

JERSEY / JUDGMENT

# O -v- P (Matrimonial) [2015]

## JRC 258A (15 December 2015)

[2015] JRC 258A

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

### judgment

the registrar: 1. On the 3<sup>rd</sup> July, 2015, Registrar O'Sullivan made a final order ("the order") in respect of the respondent husband's ("the husband") application for ancillary relief. The order contained the following provisions with regard to the sale of the former matrimonial home:- "...the former matrimonial home, namely Property 1 (hereinafter referred to as "the property") shall be sold forthwith on the open market and the following consequential provisions shall apply:- (a) the property shall be sold for such price as may be agreed between the parties; (b) the proceeds of sale of the property shall be applied as follows:- ( i ) in settlement of the outstanding mortgage upon the property to include any redemption penalty; (ii) in payment of the conveyancing costs and disbursements in connection with the sale; (iii) in payment of the charges of the appointed estate agent; (iv) the clearing of the overdraft and closing of the parties joint Barclay account; (v) the redemption of the petitioner's Cherry Godfrey loan; (iv) the net sale proceeds shall be divided as to 57.45% to the petitioner and 42.55% to the respondent". 2. The events which have occurred since the 3<sup>rd</sup> July, 2015, need to be set out in some detail so that the issue of the summons issued on behalf of the petitioner wife ("the wife") on the 10<sup>th</sup> December, 2015, can be placed into context. 3. The parties had two mortgages with Barclays secured on the former matrimonial home ("the property"). In April 2015 Barclays had agreed to vary the terms of the mortgages by suspending repayment of the principal to the loan from the 8<sup>th</sup> April, 2015, to the 18<sup>th</sup> September, 2015, so that interest only was paid during this period. 4. Thompson Estates ("Thompsons") had commenced marketing the property in April 2015 at £825,000. In August 2015 there had been email correspondence between a representative of Barclays and the wife concerning a possible further variation of the mortgage terms. Barclays suggested that the husband and wife might consider marketing the property with multiple agents or reducing the asking price. 5. The order also contained provisions that the husband should pay:- (i) child maintenance commencing on the 1<sup>st</sup> August, 2015, totalling 20% of his net salary (£975) and one half of the holiday club, after school club and breakfast clubs; (ii) £1,056 in respect of outstanding child care costs; (iii) £1,196.63 in respect of repairs and decoration to the property; (iv) £1,627.50 in respect of the wife's divorce costs. The order stated that these specific sums, totalling £3,880.13, should be paid "within 8 weeks of today's date" i.e. no later than the 28<sup>th</sup> August, 2015. No maintenance and none of the above sums had been paid by the 21<sup>st</sup> August, 2015, resulting in

an email being sent to the husband by Le Gallais & Luce (" LeG&L "). The husband replied in a letter dated the 25 th August, 2015, stating that he had only received his copy of the order and the written reasons of the Registrar on the 10 th August, 2015. He therefore took the view that no payments needed to be made until the expiry of 8 weeks from that date, i.e. by the 5 th October, 2015. He also claimed a right to set-off against the maintenance, the amount by which he claimed his equity in the property was "being dissipated by O' prevarication on sale". 6. On the 1 st September, 2015, a Petty Debts Court summons was served on the husband, claiming the maintenance for August and September and the specific sums mentioned above. The maintenance for August was eventually paid on the 1 st September, 2015, but, in a letter to Le G&L that same day, the husband stated that the September maintenance would be paid when he received his salary and that he could not afford to pay the other sums due. In the reasons for the order Registrar O'Sullivan referred to assets belonging to the husband which included a car valued at £8,500, a motorbike at £5,500 and push bikes at £10,000. She was clearly of the opinion that he should sell these assets in order to clear off some of his debts and pay the sums due to the wife. In the husband's letter of the 1 st September he stated that he had "commenced marketing my motorbike and a number of my bicycles in an effort to discharge the obligations at paragraphs 6, 7 and 13 of the Act as soon as possible". 7. On the 3 rd September, 2015, Thompsons recommended that the asking price for the property be reduced to £799,000. Later that month Broadlands was also instructed to market the property. 8. On the 9 th September, 2015, the Petty Debts Court granted the husband one week to pay the September maintenance (which he did pay on the 14 th September, 2015,) and adjourned the remaining claims for one week. The husband has paid the child maintenance since the 14 th September. 9. The husband did not attend the second Petty Debts Court hearing on the 16 th September, 2015, and judgment was taken against him for the £3,880.13. The husband was also ordered to pay interest and costs; the wife was authorised to cause the personal property of the husband to be arrested and sold and his wages to be arrested to the extent of £80 per week. The husband's father paid the Petty Debts Court judgement on the 22 nd September, 2015, before enforcement measures had to be taken. 10. In a letter dated the 30 th September, 2015, to the husband, LeG&L requested payment of the sum of £815.10 being one half of the costs of the school clubs. It was also suggested that in future, the husband should pay one half of the monthly costs by standing order into the wife's bank account. The husband replied on the 4 th October, 2015, disputing some of the amount claimed and requesting further documentation in evidence of the claims. He expressed his concern that if he paid his contribution towards the child care costs directly to the wife, if the wife did not then pay the costs he would remain responsible for payment of those unpaid costs. He said:-

