

JERSEY / JUDGMENT

P-S -v- C 9-Oct-2006 [2006]

JRC 139A (09 October 2006)

[2006] JRC 139A

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

judgment

the bailiff:

Introduction

1. On 9 th July 2003 the Court delivered its original Judgment in this cause ("the 2003 Judgment"). In brief summary the Court found that this was a long marriage of twenty-eight years to which neither party brought financial assets of any significance. At the time of their separation in 2001 the Respondent husband (to whom we shall refer for convenience as "the husband") had become a wealthy man through his business endeavours. The Petitioner ("the wife") had devoted herself to bringing up their four children and to managing the family's domestic affairs. The Court adopted and applied the reasoning of Lord Nicholls of Birkenhead in *White v White*
- [2001] 1 AC 596 . 2. The application of the principles set out in *White* to the facts of the case led to a division of family assets which is described fully at paragraphs 24-29 of the 2003 Judgment and which we will not repeat here. Suffice it to say that the wife received 56% of the matrimonial assets totalling £4,855,921, including a lump-sum payment of £2.2 million to be paid on or before 9 th July 2008. 3. The husband is an accountant by profession and the senior partner in an enterprise which we described in the 2003 Judgment and shall continue to call "the CCB Group". One of his partners was NB who was himself embroiled in matrimonial proceedings which were compromised in May 2001. On 26 th August 2003 NB's former wife ("Mrs B") applied to set aside the Consent Order on the ground of NB's failure to give full and frank disclosure of his assets prior to the compromise agreement. 4. Mrs B is friendly with the wife and discussions between them led the wife to suspect that the husband in this cause had equally failed to disclose the extent of his assets in a material way. She employed forensic accountants to investigate her suspicions and that led in due course to the issue of a Representation dated 13 th July 2005 seeking to set aside that part of the 2003 Judgment which awarded her a lump-sum payment of £2.2 million, and a fresh adjudication of that part of the award. The basis of the application is that the husband had been guilty of material non-disclosure of financial information. Delay 5. The

first objection taken by the husband was that the wife had been guilty of such delay in seeking to challenge the award that she ought not to be allowed to be heard on the merits. To set aside an award does of course, as counsel for the husband contended, breach the important principle that finality in litigation is in the public interest. Yet equally, as counsel for the wife submitted, justice can only be done if there has been full and frank disclosure by both parties so as to allow the Court properly to exercise its functions under the matrimonial legislative regime. Balancing these considerations involves the exercise of discretion. Plainly, the exercise of such discretion must depend upon the facts of the particular case. 6. In broad terms, applications to set aside an award fall into one of two categories. The first category involves the non-disclosure by one of the parties of material facts prior to the making of the original Order. The second category involves some supervening event, e.g. the sale of a matrimonial home at a price greatly in excess of its estimated value at the time of the original Order. An instance of the latter category relied upon by counsel for the husband was *Barder v Caluori* [1988] AC 20. The head-note of the Report of that decision states (paragraph 3) - "That the conditions on which a court might properly exercise its discretion to grant leave to appeal out of time from an order for financial provision or property transfer made after divorce on the ground of new events were that new events had occurred since the making of the order that invalidated the basis on which the order had been made so that an appeal would be certain or very likely to succeed, that the new events should have occurred within a relatively short time after the making of the order, that the application for leave to appeal out of time should have been made reasonably promptly in the circumstances of the case and that the grant of leave should not prejudice third parties who had acquired, in good faith and for valuable consideration, interests in property the subject of the order." In his judgment Lord Brandon of Oakwood stated at 43: "While the length of time cannot be laid down precisely, I should regard it as extremely unlikely that it could be as much as a year, and that in most cases it will be no more than a few months." 7. It is clear however, in our Judgment, that Lord Brandon was there referring not to the period of time between the supervening event and the issue of proceedings, but the period between the supervening event and the original Order. As Richard Anelay QC, sitting as a deputy judge of the High Court, said in *T v T*

