

JERSEY / JUDGMENT

H Trust [2007] JRC 213 (16 November 2007)

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judgment

the COMMISSIONER: 1. This brief judgement follows on from the judgment of this Court ("the Judgement") issued on 2 nd October, 2007 (In the matter of the H Trust

[2007] JRC 187). 2. In addressing us on the form of the Order, Mr MacRae for SW submitted that the proposed undertakings set out in paragraph 62 (ii) of the Judgment not to enforce any claims that SW may have under the English Order against the Portuguese property or the Canadian land should not apply to the proceeds of sale of those properties to the extent that those proceeds exceed the valuations attributed to them, namely £250,000 and £367,000 respectively. 3. It is clear that this submission was prompted in the main by SW's belief that the Canadian land could potentially be worth far in excess of £367,000. That belief was based on certain, in our view, rather optimistic comments RW had made in correspondence and a letter of wishes written in 2005. 4. We invited and received written submissions submitted by Mr Mills on behalf of RW and declined to accede to the submission of Mr MacRae for the following reasons: (i) The parties accepted a valuation of £375,000 for the Canadian land (and £250,000 for the Portuguese property) for the purposes of both the English proceedings and the proceedings before this court and all of the arguments and submissions were premised upon those valuations (ii) Whilst it may well be the case that the Canadian land constitutes a good long term investment, which if held long enough, may realise substantially more than the £375,000 valuation attributed to it, the orders which we have given will almost certainly require an immediate sale of the Canadian land in order to provide funds to support RW. (iii) The assets retained within the H Trust following the appointments out to SW are protected from claims by her under the English Order. However, by making the orders that she is seeking, we render the H Trust financially unviable, almost certainly requiring the trustees to appoint the remaining assets, out of the protection of the H trust into the personal hands of RW where they would be exposed to the outstanding claims of SW under the English Order. The fact of the matter is that we would not have been prepared to give SW the full extent of the order she received, if RW was not been left with the benefit at least of the assets remaining within the H Trust. 5. We received further written submissions from Mr Mills on behalf of RW which we considered. In essence Mr Mills urged the Court to impose a mechanism for the payment of SW's debts either through the Court or through RW to ensure that they are

properly payable and to make the Jersey Orders in full settlement of all outstanding obligations under the English Order so as to bring complete finality to the issues between the parties, and this by requiring the parties to satisfy outstanding financial obligations under the English Order only out of the proceeds of sale of the manor. 6. We declined to accede to these submissions because - (i) In giving effect to the English Order in so far as we are reasonably able to do so we do not regard it as our role to investigate and supervise the repayment of SW's debts out of the capital sums which the English Court determined she should receive. (ii) Desirable as it is to achieve complete finality as between the parties, our role is limited to the supervision of the H Trust and to giving directions, where appropriate, in relation to the assets within the H Trust. The undertaking which we have sought from SW relates to assets currently held within the H Trust and which, if effect is to be given to the directions she seeks in her favour, will now have to be appointed out to HW. We do not think it would be appropriate for us to otherwise interfere with the rights of the parties under the English Order. Authorities In the matter of the H Trust

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