"Consequently, my preference is that I bear responsibility for making payments in relation to three school clubs and a reduced payment is made in respect of maintenance: £979 per calendar month less deductions in respect of one half of the relevant charges falling due from Ms O under paragraph 4 of the Act of Court dated 3 July 2015. All supporting invoices in respect of the deductions will be provided to Ms O." Further documentation was provided to the husband in a letter dated the 15 th October, 2015, from LeG&L and a further request made for the increased sum of £1,058.49. The wife did not agree with the husband's proposal that he should pay all the child care costs with her share of the costs being deducted from the maintenance. She again,

requested payment by standing order into her "Child care cost bank account". Notwithstanding this, the husband contacted one of the clubs direct on the 18 th October, 2015, stating:- "Following my divorce from Ms O there is a change in our financial arrangement in that I will be paying the children's club costs for the attached account and as such the invoices you have issued to Ms O need to be cancelled and thereafter re-invoiced to me and I will put in place a replacement standing order mandate with you for £168.35 to discharge these." A further letter was sent by LeG&L on the 30 th October, 2015, requesting outstanding child care costs in the sum of £308.78 and confirmation that the husband had set up standing order payments in respect of child care costs into the wife's child care costs account. Confirmation was also sought from the husband that he had set up a standing order for the payment of child maintenance into the wife's bank account. 11. An offer on the property of £765,000 was accepted on the 16 th October, 2015, and it was anticipated that the contract would be passed before the Royal Court on the 13 th November, 2015. However, on the 28 th October, 2015, Advocate Nina Benest of Benest & Syvret ("B&S"), the firm which had initially acted for the husband, lodged with the Bailiff a caveat against the passing of any contract of alienation of the property. 12. There was a final hearing on the 3 rd November, 2015, in respect of the wife's application for sole residence and the husband's application for shared residence. It was ordered, by consent, after hearing the evidence of the JFCAS officer, that there should be a residence order in respect of the parties' two daughters in favour of the wife. 13. On the 13 th November, 2015, a summons issued by B&S for payment of outstanding legal fees and costs in the sum of £42,750.09 was tabled in the Royal Court and placed on the pending list. The caveat remained in force and therefore the contract of sale of the property could not be passed. Advocate Godden wrote to Advocate Benest on the 24 th November, 2015, setting out the prejudice being caused to the wife because the caveat was preventing the sale of the property. He suggested that it would be more sensible to obtain an injunction over the husband's share of the sale proceeds so that the caveat could be lifted. B&S had agreed to this suggestion. 14. A letter from the husband dated the 26 th November, 2015, to Thompsons needs to be set out in full:- "I write further to your email dated the 25 November 2015 timed at 12.30 as a matter of courtesy to provide an outline of the situation; and of the position going forward. I acknowledge the purchasers' position and can only apologise for the situation I find myself in. Briefly stated, I presently hold my interest in the Property for the benefit of a number of unsecured creditors, rather than for myself per se: the total amounts claimed are greater than the anticipated proceeds of sale; and of my ability to discharge the balance within a reasonable time having regard to child maintenance and other liabilities I am expected to discharge on a monthly basis going forward. Whereas Benest & Syvret (B&S) have sought discharge of their claims in priority to all other creditors and have secured a caveat against the sale of the Property as a form of quasi-security, I have a duty to treat all creditors fairly. I have therefore suggested that the proceeds of sale ought to be applied towards discharge of the immediate claims on a pari passu basis pending the outcome of a dispute concerning repudiatory breach of contract and excessive fee claims. I regret that B&S appear to have rejected the suggestion with the result that I am left in a position of having to try to satisfy their claim in full in an effort to secure release of the caveat, while also having to ensure that other creditors receive equal benefit from the proceeds of sale. Having consulted with B&S and the third party creditor, and in default of constructive proposals for

resolution of the immediate dispute in circumstances where independent professional estate agents have valued the Property at £799,000, I regret I am obliged to ask that you re-market the Property for sale at this price point in an effort to maximise potential distributions to each claimant." 15. On the following day, the 27 th November, 2015, Advocate Godden wrote to the husband asking him to confirm that he would accept the offer already on the table of £765,000 and proceed with the sale. Advocate Godden advised the husband that if he did not progress with the sale then the matter would be referred back to the Court. 16. On the 1 st December, 2015, B&S was granted an interim injunction over the husband's share of the sale proceeds which was confirmed by the Royal Court on the 4 th December, 2015. Also on the 4 th December, 2015, the husband's parents issued proceeding against him for the recovery of a debt of approximately £20,000 ("the parents' proceedings"). 17. A further letter with regard to child care costs was sent to the husband on the 4 th December, 2015, as no outstanding or ongoing child care costs had been paid to the wife. 18. The caveat was lifted with effect from the 9 th December, 2015. 19. Le G&L issued the summons ("the summons") on the 11 th December, 2015, requesting:- "TAKE NOTICE that the petitioner intends to apply to the Judicial Greffier on the day of , at [a.m.] [p.m.] for - 1. An order that the former matrimonial home, namely Property 1 shall be sold to the potential purchasers for the price of £765,000 this order being sought as a consequence of the respondent reneging on his previous agreement with the potential purchasers to accept their offer; 2. Should the respondent neglect or refuse to comply with the Order as to the sale of the Property, in particular as to the execution or making of any conveyance or other document or instrument for giving effect to the Order for sale, the Viscount shall be appointed to execute in the respondent's place all and any documentation to give effect to the instruction of the Estate Agents and the lawyers who have been appointed to deal with same and to give effect to the sale of the Property generally to include attending before the Royal Court in place of the respondent to be a party to the contract of sale of the Property, the Viscount's costs, fees and expenses to be met by the respondent on an indemnity basis; 3. If the sale to the potential purchasers does not proceed because they wish to withdraw their offer then the Property shall be re-marketed initially at the price of £799,000 or such sum as the Court deems just but that any offers received in excess of or equal to £765,000 shall be accepted; 4. An order of the Court varying the Act of the Royal Court dated 3 July 2015 ("the Act") such that: (a) 57.45% of the interest that the parties have accrued on the two mortgages with Barclays since 26 November 2015 (the date that the respondent reneged on his previous agreement with the potential purchasers) be reimbursed to the petitioner from the respondent's share of the sale proceeds; (b) the monthly capital repayments to be paid by the parties when the mortgage holiday ends on 7 January 2016 are to be met in full by the respondent; (c) any financial penalties, bank fees, or other costs that the parties incur since 26 November 2015 be reimbursed to the petitioner from the respondent's share of the sale proceeds (this to include any penalties incurred should the respondent not meet the mortgage payments sought at 3(b) above); (d) the sum of £474.76 being the monthly loan repayment on the petitioner's Cherry Godfrey loan for December 2015 and any future payments made by the petitioner towards this loan be reimbursed to the petitioner from the respondent's share of the sale proceeds; (e) the sum of £110 being the monthly storage costs that the petitioner has incurred in storing her furniture and other household items in anticipation of the sale and any

