

JERSEY / JUDGMENT

M v G [2003] JRC 047A (10 March 2003)

[2003] JRC 047A

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judgment

the REGISTRAR: 1. In this case, the parties are already divorced, but within a month of the issue of the decree absolute, the wife (respondent) applied to the Court for a lump sum, a transfer of property and maintenance. The application was filed on 1 st August, 2002, the First Appointment to be held on 30 th October, 2002. 2. Affidavits of means have been exchanged. 3. The nature of the hearing before me today is for me to give further directions regarding disclosure of information, in particular, whether the husband should be ordered to answer a second questionnaire, in relation to which I have heard submissions from both lawyers. The husband's affidavit is indeed remarkable for the small amount of financial information it provides, e.g. no figure for rent/mortgage or rates or a host of other details normally provided. The affidavit states that the Chavic Trust pays the sum of £400 per month as child maintenance for the parties' daughter C and £100 per week for V. 4. The husband lives in a substantial property ("the property") consisting of 14 rooms; he is unemployed, and is the settlor of the Chavic Trust. 5. The Trust owns two property owning companies, Timberlake Limited and Zellah Limited. By virtue of a licence, or life interest agreement (I am not certain exactly what) the husband appears to be at liberty to reside in the property indefinitely and free of charge for mortgage, rent, electricity, gas, home insurance or even car insurance or car maintenance. 6. The husband however, states that he is not a beneficiary of the Trust. The beneficiaries are stated to be the parties' two daughters. 7. Before his settling in Jersey as a resident by virtue of the Housing Regulations category 1(1)(k) in about 1989, the husband was declared bankrupt in the United Kingdom with debts of some £8,000,000. I am not clear whether he is now a discharged bankrupt or not. 8. The parties signed a separation agreement in 1989 at about that time, recording the terms of their intended separation. I understand that since that time there was a reconciliation, and indeed the wife came over to Jersey to live with the husband. However the terms of the agreement are, none the less, of importance. For example, there is no mention in the agreement of any capital settlement for the wife, a situation, which now appears to be denied by the husband. Paragraph 4 of the agreement records:- "(i) That neither will make any claim upon the other for any lump sum payment property transfer or property adjustment or any other financial claim save that the wife shall be at liberty to claim periodical payments from the husband in respect of herself and the children; (ii) In any divorce or judicial separation proceedings the parties hereto shall apply by consent for an order dismissing all such claims as are mentioned in sub paragraph (i) hereof save only the wife's right to claim periodical payments for herself and the children of the family." 9.

The wife's concern, which I share, is that the husband is hiding behind the Chavic Trust, in order to avoid his responsibility to provide his ex-wife with a reasonable divorce settlement. 10. The husband has been asked to clarify who decides the amount that is being paid to C and V, when the amounts started to be paid and whether they have stopped at anytime and if so why. 11. His answer reads as follows:- "The Trustees of the Chavic Trust, Warren Trustees Limited, decide on the amounts to be paid to C and V. When the same commenced and whether they were stopped at any time and if so why are matters which the Trustees have been requested to clarify (see attached letter from Petitioner to Trustees) but they have declined to do so, on the basis that neither the Petitioner nor the Respondent are beneficiaries of the Trust. The Trustees do not wish to be unhelpful but have a duty of confidentiality. (a) The Trustees are Warren Trustees Limited of 2 nd Floor, Salisbury House, Union Street, St Helier, JE4 8RH; (b) The beneficiaries are C and V; (c) The Petitioner believes that the Chavic Trust is a life-interest Trust; (d) The Petitioner does not have a copy of the Trust Deed or any subsequent Deeds of variation or appointment

- again please refer to the answer in 3 above setting out the Trustees' position; (e) The Petitioner does not have in his possession any copies of Trust accounts for the last three years. See Trustees' position; (f) The Petitioner has not received any capital advances from the Trustees since the creation of the Trust and therefore no documentary evidence of the same exists; (g) The Petitioner, as far as he understands the position, estimates that he will not receive from the Trustees any income or capital advances in the foreseeable future. He believes that the asset/liability position of the Trust precludes this; (h) The Petitioner does not have in his possession any copies of any Letters of Wishes." 12. I do not propose to hear evidence of the matter at this stage, but I have grave doubts as to whether the Trustees in fact choose whether or not to pay maintenance to the parties' daughters. I am told by the wife's lawyers that maintenance has now stopped and that the girls were told by their father, not the Trustees. I was unconvinced by the explanation given by Mr. Manning, for the husband. 13. I am told today by Mr. Manning that the Trustees have taken legal advice and are not prepared to co-operate in providing any further information. 14. It remains for me to decide whether an order should be made against the husband for the disclosure of information requested in the 2 nd questionnaire. 15. There are 4 reasons why it seems to me that such an order should be made:- (i) Mr. Manning told me that there was no issue taken about the fairness of the questions asked, merely the need for the Trustees to co-operate, in which case the questionnaire could be answered. (ii) In at least one respect, the husband, is a beneficiary, in that he actually enjoys the benefit of living in substantial property free of charge. In the case of Rabaiotti

[2000] JLR 173 the Deputy Bailiff ordered the disclosure of information by trustees to a beneficiary in order for him to comply with an order of disclosure in UK matrimonial proceedings. (iii) Much, if not all, the information and documents requested must have been known to, if not in the control of the husband and it seems unconscionable to allow him to forget all knowledge of them when a simple request might enable him to obtain them. In the case of T -v- T and others

[1996] 2 FLR 357 the application to set aside an order joining trustees to an action for the settlement of ancillary matters was refused. (iv) Finally, I retain a suspicion that the trust, and not the husband, actually controls the funds and companies in question. Disclosure of the documents requested might help clarify the position for all concerned. 16. I, therefore, make the order requested, that the husband shall answer the questionnaire by close of business on 31 st March, 2003. 17. I suggest that the matter be brought to the attention of the Inferior Number by Order of Justice as soon as practicable after the sadly probable event that this order is not complied with, at which time an order could also be made for the service of proceedings on the trustees of the Chavic Trust, who could be joined to the action. Authorities Rabaiotti

[2000] JLR 173 . T -v- T and others [1996] 2 FLR 357. Page Last Updated: 27 Mar 2017 BAILII:
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