[1996] 2 FLR 640 at 664 H: "A vital difference between a case of fraudulent non-disclosure and a supervening event case under *Barder* is that in the former the Court has been deprived of the opportunity fully to exercise its powers under S.25 of the Matrimonial Causes Act 1973 by the deliberate and dishonest conduct of the person who has failed to make full and frank disclosure whereas in the latter it has not." 8. This is not a supervening event type of case. Nevertheless it seems to us axiomatic that, where material non-disclosure is alleged, the disaffected party should act with reasonable promptitude having regard to all the circumstances of the case. 9. In this case the original Judgment was delivered on 9 th July 2003. The wife's first Affidavit of 20 th March 2006 discloses that it was not until March 2004 that she first saw a report by Deloitte Touché in the matrimonial proceedings involving NB

and Mrs B. That report showed that the Swiss business of the CCB Group had been valued at 1 st December 2003 at £1.8 million. That evidence has not been seriously contested, and we accept it. By contrast it had been valued by the Court in July 2003 at £42,846. This information was passed by the wife to Mrs Nicola Robinson at Deloitte Touche who wrote to the wife's legal advisers on 12 th March 2004. The letter highlighted discrepancies between the information given to the Court in this case and the information given to the Court in the case of NB and Mrs B. Matters were however complicated by the fact that wife's forensic accountant in 2003, Mr Peter Beamish, had retired. Consideration was given to employing Mr Branch of that firm, but the wife's evidence was that she was not comfortable with that proposal because Mr Branch and the husband were friendly to the extent of having gone on holiday together with their respective partners. Enquiries were made to identify a forensic accountant outside the Island, and in October 2004 Ms Julia Walker of Forensic Accounting LLP was engaged. Her first report was dated 31 st January 2005. A draft of that report was however available in December 2004 and led to correspondence between the legal advisers of the wife and the legal advisers of Mrs B. On 7 th January 2005 the wife's legal advisers had written to them to say "I am instructed on behalf of [the wife] to bring an application to set aside the matrimonial award made in her favour by the Royal Court". The application to set aside the 2003 Judgment was not however made until 13 th July 2005. 10. Counsel for the husband submitted that there were three relevant periods of delay, viz , March to December 2004, December 2004 to January 2005, and January to July 2005. So far as the first period between March and December 2004 is concerned, we do not think that there can be any ground for complaint. In March 2004 the wife came into possession of information which gave grounds for suspicion that there had been a material non-disclosure, but nothing more. There are few forensic accountants in the Island, and we think it was reasonable, having considered and rejected the possibilities of an appointment locally, to seek an adviser in England. That process would inevitably take time. So far as the second period is concerned, it was inevitable that the wife's legal advisers should take time to consider the draft report of Ms Walker, and we think that this short period of delay equally gives no ground for legitimate complaint. 11. The period between January and July 2005 has however caused us some concern. A period of six months from an indication that an application was to be made to set aside an Order might ordinarily be regarded as too long. As Thorpe L J stated in *Shaw v Shaw*

[2002] 2 FLR 1204 at 1217: "Given the importance of the overriding principle of finality in litigation, whatever the chosen route, the Court should clearly exact promptitude and censure delay." However the learned judge continued at 1218: "What then constitutes reasonable promptitude? Obviously each case must be determined on its own facts and circumstances. In cases falling within the *Livesey v Jenkins* category [a material non-disclosure type of case] no application can precede the discovery of the evidence that suggests or proves the wrongful advantage taken by the adversary at trial. Similarly, in cases that fall within the *Barder v Caluori* category, no application can precede the happening of the event relied upon. In either case any judgment must recognize the need