future payments made by the petitioner towards the storage costs until the Property is sold be reimbursed to the petitioner from the respondent's share of the sale proceeds; (f) the sum of £197.53 being the additional oil that the petitioner has purchased for the former matrimonial home since 26 November 2015 be reimbursed to the petitioner from the respondent's share of the sale proceeds; (g) the sum of £92.50 being the monthly payment for the life policy held in the parties joint names for December 2015 and any future payments made by the petitioner towards this policy be reimbursed to the petitioner from the respondent's share of the sale proceeds; (h) the sum of £778.11 being the outstanding child care costs owed to the petitioner by the respondent pursuant to paragraph 4 of the Act be reimbursed to the petitioner from the respondent's share of the sale proceeds. 5. an order that paragraph 4 of the Act be varied in light of the respondent's persistent breaches of this order such that the respondent shall now pay £234.67 per month by standing order to the petitioner for the school club costs, this being one half of the monthly cost. 6. the costs of and incidental to these proceedings be met from the respondent's share of the sale proceeds on an indemnity basis. 7. that there be liberty to apply."

20. The purchasers withdrew their offer on the 11 th December, 2015. 21. The summons was heard on the 15 th December, 2015. 22. Advocate Godden called Mrs Rebecca Sokrati from Thompsons to give evidence. In answer to questions from Advocate Godden, Mrs Sokrati confirmed that she is a director of Thompsons and has been an estate agent for 13 years. The property had been marketed by Thompsons since April 2015 initially at £825,000 but then later at £799,000 which she considered to be reasonable as an asking price. There had been 27 viewings of the property and 2 open viewings. The property had been advertised in 16 adverts in the JEP, in Thompsons' monthly magazine and it had been emailed out to 798 applicants on their database. Only 1 offer had been received. She would have expected more than one offer from April to the present time. Mrs Sokrati thought that the property was in a great location but there were factors which made it more difficult to sell. It was heavily overlooked at the rear of the property and from feedback of people who had viewed the property, this lack of privacy was an issue. Also, the parking area was away from the property which was also an issue. The property was in good condition but a certain amount of upgrading was still required. Mrs Sokrati considered that the offer of £765,000 was a very good offer because there had been no other interest. The property had been marketed for most of the year. She was not aware whether the other agent marketing the property had received any offers. She considered that £765,000 was the best figure and it was debateable as to whether or not that figure could be achieved again. The potential purchasers had been a relatively "low risk" - they had not had a property to sell and were not therefore in a chain. Their purchase monies were not being provided by a mortgage provider but from other sources. They were considering not having a survey but the transaction did not reach the stage where such a decision had to be made. Although the offer had been withdrawn, she thought the potential purchasers could possibly be brought back to the table but the time scale had become an issue for them. They had withdrawn the previous week because they could not see the light at the end of the tunnel and she believed they had started looking at other properties. She considered that it would be highly unlikely that the property would sell at £799,000 if it was remarketed for that price. Her advice would be to take any other offer of £765,000 if such an offer was received. 23. The husband asked Mrs Sokrati how much commission

Thompsons would receive from a sale at £765,000. She confirmed that at 1.25% the commission would be £9,562.50. The husband suggested to her that there was a conflict in having her provide a valuation because Thompsons would benefit from the outcome of a sale; he said that she was conflicted in providing the evidence she had already given. Mrs Sokrati replied that her evidence had been a professional opinion. The husband put it to her that as she had no formal qualifications she could not formally value the property as a surveyor could. Mrs Sokrati accepted that she could not give a formal valuation but she could give an estate agent's valuation based on market research

- what Thompsons had sold, comparisons with what other agents had sold thereby arriving at an accurate market value. The husband provided a copy of the Jersey House Price Index Third Quarter 2015 where the figures, he said, showed an increase in the average price of about 8½% from Quarter 1 to Quarter 3. He asked her if Thompsons used these figures in research. Mrs Sokrati replied that although the figures were useful they were only a guide. Thompsons access research across the Island, from the Jersey Property Bulletin which lists all freehold transactions, properties everybody is selling not just the proportion of properties which Thompsons had on the market. The husband put it to her that whereas the statistics showed an increase of about 8½%, she was suggesting a decrease of about 5%. Mrs Sokrati did not agree that she was saying that; if the husband was calculating this by reference to the fact that the property had been placed on the market at £825,000 and then reduced to £765,000, then it was her opinion that the original price might have been incorrect. The husband asked Mrs Sokrati about the peak months for selling a property. She replied that normally it would be springtime but since coming out of the recession the markets had not been following the normal trends - e.g. normally the Christmas period would be quiet but this was not the case. January and February would normally be slow but 2015 had been busy for most of the year and had not followed any normal regular pattern. Mrs Sokrati said that the best time to sell a family home would be when there were good daylight hours and good sunlight. The husband asked how many open viewings had been held between April and August. There had been 2 open viewings but Mrs Sokrati was unable to confirm when they had taken place. The husband suggested to her that, as a sole agent, not holding open viewings during that period was not maximising the property's exposure to the market. Mrs Sokrati replied that open viewings aside, the property had been advertised in the JEP and the monthly magazine, on the website, in the King Street shop window, and had therefore had every other exposure possible. She disagreed with the assertion by the husband that a series of open viewings, a number of estate agents also marketing the property would have got much better results. She had found that instructing a number of estate agents could actually give an impression of desperation for a sale and lead to lower offers. She did not believe that having Thompsons as the sole agent would have affected the sale. It was one of the biggest estate agents in Jersey which conducted heavy marketing and she did not believe that any other estate agent would have provided equivalent marketing. Her opinion was that the property had had Island wide exposure. Mrs Sokrati's view was that with the number of viewings conducted by Thompsons and the fact that only one offer had

