

JERSEY / JUDGMENT

J - v - H and R [2005] JRC 071 (24 May 2005)

[2005] JRC 071

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

THE REGISTRAR: 1. On 13 th March 2000, the Court made a Consent Order on the terms which were dictated by the parties' advocates. 2. The material passage, which has resulted in extensive litigation, reads:- "7. that, as expeditiously as possible, the jointly owned property, namely, B, shall be transferred into sole name of the petitioner, the respondent paying the normal stamp duty in respect of the said transfer;

8. that upon the following "trigger" events, namely, a. all the said children completing their full-time education or reaching the age of 18 years; or b. the re-marriage of the petitioner; B shall, subject always to paragraph 9 of this order, be sold for the best possible price obtainable within a reasonable time;
9. that 10 days after the sale of B in accordance with paragraph 7, the petitioner shall pay to the respondent 10% of the net proceeds of sale;
10. that notwithstanding the provisions of paragraph 7 and 8, the petitioner and respondent may, by further agreement, agree that the sale of B should not proceed, in which case the petitioner shall retain the property in her sole name and pay to the respondent a sum representing 10% of the net value of the property, which net value, if not agreed, shall be determined:- a. by an independent surveyor to be agreed between the parties; or b. failing agreement, by an independent surveyor to be chosen by the President at the time of the Jersey Branch of the Institute of Chartered Surveyors;
11. that, in any event, without the consent of the respondent, which consent shall not be withheld unreasonably, paragraphs 7 - 9 shall not take effect unless or until the mortgage secured on the property has been redeemed." 3. The Consent Order, in addition, noted the parties' undertaking to do all that was necessary to give effect to the order and to discharge their liabilities thereunder, with liberty to apply, if necessary; and the respondent undertook to continue to pay the mortgage on B and the endowment insurance premium, and, upon its maturity to apply the proceeds to redeem the mortgage. 4. On 25 th September 2003 the respondent's advocate filed a summons requesting that the decree nisi of divorce pronounced on 20 th January 1999 be made absolute. 5. On 19 th January 2004, I refused to grant the decree absolute unless B was first transferred into the wife's name. The material part of my order reads:- "1. that the respondent's application that the decree nisi of divorce

pronounced on 20 th January 1999 be made absolute be granted, subject to the following conditions:- (a) that the parties' jointly owned property B, be transferred into the sole name of the petitioner; (b) that the property be transferred free of any charges; IT IS FURTHER ORDERED:- 1. that, within 14 days of the said transfer, the petitioner shall pay to the respondent a sum representing 10% of the net value of the property;" 6. The respondent appealed against this decision, but on 5 th May 2004, the Inferior Number dismissed the appeal. 7. The present application is made by the husband to reach a conclusion to this lengthy dispute. In the words of his advocate:- "In February 2004, the Court denied the Respondent his decree Absolute save on terms which necessitate him refinancing the mortgage on the Property, transferring the Property to the Petitioner free of all charges and receiving 10% of the value of the Property from the Petitioner. Until such time as the Petitioner chooses to participate in this process promptly and in a meaningful way, the Respondent is deadlocked. He cannot transfer the Property, he cannot obtain his Decree Absolute and he cannot remarry. This is plainly inequitable and the Court must assist him to remedy this situation." 8. I am told by the wife's solicitor:- "Mrs H proposes that the Property be transferred into her sole name as expeditiously as possible in accordance with the original Order and that, because she is unable to discharge immediately the payment of 10% of the value of the Property, the transfer be undertaken subject to a payment of 10% of the current net value of the Property upon the transfer of the Property out of the ownership of Mrs H at any time in the future. In the alternative Mrs H submits that the original Consent Order and its subsequent variation on the 9 th February 2004 have been frustrated by her inability to raise the said sum of £46,375.00 and that accordingly the term of the ancillary arrangements settled between the parties require review in their entirety." 9. I am unable to rule out the suggestion of the husband's advocate that:- "The Petitioner is deliberately delaying matters because either she does not wish the Respondent to have his Decree Absolute and remarry or she is using this as a negotiating tool to ensure that she does not have to pay the Respondent 10% of the net value of the Property." 10. It was my earnest hope in January 2004, as I believe it was that of the Bailiff, when the Court dismissed the husband's appeal in May 2004, that completion of the January order would bring an end to the dispute. 11. However, neither of us foresaw that the wife would have a difficulty in raising a loan or the cash equivalent to 10% of the value of B. 12. It will profit neither party to prolong this case. Either the wife must somehow find the 10%, or the property must be sold. B is an important asset, presently still registered in joint names, but it does not offer, at this time, immediate refuge for either party as a permanent residence. 13. I have considered the only possible compromise, which would be dependent on the husband not receiving his 10% payment immediately. However, this was not contemplated by me in January 2004, nor by the Inferior Number in May 2004. It would be inconsistent with those decisions to consider it now. Indeed, why was neither I, nor (I believe) the Inferior Number informed of any potential difficulty? 14. The wife must be offered a further period of time in which she can raise the 10% value, failing which, as was originally contemplated in the Consent Order of March 2000, the property must be sold, with the proceeds being distributed as contemplated at that time; 90% to the wife and 10% to the husband. 15. Finally, the purpose

of withholding the Decree Absolute was to ensure that the husband cooperated in the transfer of B to the wife. I am now satisfied from the correspondence between the lawyers that he is willing to do this. The only remaining stumbling block is the wife's inability to fund the 10% payment to him. 16. There is, therefore, no reason to continue withholding the decree, which, in my opinion, should be issued as soon as the appeal process is complete.

No Authorities Page Last Updated: 18 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2005/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/j-v-h-and-r-2005-jrc-071-24-may-2005>

Prepared on 26 October 2026 · Esheria