to comprehend the extent and consequence of the discovery, the need to obtain competent legal representation and, in many cases, the need to obtain public funding." 12. The "extent and consequence of the discovery" clearly includes the necessity for professional accounting advice in an appropriate case. Yet that advice was substantially available to the wife by the beginning of February 2005. This period of delay must however be set in context. The enforcement of the 2003 Judgment had not been without difficulty for the wife. As her Affidavit of 20 th March 2006 makes clear, there was, following the 2003 Order, a sustained failure by the legal advisers of the husband to respond to letters from the wife's lawyers. This led eventually to a complaint to the Bâtonnier from which it emerged that the failure to respond had been on express instructions from the husband. There had been extensive delay in transferring the former matrimonial home to the wife. The wife had been driven to apply to the Court for the Viscount to be authorized to pass the contract, whereupon the husband had executed the necessary Power of Attorney. The transfer of paintings and furniture in the former matrimonial home led to lengthy arguments, the issue of a Summons to be heard before the Family Registrar, and capitulation by the husband at the eleventh hour. The payment of maintenance for the youngest daughter of the marriage was habitually late, and distress was caused by the cancellation of the BUPA health insurance cover for the daughter without notice to the wife. 13. Furthermore, in early 2005, the wife began to entertain fears that the husband might dispose of his business interests in the Island or otherwise make it impossible for her to enforce the award contained in the 2003 Judgment. That fear of dissipation led her to apply for a Mareva-type injunction freezing the husband's interests in the CCB Group. That injunction was granted on 5 th April 2005. The Affidavit which the husband was required to file in consequence of that injunction provided further information relevant to the Summons which the wife's legal advisers had to consider and upon which they had to seek further advice from Ms Walker, the forensic accountant. That advice was provided in an addendum to her report dated 5 th July 2005. Proceedings were then instituted on 13 th July. 14. On balance we consider, in the exercise of our discretion, that this period of delay between January and July 2005, and indeed the totality of the delay between March 2004 and July 2005 were not so excessive that we ought not to consider the wife's application to set aside the 2003 Judgment on the ground of material non-disclosure on its merits. 15. We turn therefore to consider the grounds upon which the wife seeks to set aside that Order, and the legal principles applicable to the exercise of our discretion. The Law 16. The leading authority in England on the duty to make full and frank disclosure in matrimonial ancillary relief cases is *Jenkins v Livesey*

[1985] AC 424 HL. Lord Brandon of Oakwood stated during the course of his Judgment at 436-437: "The scheme which the legislature enacted by sections 23, 24 and 25 of the Act of 1973 [the Matrimonial Causes Act 1973] was a scheme under which the court would be bound, before deciding whether to exercise its powers under sections 23 and 24, and, if so, in what manner, to have regard to all the circumstances of the case ... It follows that, in proceedings in which parties invoke the exercise of the court's powers under sections 23

and 24, they must provide the court with information about all the circumstances of the case including, inter alia, the particular matters so specified. Unless they do so, directly or indirectly, and ensure that the information provided is correct complete and up-to-date, the court is not equipped to exercise, and cannot therefore lawfully and properly exercise, its discretion in the manner ordained by section 25(1) ... "It follows necessarily from this that each party concerned in claims for financial provision and property adjustment (or other forms of ancillary relief not material in the present case) owes a duty to the court to make full and frank disclosure of all material facts to the other party and the court." 17. The duty has been frequently repeated. Richard Anelay QC in *T v T*

[1996] 2 FLR 640 at 643 stated: "The parties to an application for ancillary relief in a matrimonial suit have a duty to make full and frank disclosure of their financial position. Compliance by them with that duty is fundamental to the exercise by the court of its duty under s25 of the Matrimonial Causes Act 1973. By virtue of s.25(2)(a) of that Act one of the particular matters to which the court is to have regard is the financial resources which 'each of the parties to the marriage has or is likely to have in the foreseeable future'." 18. Material non-disclosure by a party to a matrimonial suit may be active or passive

- the effect upon the Court's ability to do justice in the case is the same. In *Burns v Burns*