been received, it would be sensible for the husband and wife to pay for a professional valuation from a surveyor and use the figure to look at a new marketing strategy. However she was of the opinion that a surveyor would be likely to value the property lower than £765,000. She would not advise going with more than one additional agent. The husband said that the property had been purchased in December 2009 for £870,000 and two years later the mortgage renewal occurred when a professional surveyor had valued the property for the bank at £900,000. The husband therefore thought that the same surveyor should be appointed and he did not think that the surveyor would say that the property was worth £200,000 less. 24. In answer to a question from Advocate Godden Mrs Sokrati confirmed that Thompsons does provide valuations for matrimonial proceedings. The value of similar houses vary massively depending e.g. on location and condition. In relation to the survey of the property conducted in 2009 referred to by the husband, the market had just peaked and then the recession followed. She thought that the valuation might well be different now. Submissions on behalf of the wife 25. Advocate Godden submitted that the difficulties faced by the wife since the final hearing in July needed to be outlined in detail and taken into account in reaching a decision. He mentioned the difficulties with regard to the payment of child maintenance and child care costs (paragraphs 5, 6, 8, 9, 10 and 17 above) which do not need to be repeated. As at the date of the hearing of the summons there had still been £778.11 outstanding in respect of the child care costs. 26. The contested matters between the husband and wife had not all been concerned with finances - there had been the contested application for shared residence referred to in paragraph 12 above. 27. There had been the difficulties relating to the caveat (paragraphs 11, 13, 16, and 18) which had prevented the sale of the property. There had been a contested hearing in relation to the injunction on the 1 st December, 2015. The parents' proceedings had been issued against the husband for a loan of which he had the benefit but which was secured on their own property. B&S intervened in the parents' proceedings on the grounds that the husband was attempting to obtain a priority over the debt that the husband owed to B&S. B&S also submitted that the parents' proceedings had been issued against the wrong defendant as Registrar O'Sullivan had made a finding of fact that the liability was a business liability and not a personal liability of the husband. 28. The offer of £765,000 referred to in paragraph 11 above had been accepted by both parties. It was the second offer made, the first having been received through Broadlands at £760,000. The sale had been delayed by the caveat. Subsequent to that, the sale had stalled and the offer withdrawn because the husband had reneged on the agreement to accept £765,000 in the letter dated the 26 th November, 2015, set out in paragraph 14 above. This left the wife with no alternative other than to issue the summons. The order had stated that the property should be sold at such price as "may be agreed between the parties". £765,000 had been agreed between the parties and the husband had reneged on the agreement. 29. Paragraph 14 of the order stated that:- "Upon compliance with paragraphs 1, 2, 6, 7, 8 and 13 above and save as above, all claims of either party for financial provision, property, property adjustment orders and maintenance orders shall stand dismissed and this order shall be in full and final settlement of all such claims". The sale of the property had been ordered in paragraph 2 of the order and therefore the order

had not been complied with. There was therefore no full and final order in place as at the date of the hearing of the summons. It was therefore open to either party to apply to vary the order by virtue of Article 33 of the Matrimonial Causes (Jersey) Law 1949 . In exercising this power the court should take into account all the circumstances of the case, including any increase or decrease in the means of either party. 30. The wife sought a variation of the order to provide that the property can be sold for £765,000. Advocate Godden submitted that Mrs Sokrati's evidence had been clear - the property had been on the market for 9 months and only 2 offers had been received. The property had been actively marketed. If the potential purchasers returned to the table Advocate Godden said it was necessary that the offer be accepted or alternatively, should another offer be received at that price then it should be accepted. The wife should not have to wait until the husband received an offer acceptable to him. 31. The only thing that had changed since the husband had accepted the offer was that B&S had issued proceedings against the husband and he had realised that he would like to have more money. There had been no increase or decrease in the needs of the parties - the outstanding fees and the loan from the husband's parents had been dealt with at the final hearing. Nothing new had led to a change in circumstances. 32. Advocate Godden submitted that the financial implications of the house remaining on the market were significant. A mortgage holiday in respect of the two mortgages over the property had been agreed but interest on a daily basis was still accruing at the rate of £39.59 and £32.91 per day and therefore the wife was being prejudiced on a daily basis. From the 26 th November, 2015, the day upon which the husband had withdrawn his agreement to the sale, interest had accrued in the sum of £1,450. The cost to the wife had been 57.45%, i.e. £833. Advocate Godden said that the wife would get very little out of the proceeds of sale as a result of the husband's actions. In addition, from the 30 th November, 2015, the fixed rate of 3.59% on the larger mortgage would end and interest charged at 3.49% above base. He submitted that this was a financial penalty which the wife would potentially have to bear. The capital payments were to recommence on the 7 th January, 2016. Advocate Godden said that neither party could afford these repayments and that is why the mortgage holiday had been granted in April 2015. He submitted that Barclays would be unimpressed by the husband's change of mind with regard to the sale price. Advocate Godden pointed out that the husband and wife had not as yet been charged any fees or penalties by Barclays but that could change. 33. The husband wanted the property to sell for £799,000, only £34,000 more than the offer he had accepted. He was due to receive 42.55% of that, namely £14,467. Advocate Godden submitted that the husband had reneged on the deal, opened the wife and the children up to further significant financial prejudice for just over £14,000. The husband had said he needed the extra money to pay his liabilities but even with the extra money he would not be able to meet his liabilities. B&S were claiming £42,750 but this figure would have increased because of the caveat and the injunction proceedings. The husband owed his parents about £20,000 so his liabilities amount to £62,750. With a sale at £765,000 the husband would have received £39,000. Therefore the husband would not be able to pay all his debts even if the property did sell for £799,000. He submitted that the husband was making matters more complicated and more expensive, dissipating the pot even further. 34. The husband and the wife had

