.

The Power of the BC Courts

The BC Court will have to determine whether it has the jurisdiction or power to deal with the assets or parties involved. Generally, a BC court will only have the power to make orders against people or assets in BC.

The BC Supreme Court will take jurisdiction in a matrimonial case if either the husband or wife have resided in BC for a minimum of one year. If neither has been resident for a year, then a lawsuit cannot be commenced in BC in Supreme Court. If one person has been resident for at least a year, the Court will likely assume jurisdiction.

The following example is a typical fact pattern. Mr. and Mrs. X moved to Vancouver from Hong Kong 2 years ago. Mrs. X has resided in Vancouver with the 2 children continuously since that time, while Mr. X has lived primarily in Hong Kong, for business reasons. Mrs. X could commence a lawsuit in BC on the basis that she has been resident here for one year. Mr. and Mrs. X own the following assets:

- two homes in Vancouver worth \$1 million each;
- \$900,000 in stocks and bonds in BC in Mrs. X's name; and
- a business and commercial building in Hong Kong worth \$8 million.

Mr. X controls the Hong Kong assets.

In this scenario, there may be some question as to whether the Court will assume jurisdiction over Mr. X if he continues to reside primarily in Hong Kong and does not come to B.C. Mr. X will have to attorn to the BC Court. Attorning is a legal term which in this example would mean something akin to the husband accepting the authority of the BC Court. If Mr. X deliberately refrains from attorning to the BC Court's power is not necessarily likely to prevent the BC Court from dealing with the two homes and investments in BC and making awards that may favour Mrs. X.

A Court may decline jurisdiction in circumstances including the following:

- (a) If Mr. X had already commenced matrimonial proceedings in Hong Kong over the same assets; or
- (b) Hong Kong is a more appropriate forum (only likely if all the assets were there).

Authority Over Parties vs. Authority Over Assets

The remainder of the article will assume that Mr. X has attorned to the BC Court's jurisdiction.

As a general rule, the Court will not have the power to make orders **directly** relating to property outside BC. That is, a BC Court could not "freeze" or force the sale of the Hong Kong business or commercial building.

What the Court could do is to make an Order against Mr. X from either disposing of the commercial land or shares in his business. If Mr. X does not comply with the Order, Mrs. X's remedy is to make an application for contempt of court; an Order for contempt may include monetary fines and/or jail time.

This is in contrast to the Court's ability to deal with assets directly inside BC. For example, if the Court made an order "freezing" or preventing the disposition of investments such as stocks and bonds against Mrs. X, the Order would not only direct that Mrs. X herself be prevented from transferring or selling her investments, but would also direct the financial institution where the investments were held, to "freeze" assets and prevent the disposing of the investment.

Dividing B.C. Assets

In BC, the presumption at law is an equal division of family assets.

Since the business and commercial building situated in Hong Kong are worth more than the assets in Vancouver, and are in the control of Mr. X, a B. C. Court may be inclined to make an Order giving Mrs. X the Vancouver assets as there may be some uncertainty as to whether Mrs. X may successfully obtain a fair portion of the Hong Kong assets.

Conclusion

The issues raised in this paper are only a handful of topics that are generally raised in situations where the parties own assets in different countries. The best solution for any particular client will be dependent on the specific facts of that case. Every case is unique and different facts may yield widely different results. We encourage everyone whose marriage or common law relationship has deteriorated to the point that separation is inevitable to seek competent legal advice as early as possible, which will ensure that the best strategy and the most options are available.