[2004] 3 FLR 263 Thorpe LJ stated at 268 paragraph [17]: "The effect of these decisions is to establish clearly that if a party is in breach of the duty of candour, whether by actively presenting a false case or passively failing to reveal relevant facts and circumstances, then the court has the power to set aside the order and do justice, whether or not the order was made by consent." 19. It is no defence to an allegation of material non-disclosure that the true facts might have been elicited by the other party if greater diligence had been exercised. It is not the duty of the opposing party to act as a ferret. In *Robinson v Robinson*

[1983] 4 FLR 102 Templeman LJ (as he then was) stated at 109: "It is said that Mrs Robinson's advisers ought to have called for more information, or they ought to have dissected all the voluminous correspondence and papers, and ought to have considered a valuation themselves, and woken up to the true facts. "But the situation with which we are faced is that there is a duty in matrimonial proceedings, a duty both under the rules and by authority, that full particulars must be given by any party of income and property and, as it has been put, 'there must be full and frank disclosure'." 20. We adopt all these principles as equally expressing the law of Jersey in this area. The duty to disclose all material facts in ancillary relief proceedings is a high one. The breakdown of a marriage of some years' duration engenders disappointment, hurt and a sense of failure, as well as other emotions. The policy of the Court is to try to secure wherever possible a 'clean break' so that the parties may put the failure of their relationship behind them and get on with their lives. It is inherent in the notion of a 'clean break' that the husband and wife are honest with each other, especially with regard to financial matters. No break can be clean if suspicion lurks that assets have been hidden or that their value has been understated. The wife in this

case received what most people would regard as a substantial reward in the 2003 Judgment. But that is not the point. The wife told us that she felt cheated and, if there was material non-disclosure, that is a perfectly understandable reaction. If parties are transparent and truthful in their dealings on divorce, there is a much greater likelihood not only that they will be satisfied with whatever award is made, but also that they will be able to draw a line under the failure of their marriage. The duty of full and frank disclosure is one of the highest importance. If a party to a matrimonial suit fails in that duty to a material extent, so that the Court concludes that the impugned order would or might not have been made, it is liable to be set aside. 21. One should however underline that not every failure in the duty of full and frank disclosure will lead to the setting aside of an award or of an agreement leading to a Consent Order. As has been stated, it is also in the public interest that there should be an end to litigation. It is only when there is a material failure to observe the obligation of full disclosure that the Court will set aside an earlier Order. We respectfully adopt the words of Lord Brandon in *Jenkins v Livesey* at 445: "I would end with an emphatic word of warning. It is not every failure of frank and full disclosure which will justify a court in setting aside an order of the kind concerned in this appeal. On the contrary, it will only be in cases where the absence of full and frank disclosure has led to the court making, either in contested proceedings or by consent, an order which is substantially different from the order which it would have made if such disclosure had taken place that a case for setting aside could possibly be made. Parties who apply to set aside orders on the ground of the failure to disclose some relatively minor matter or matters, the disclosure of which would not have made any substantial difference to the order which the court would have made or approved, are likely to find their applications being summarily dismissed, with costs against them, or, if they are legally-aided, against the legal aid fund." 22. We turn now to apply these principles to the facts of this case. Counsel for the wife alleged several elements of non-disclosure, but only two could conceivably be regarded as material and, without intending any disrespect to Counsel, we will restrict ourselves to those elements. The first allegation is that the level of directors' remuneration for CFSL (one of the companies in the CCB Group) was understated resulting in a lower valuation of the husband's shareholding. The second is that the impact of the transfer of some of the CCB Group's business to Switzerland was misrepresented with the result that the value of the husband's shareholding in the CCB Group was materially understated by the experts and by the Court. We take each of these allegations in turn. 23. At the hearing leading up to the Judgment evidence was given by Mr Peter Beamish on behalf of the wife. Mr Beamish had endeavoured to place a value on the husband's interest in the CCB Group. Part of those calculations involved estimating the directors' remuneration for 2003. Mr Beamish estimated that remuneration as being in the region of £450,000. In the event, the accounts for the year ended 31 st May 2003 show actual remuneration paid to the directors of £594,308. The hearing had taken place only one month before the year end, and it was the evidence of Ms Walker before us that it seems unlikely the husband would not have known the correct figures for the directors' remuneration at the time of the hearing. We agree, and it follows that there was in our