received an invoice of £2,887.50 from Ogier who had been instructed with regard to the sale of the property. If the sale to the potential purchasers could not be revived these costs would be incurred again and, Advocate Godden submitted, these costs had been incurred as a result of the husband's actions. 35. The wife had incurred other expenses as set out in the summons. She had incurred storage costs of £110 per month for her furniture and other household items when she thought the property was going to be sold. This was a cost wasted as a result of the husband's actions. The wife had purchased more oil at a cost of £197.53 because she remained at the property. She had still paid £92.50 for the life policy covering the mortgage while the property remained in their joint names. The Cherry Godfrey loan had been taken out by the wife because the husband had failed to pay any maintenance for the children until the Registrar's final decision was received. This had cost her £474-76 per month. Registrar O'Sullivan had ordered this to be repaid out of the proceeds of sale before being divided between the parties. If the sale had gone through, the wife would be £474-76 per month better off. This was another financial prejudice to the wife caused by the husband's actions. 36. Advocate Godden submitted that the husband had no consideration for the wife and the children. The wife had suffered since October 2014 when the divorce proceedings were issued. She was still suffering and still trying to extricate herself from the husband. She wanted to move on and set up a new home with the children but the husband's actions were preventing her from doing that. She had intended to move with the children to her parents' house temporarily after the sale of the property to allow her time to find new accommodation. Some of their furniture and effects had been moved to her parent's home, some was in storage; she was living between the two properties. 37. The wife had incurred fees of £44,000 with LeG&L . She had been due to receive £52,776 from the sale and this would have left her with a small lump sum but he submitted that this would soon be gone. 38. The husband had outstanding child care costs of £778.11 which should be paid to the wife from the respondent's share of the sale proceeds otherwise the wife would have to issue further Petty Debts Court proceedings. Because the husband had repeatedly refused to pay the child care costs Advocate Godden sought an order that the husband should pay one half of the child care costs for the holiday club and the afterschool club to the wife by standing order of £234.67 per month, i.e. a variation of paragraph 4 of the order to try and prevent similar difficulties in future. 39. Advocate Godden sought an order that the husband should pay the costs, on an indemnity basis, incurred by the wife in respect of the summons which had to be issued because of the husband's actions. The husband's submissions 40. The husband had filed a written reply to the summons on the 14 th December, 2015. 41. The husband explained that he had received the Act of Court dated the 3 rd July, 2015, and the reasons on the 10 th August, 2015, and it was the delay which had caused financial difficulties in making payments. He had already been in breach of the order before it was distributed on the 4 th August and before he received it on the 10 th August. He had contacted LeG&L and advised that he would make the payments required within 8 weeks of the date of receipt. There had seemed to be some great desperation for the money or a need to create conflict so LeG&L had proceeded to Petty Debts Court. The husband said that Magistrate Harris had understood the 8 week period started from the date of receipt unless

the matter was brought back to court. The husband believed that Advocate Godden had misrepresented the facts of the matter. Advocate Godden had contacted the court for clarification as to when the 8 week period should start but he had not told the court that the order had only been received on the 10 th August. The husband had made all payments within 8 weeks of the date he received the order and the reasons. 42. B&S had taken out the caveat preventing the sale of the property at the beginning of November. The caveat stipulated that B&S were responsible for all losses caused as a result of the caveat. He believed that Advocate Godden had pointed this out to Mr Philip Syvret and recommended that he replace it with an injunction. He believed that the caveat had frustrated the sale and had been the cause of the loss of the sale. He had received notice that the caveat had been lifted at the end of the day on the 11 th December, 2015. He had been notified that the potential purchasers had withdrawn their offer earlier on the 11 th December, 2015. The sale had been frustrated by the actions of B&S and they had accepted responsibility for all liabilities caused by the caveat. At the hearing on the 1 st December, 2015, Advocate Godden had asked the Deputy Bailiff if he would award a number of liabilities, the losses caused as a result of the caveat against the husband. The Deputy Bailiff had pointed out to Advocate Godden that his route of recovery was B&S. The husband thought it strange that Advocate Godden had ignored the Deputy Bailiff and claimed these costs from the husband. The husband believed that all the sums of money claimed in the summons should be claimed from B&S i.e. the interest, the loss under the Cherry Godfrey loan, the storage costs. He did not understand why oil was required if the property was empty but in any event, the costs should be recoverable from B&S. The life insurance policy covered only a married couple, this had been a strict term of the life policy and therefore he submitted it was void and no-one would be able to claim against it. There had been no obligation under the terms of the mortgage to have life cover. 43. The order had made the husband responsible for one half of the child care costs. The husband said that he wanted to have a direct relationship with the service provider ("the club"). He had not received transparency from the wife regarding the matter. He had written to the lady who runs the club and he had tried to make an arrangement which would have allowed him to discharge his liabilities direct to her. He said that the matter had rested with LeG&L since the 30 th October when he received a response from the lady stating that she was waiting to hear from LeG&L . He provided an email which suggested, he said, showed a relationship between the lady and LeG&L which might be why he was not getting transparency in relation to the liabilities which he had been trying to settle direct. 44. The husband referred to a statement from the club dated the 8 th October, 2015, which had not been provided at the final hearing. The statement showed that there was a liability of £2,764.10 as at the 30 th June, 2015. Since the final hearing, the wife had sought inflated recovery for back debts from him. The arrangement during the marriage had been that the wife would pay the childcare costs and the husband would pay the mortgage. The wife had not disclosed this statement to the court. Therefore he was being asked to set up a standing order covering not 50% of the future costs but of historic costs as well, which he said should have been taken into account at the final hearing. The husband had written to LeG&L and advised them that his preference would be to deal direct with the service

providers. He had received an invoice from the breakfast club and he had discharged that direct to the school. He did not want to have to pay money to the wife because he thought that she might not pay it to the service provider but might use it for other things. The invoice to which he referred was evidence, he said, of the debts that have accrued. He thought that the wife might well cause future debts to arise for which he might become liable a second time. The claims sought by the wife were not for monies she had discharged but rather for monies that she had not discharged or if she had discharged them, she had not provided him with a statement confirming payment. He did not agree that the £778.11 was due to the wife - it was an amount that she had not paid or if she had paid it, she had not provided any documentation to show she has paid it. He did not accept that the £234.67 figure asked for in respect of one half of the monthly costs was correct because there was no transparency as to what the monthly costs were. He said that the figures kept changing every month. He repeated that he would be happy to discharge direct to the service provider what he was due to pay and he wanted to make his own arrangements with the service provider and make his own terms of payment with them. The husband said that the wife had decided that she, for her benefit, wanted a standing order paid in advance but that, he said, might not be to his benefit or preference. The husband said the matter of child care costs could easily have been resolved without coming back to Court. He said that it was clear that he had offered to pay the costs direct. The fact that no response had been received from the service provider had prevented him from doing that. Where statements had been provided he had reimbursed the wife. It was not acceptable for the wife to claim money from him when she had not paid the service provider. 45. The husband remarked again on the lack of transparency and he referred to his letter dated the 4<sup>th</sup> October, 2015, to LeG&L. The wife had claimed £74.10 from him being the residual balance payable for afterschool club costs to the end of the July term. The husband said that he had paid all costs up to that date. 46. The husband's parents had lent him some money in April 2012. He had paid them 37 out of 60 monthly repayments up to the date of the final hearing. Registrar O'Sullivan had decided that the husband was not obliged to pay the money back to his parents. However he said that the Registrar had made that decision in the absence of his parents and it was not binding on them. The parents had brought a claim against him in the Royal Court in an attempt to receive their fair share of the sale proceeds of the property. The parents were claiming about £18,700 as the balance of the loan, £170 of interest accrued since the last payment and £4,200 which his father had paid to the wife following the Petty Debts Court judgment. He believed that it was wrong for the Registrar to have dismissed the claim of his parents in her judgment. 47. The husband said that he found himself in what he called "the twilight zone of insolvency". He did not have the money to pay his creditors. He said his intention was to act in a fair way to his creditors. He had researched the matter and he wanted to avoid any wrongdoing. B&S had been informed that there were two creditors, B&S and another. B&S was offered the opportunity to accept a pence in the pound distribution from the net amount he might receive from the sale without prejudice to whatever amounts were due after that. His parents, as the other creditor, had accepted that proposal but B&S did not. B&S wanted a preference and wanted all of the money for itself. This had led to the parents taking the action they did. In light of a valuation

at £799,000 from a professional estate agent, and he said, bearing in mind that he held his share of the property for the benefit of his creditors not for himself, and considering the duties he owed to his creditors, he felt that after writing to B&S and receiving no constructive suggestions on how to proceed, there had been no choice other than to remarket the property so as to maximise distributions to potential creditors. The husband said that a sale at £765,000 would crystallise his insolvent position. He would probably find himself having to apply for insolvency or a creditor might make such an application. His employment would be terminated immediately and he would struggle to replace his employment with a job with a similar level of income. The financial implications of providing for his children would be quite obvious. 48. The husband said that Barclays had originally granted a six month repayment holiday which had expired on the 19 th September, 2015. The bank had granted a further payment holiday up to the 18 th December. There had been no indication from Barclays that they would not extend it for a further period, bearing in mind the valuations of £799,000 and the offer of £765,000, and with a liability of about £650,000 there was equity in the property of about £100,000. The husband said that the larger mortgage was due to expire on the 30 th October, 2015. The smaller mortgage had already reverted to the bank's standard variable rate so any early repayment charge, which had been a penalty to prevent the early repayment of the mortgage, should fall away. 49. The husband referred to the draft completion statement prepared by Ogier in respect of the sale which showed the repayment of the sum of £2,117.77 to Barclays in payment of an overdraft. The husband said that during the final hearing the finances of the parties had been analysed and at that time there was a liability on that account of about £220. The wife had made payments out of that account knowing it would be paid off the top of the sale proceeds, a proportion would be taken out of his equity. He considered that this was wrong unless the wife paid the deficit. 50. At the time of the final hearing the wife had advised Registrar O'Sullivan that she had a monthly liability of £120 for oil. The wife had ordered oil on the 26 th February and again on the 9 th June. She had not provided the Court with any details of the liability. The oil should not have been put onto his account, the wife had not been authorised to do so but she had refused to accept responsibility for the liability. The husband had not known about this until he had been contacted by the fuel company in July. He said that this highlighted the continued problems he had had. 51. The husband had not had time to consider the invoice from Ogier . However, he believed that the fee had been incurred because of the caveat and therefore the invoice should be claimed from B&S. 52. The husband said that the costs of hearing the summons should not be ordered against him as it had been unnecessary for the hearing to take place. 53. The husband confirmed in reply to a question from me that he had not contacted Advocate Godden about putting the price back up to £799,000. He had given a copy of his letter direct to the wife. The wife had not agreed that the property should be remarketed at £799,000. 54. The husband believed that Mrs Sokrati did not know the property very well. She had been brought to Court because she was a director of Thompsons not because she was the person that dealt with the sale of the property. He thought that she was heavily conflicted because she wanted the sale to go through so that Thompsons could take the commission. The only sensible suggestion she