judgment an element of non-disclosure. We do not, however, regard this non-disclosure as being, by itself, so material that the award in the 2003 Judgment should be set aside. We turn to consider the crux of the wife's argument, viz the alleged failure to disclose the true facts relating to the transfer of part of the CCB Group's business to Switzerland. 24. We are not, we hope, being unfair to the husband by stating at the outset that the wife's advisers experienced difficulty in obtaining information and documentation from him. As the court stated at paragraph 15 of the 2003 Judgment: "Mr Beamish is a chartered accountant who qualified in 1973 and who has practised in Jersey since 1984. He is a partner in the firm of Deloitte Touche. He has been involved in many forensic examinations and is an experienced investigator. His opinion was given on the basis of information made available to him. He did not suggest that the husband had concealed information from him, but he stated that it had taken a considerable amount of time to get what he wanted and that some information was still outstanding. Up-to-date information on a Swiss subsidiary was not available, and Mr Beamish thought that had a value, although the latest figures showed it to be making a loss." We will return to the last sentence of that extract below. 25. In arriving at his valuation of the husband's interest in the CCB Group, Mr Beamish had necessarily had to have some regard to the group's activities in Switzerland. The husband's forensic expert, Mr Pushman, had however been instructed to ignore the Swiss interests. The Court commented on this element of the dispute at paragraph 19 of the

Judgment:

"One surprising aspect of the evidence of Mr Pushman related to the instructions upon which it was based. Mr Pushman had not been instructed to value the Swiss subsidiary, but only the principal trust company operating in Jersey. Mr Pushman had accordingly not factored in any value for the Swiss subsidiary. It is true that the Swiss subsidiary has not yet, on the figures available to Mr Beamish and to the Court, made a profit. But it is clear that a significant percentage of the business formerly conducted in Jersey has been transferred to Switzerland. In May 2002 the turnover of the Jersey business was approximately £3 million, whereas the turnover of the business in Switzerland was £1 million. In Mr Beamish's view the Swiss business was poised to move into profit. Nevertheless that aspect of the CCB Group had been excluded from Mr Pushman's brief." 26. The "figures available to Mr Beamish and to the Court" were in fact the accounts of Caversham SA ("CSA") for the year ended 31 st May 2002. The balance sheets of CSA and Caversham Financial Services Limited ("CFSL") for the same period gave no details of the business transferred between Jersey and Switzerland. Mr Beamish had valued the Swiss business at cost, viz £42,846. The wife's

submissions

27. Counsel submitted on behalf of the wife that Mr Beamish was not informed of the detailed arrangements concerning the transfer of business to Switzerland and that the husband's failure in this regard amounted to a material non-disclosure. There are a number of strands