had made was that the husband and wife should consider obtaining a professional valuation. I asked him if, as Mrs Sokrati had intimated, that the valuation might possibly come out lower, would he market it at the valuation figure. The husband's position was that they should hold out for £799,000. He had been concerned that Thompsons had not aggressively marketed the property during the summer months. 55. In reply Advocate Godden submitted:- (i) The husband appeared to be confused as to what Advocate Godden had asked the Deputy Bailiff about costs. Advocate Godden had been concerned about the costs incurred by Ogier in the injunction proceedings and no other costs. The Deputy Bailiff had said that Ogier's costs, as a party cited, would have to be met by B&S. Any costs incurred by Ogier in respect of the caveat should not be included in the invoice sent to the husband and the wife. (ii) The summons for the injunction had been issued on the 27 th November, 2015, so this had been the first step in removing the caveat. Referring to the husband's argument that the financial claims should be made against B&S, he stressed that the caveat had been lifted. He submitted the only factor preventing the sale was the husband. This had been reflected in the summons because the orders sought were only from the 26 th November, the date of the husband's letter to Thompsons. (iii) The wife has a residence order and she therefore wants to deal with the service providers direct as the person dealing with the day to day running of the children's lives. There was also an historic reason why the wife wanted to deal with the service providers. He referred to paragraphs 74 and 75 of Registrar O'Sullivan's reasons:- "74. The husband has refused to pay any interim child maintenance and contribute to child care costs since he left the former matrimonial home in January 2015. The mortgage break freed him from the 2nd April 2015 from paying the mortgage of about £3,000 per month. He stated in Court that "they are having free accommodation at my cost" but these are his children he is talking about and in any case he was not paying the mortgage from April 2015. 75. The wife has therefore had to shoulder on her own the burden of meeting all the child care costs (breakfast, after school and holiday club) as well as the day to day expenses of looking after the children". Advocate Godden submitted that this was a summary of some of the issues the wife had faced. She was concerned that if the husband was left to his own devices the costs might not be paid or he might try to renegotiate the sums that should be paid or there might be other issues arising. The wife wanted to avoid that happening and avoid the extra stress that might be caused. (iv) Advocate Godden referred to the paragraph in the email from the husband to the service provider set out in paragraph 10 above. In the email he had said, without any consultation with the wife or any contact with Advocate Godden, that he would pay all of the costs but in his submissions he had said he only wanted to pay one half. It was not correct that he was now in charge of paying the costs. Advocate Godden submitted that it was this bullying, controlling attitude in relation to all matters which caused concern for the wife and that was why she wanted to be the one to pay the child care costs. (v) The husband had said that the wife sought inflated recovery of the costs but there was no evidence of this. He had also stated that she might use the funds that he gives her in relation to the cost of other things. It may well be that she does but, he said, the money is paid into one pot out of which the wife meets all the expenses in relation to the children and the household. (vi) Doubt had been

raised by the husband in relation to the £74.10 claimed to be due. Advocate Godden said that the wife would agree to deduct that from the total sought of £778.11. (vii) The husband had made much of his potential bankruptcy. It was not accepted that the husband was on the verge of bankruptcy but if he really considered that he was bankrupt then he should have made an application. (viii) The husband still had the assets which Registrar O'Sullivan had suggested be sold to meet his liabilities. He had talked about treating his creditors fairly but he was not treating the wife and his children fairly. (ix) Barclays had given no indication that they would either extend the mortgage holiday or not. The interest is still accruing either way. (x) The husband had referred to the overdraft with Barclays as being at £220 at the time of the final hearing. Registrar O'Sullivan referred to this in her judgment as standing at £1,000. The wife had used the account for household bills and the husband's Sky bill for his rental property was also coming out of that account. The wife had not been wasting funds. (xi) Finally in relation to the oil bills on the husband's account, the wife accepted that she had to pay the oil bills and she was in discussion with the oil company with regard to payment of the outstanding amount. The decision 56. As stated in paragraph 29 above, the order was only to become a final order if various terms within the order had been complied with. They had not and therefore the order is not final and the terms thereof can be varied by the Court. Although the husband criticised parts of Registrar O'Sullivan's reasons or did not agree with some of the orders she had made, it must be noted that he did not appeal against the order. As will be seen from the comments below, it would appear that the husband does not consider that he is bound by the order in that he has made several attempts to change terms of the order to suit himself. The property 57. Paragraphs 1 and 2 of the summons do not need to be considered as the offer by the potential purchasers had been withdrawn prior to the hearing. 58. I ordered that the property should be remarketed at the price of £799,000 with any offer of £765,000 being accepted by the parties for the following reasons:- (i) The husband criticised Thompsons for the way in which the firm had marketed the property between April 2015 and the date of the offer being made. There was no evidence to show that the husband had made any comments to or criticism about the marketing strategy to Thompsons during that period. Mrs Sokrati is a well-known, experienced estate agent and in the absence of any evidence put forward by the husband, apart from the Jersey House Price Index figures, I accepted her opinion that £765,000 was a good price for the property and that the husband and wife might not even achieve that price again. The price at which properties should be marketed are, as Mrs Sokrati said, realistic prices which have been set by looking at market research, the sale prices of similar properties and so on. Sale prices are not calculated by reference to the Jersey House Price Index figures. I do not accept the husband's argument with regard to Mrs Sokrati's conflict of interest. Any estate agent would receive a commission on the sale of the property. As she said, Mrs Sokrati had given her professional opinion as to a realistic achievable price for the property. While the husband did not agree with her opinion, he had not called any expert witness of his own to show otherwise. (ii) Much was said by both parties about the reasons why the sale of the property did not go through, where the blame should lie and who should be responsible for the payment of additional costs incurred. I have not found it necessary to