to Counsel's submissions: (1) Mr Beamish was only made aware of one Swiss company of which the CCB Group had an interest, viz CSA. In fact there was another entity to which clients had been transferred, viz Mayo Services SARL ("Mayo"). By an agreement signed on 25 th September 2003, but taking effect from 1 st June 1999, clients were transferred to Mayo for a consideration of £601,000. (2) There was an option agreement dated 23 rd December 1999 between the husband (or the CCB Group) and Mr Myles Stott of Mayo whereby the husband (or the CCB Group) could acquire Mayo for 30,000 Swiss Francs at any time between 1 st January 2000 and 1 st January 2015. Mayo remained potentially, in effect, a part of the CCB Group. (3) A number of Client Entity Sale Agreements between CFSL and CSA were in draft pending the conclusion of negotiations with the tax authorities in Geneva. Two agreements were concluded in September 2003, but took effect from 1 st February 2001 and 1 st February 2002 respectively, involving a total consideration of £842,000. 28. Ms Walker's evidence in support of these submissions was that the discounted value of the Client Entity Sale Agreements with Mayo and CSA was in the region of £1 million. The discount from £1,443,000 (£601,000 plus £842,000) took account of the fact that payment of the consideration was deferred. In her view, as an expert and experienced practitioner, the husband must have been aware of the draft agreements for sale of part of the CCB Group's business to Mayo and CSA, and of the price or likely price to be achieved. The failure to disclose this information to Mr Beamish and to the wife's other advisers had led, in her opinion, to a significant under-valuation of the husband's assets. 29. Ms Walker drew attention to a note in the draft and final accounts of CFSL for the year ended 31 st May 2003 which stated: "A number of fee income generating cases have been transferred to Caversham SA, (a company also owned by Caversham Holdings Limited) and Mayo Services SARL, a related company of the group ... In consideration for the transfer, agreements have been entered into whereby a portion of the anticipated future earnings over the following ten years are due to the seller. The expected return on this agreement is £1,443,000 ..." This information was not of course made available to Mr Beamish or to the Court. 30. By contrast the final report of Mr Beamish stated: "In the absence of further information, we have included the value of CSA at the book value indicated in CHL's 2002 financial statements i.e. £42,846. We are concerned however as to the accuracy of this figure given the conflicting information upon which we have had to rely." The husband's

submissions

31. The husband's evidence was that he had told Mr Beamish that transfers of clients from Jersey to Switzerland had taken place, but he conceded that he did not disclose the quantity of business transferred. His explanation for this was that, if asked, he would have given the information. 32. The husband emphasised that all the negotiations with the Swiss tax authorities were being undertaken by Mrs Christina Platts, the Managing Director of CSA. He indicated that he had only a marginal appreciation of the substance of those negotiations. Mrs Platts gave evidence to the like effect. The evidence of Mrs Platts did however confirm that there was a written agreement relating to the transfer of clients

between CFSL and Mayo and that the agreement was executed on 20 th May 1999. She also deposed that in 2001 there was a similar agreement between CFSL and CSA, but that no formal agreement was executed. It was understood that the transfer of clients would be on the same basis as that agreed with Mayo. 33. The husband also called evidence from another of his partners, Mr Stephen Whale. Inter alia , Mr Whale dealt with criticism by the wife of his affidavit evidence in 2003 that the profits of CFSL were in decline. In his affidavit of 23 rd March 2006 Mr Whale stated: "In my affidavit, I commented that I estimated that the profits before taxation of CFSL for the year ended 31 st May 2003 would be in the region of GBP 600/800k and that in that year the fee income of the firm could be as much as GBP 500k lower than the previous year. The actual operating profit of CFSL for the year ended 31 st May 2003 was GBP 754k and so in line with my estimate contained within the affidavit. I accept that the profit before taxation was higher than my estimate at GBP 965k. The difference between was in part due to the inclusion of amounts due from Switzerland in respect of goodwill payments." 34. This is, in our judgment, a little disingenuous. In his affidavit of 6 th March 2003 Mr Whale stated: "In the past CFSL has been a very successful business. However, over the past two years its profitability has reduced substantially. Profit before taxation in the year to 31 st May 2002 was £1,062,000. This was down from £1,438,000 in the previous year. I estimate that the figure for the year to 31 st May 2003 will be in the region of only £600,000 to £800,000." He then gives some reasons for the expected decline in CFSL profits. At paragraph 8 he continues: "In summary, therefore, ...