comment in detail on these submissions. There is no doubting the fact that the caveat prevented the sale from going through in November 2015. However, by the end of November discussions between B&S and LeG&L had resulted in B&S taking action to replace the caveat with the injunction. As set out in paragraph 14 above, the husband wrote to Thompsons on the 26 th November, 2015, withdrawing his agreement to sell at £765,000. That letter contained his assertions that he held the property for the benefit of his creditors. He, in effect, blamed the fact that the property had to go back on the market at a higher price on B&S as the firm would not agree to the compromise he had offered, namely a pound for pound payment for B&S and for his parents. The offer from the potential purchasers was not withdrawn until the 11 th December, 2015, some 2 weeks after the husband changed his mind. I do not believe that the husband would have co-operated in a sale at £765,000 after the 26 th November. The husband had once again acted unilaterally, without consulting the wife, in providing new instructions to Thompsons. The order clearly stated that the sale price had to be agreed between the parties. The husband had not gained the wife's agreement to withdraw from the agreed sale and remarket the property. (iii) I do not accept that the husband's duty towards his creditors gave him no choice other than to remarket the property at a higher price in order to maximise distributions towards potential creditors. It would have been far better to get the property sold to prevent further interest and costs accruing rather than maximise the benefit of the creditors. As pointed out by Advocate Godden, even if an offer of £799,000 were to be received, the husband would still not have sufficient funds to pay off B&S and his parents. He also seemed to forget the fact that Barclays is also a creditor with bank interest accruing on a daily basis. Any benefit gained from selling at a higher price could potentially be lost because of the accruing interest due to Barclays. Neither party had up to date information from Barclays with regard to a further mortgage holiday. It has to be considered likely that, if the property does not sell in the near future, Barclays might decide to foreclose on the property and sell it in order to pay off the mortgages. I am sure that Barclays will not be interested in obtaining the best possible price for the property but rather for a price which would cover repayment of the mortgages only. (iv) I will not make any comment on the parents' proceedings as those proceedings are ongoing. However, the husband has, on several occasions throughout these proceedings referred to the fact that he is on the brink of insolvency. I find it hard to believe that the husband's parents would pursue their son to such an extent as to drive him into bankruptcy proceedings, thus causing him to possibly lose his employment and become unable to provide for his children. It should not be forgotten that if a debt is due to his parents it is not a joint liability. The wife should not be prevented from obtaining her share of the sale proceeds because the husband wants to obtain a higher price in order to pay back his parents. As Registrar O'Sullivan and the Deputy Bailiff have pointed out, the husband has assets which he can sell in order to clear some of his liabilities. (v) I have no doubt from what he said at the hearing that the husband would not agree or co-operate in a sale of the property for anything less than £799,000. He said at the hearing that he thought they should "hold out" for £799,000. The parties cannot afford to wait until an offer of £799,000 is received. They cannot pay the mortgage; further delay will result in there being less money.

I made the order that the husband and the wife must accept any offer of £765,000 or above because of my belief that the husband will not cooperate if future offers are not to his liking.

(vi) In his reply to the summon the husband had raised issues which he had not dealt with at the hearing but which need to be commented upon :- "It is not appropriate for the Court to intervene in the exercise of the discretion of the Respondent and the Petitioner, each acting in their best interests, to secure the best financial outcome for themselves and their creditors in circumstances where the Respondent and the Petitioner are ultimately responsible for financial difficulties caused". It is not correct for the husband to say that the wife has been responsible for the financial difficulties. The debts due by the husband are of his own making and have nothing to do with the wife. The wife has, in my view, acted in her best interests by attempting, through the issuing of the summons, to get the property sold at a realistic price. The husband also submitted that if the exercise of discretion by the husband and the wife was to be overridden then it would be appropriate for the Court to approach the marketing and sale of the property from the "prospective of a trustee charged with maximising the value of the asset". It would be highly inappropriate for the Court to become involved in such a way. Child care costs 59. It is clear from the correspondence between LeG&L and the husband detailed above that there had been difficulties in extracting the child maintenance and child care costs from the husband. Whilst I accept that the husband did not receive the order and the reasons until the 10 th August, 2015, that was no reason for him to unilaterally decide to change the terms of the order to suit himself by extending the period of 8 weeks. Registrar O'Sullivan's order was quite clear - the sums were to be paid within 8 weeks of the date of the order. The husband did not comply, he did not seek an extension of time to pay from the Registrar and he did not seek to vary the terms of the order. I do not accept the husband's assertion that the Magistrate himself considered that the 8 week period should begin to run from the date of receipt. The maintenance was paid late; it can be seen from the correspondence and from what the husband himself said at the hearing, that he was not going to comply with the order for payment of one half of the child care costs to the wife. He advised Advocate Godden in correspondence that he was going to pay the service provider direct. He entered into correspondence with the service provider giving unilateral instructions to change the method of payment. He had therefore, once again, tried to vary the terms of the order without consultation with the wife. I do not accept his argument that the problems with regard to child care costs had been because of lack of transparency on the wife's part. I was concerned by his statements such as he wanted to "make his own arrangements" with the service provider and "the wife had decided that she, for her benefit, wanted a standing order paid in advance, but that might not be to his benefit or preference." I accept Advocate Godden's submission that the husband wanted to keep control and maybe alter the terms of payment to the detriment of the children. I do not accept the husband's assertions that there had been no need to come back to Court about child care costs as this matter could have been dealt with out of Court. The plain fact of the matter is, even accepting that the husband did not receive the order and reasons until the 10 th August, 2015, there were still outstanding sums due on the 15 th December when the hearing took place. The wife had had to incur more legal costs with LeG&L because the

husband would not agree anything at all. In my view, the wife needs, as submitted by Advocate Godden, to extricate herself from the husband and move on with her plans to set up a new home for the children and herself. The wife needs to be certain in future that the child care costs will be paid without argument and the only way for that to happen, judging by past performance, is to place the obligation on the husband to pay one half of the child care costs by monthly standing order to the wife. With regard to the outstanding child care costs, the husband had only disputed that £74.10 of the £778.11 was not due and I therefore deducted this figure and ordered him to pay the balance of £704. The other sums sought 60. I did not accept the submission of the husband that B&S should be responsible for the payment of the additional sums claimed in the summons as they had not arisen as a result of the caveat. The sale of the property to the potential purchasers could not go through after the 26 th November because of the husband's actions. The wife has incurred and will continue to incur additional costs and payments through no fault of her own. I made the orders set out in paragraph 2 of the order dated the 15 th December, 2015, to be paid out of his share of the sale proceeds should B&S agree that the injunction can be lifted with regard to these sums. In addition, the husband is to be responsible for repayment of the capital to Barclays in the event that a further mortgage holiday is not agreed. 61. Contrary to the husband's opinion, I accept the submissions of Advocate Godden that the wife had no option other than to bring this matter back to Court. I therefore ordered that the respondent should be responsible for her costs, to be taxed if not agreed. Authorities Matrimonial Causes (Jersey) Law 1949. Page Last Updated: 15 Feb 2017 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/2015/>

CASE PAGE              <https://chat.esheria.ai/case-law/jersey/o-v-p-matrimonial-2015-jrc-258a-15-december-2015>

Prepared on 29 October 2026 · Esheria