- (e) anticipated profit before tax year ended 31 st May 2003 £662,000." This estimate was given by the managing director of the company less than two months before the end of the accounting year. The profit before tax was in fact £965,000. 35. The husband called expert evidence from Mr Andrew Dann, a partner of Ernst & Young LLP. The material part of Mr Dann's report reads: "In the Royal Court's judgment dated 9 th July 2003 (paragraph 19) and in Deloitte & Touché's report dated 14 th April 2003 (paragraph 4.5.9) reference is made to the fact that clients were being transferred from Jersey to Switzerland. Further, in D&T's report they stated that 'Essentially, CSA underpins the maintainable value of CFSL'. We can reasonably assume D&T concluded that this transfer would not materially impact their valuation as the Swiss entities will gain clients to the detriment of the Jersey business. The total consideration of £1.443m is recognised in the accounts of each entity based on instalments payable from the Swiss entities over a ten year period, in line with the transfer agreement. Caversham SA was valued at cost at the time of the Hearing. For the years ended 31 st May 2003-2005, both Caversham SA and Mayo SARL have net shareholder liability positions. It is important to note that Mr Crichton's share of Caversham SA, at 31 st May 2003, and thereafter, has not been worth more than cost, despite the transfers of clients." While it is true that the consideration of £1.443 million was recognized in the accounts of the relevant companies for the year ended 31 st May 2003, Mr Dann does not address the point that this information was not available to Mr Beamish at the time when his evidence was given. 36. Mr Dann testified that there were other entities in the CCB Group which were loss-making and invited the Court to take account of them in assessing the value of the husband's

interest in the CCB Group. This is an invitation which the Court cannot accept. No evidence has been placed before us as to the value of other entities, whether positive or negative, and we are bound therefore to regard any such values as neutral or insignificant.

Conclusion

37. We have reached the conclusion that there was a failure to disclose information as to his assets on the part of the husband to a material extent. We have reached that conclusion for the following reasons. (1) We think that the husband is prone to prevaricate, and to seek to undermine the evidence of the wife if he can. In contending that there was no necessity to appoint a forensic accountant outside Jersey he insisted in evidence that he had not been on holiday with Mr Branch and their respective partners. It was only when faced with the prospect of contrary evidence from the wife that he instructed his counsel to concede that he could in fact now recall this shared holiday. We find that he is prone to holding back information if he thinks that he can avoid disclosure. (2) The husband is an intelligent and articulate chartered accountant as well as being the architect of the success of the CCB Group and its chairman. We find it incredible that he did not know in reasonable detail about the draft Client Entity Transfer Agreements nor the considerations agreed or in contemplation. To the extent that he disavowed such knowledge, we reject his evidence. (3) With the benefit of hindsight it seems plain to us that the decision to instruct Mr Pushman, his expert adviser in 2002/2003, not to investigate or assess the value of the Swiss operations was deliberate. The husband wanted to obscure the picture in relation to the CCB Group's activities in Switzerland and it would not have been helpful to instruct Mr Pushman in that respect. (4) We find that the husband's evidence was less than candid. In particular he failed to disclose the existence of Mayo and the options agreement in relation to the shares of Mayo, and the fact that Client Entity Sale Agreements were in draft. Mr Beamish's final report stated at paragraph 4.2.9: "CSA. We understand that this company represents CCB's investment in its Switzerland-based operations." The husband knew that this was inaccurate but failed to say anything. Mr Whale eventually agreed in evidence that the board of CFSL was aware of the agreements and the prospective considerations. (5) The failure to volunteer this information to Mr Beamish led him to undervalue the Swiss operations of the CCB Group. In addition it was, in our judgment, an important contributory factor in persuading Mr Beamish to reduce his estimate of the value of the husband's shares in CFSL from between £5.1 million and £6.6 million (see paragraph 4.5.11 of his final report) to a significantly lower figure when he gave evidence at the hearing. 38. For all these reasons we set aside that part of the award ordering a lump sum payment of £2.2 million in favour of the wife. We will hear argument, in default of agreement between the parties, as to the figure which should be substituted. *Authorities White v White*

[2001] 1 AC 596 . *Barder v Caluori* [1988] AC 20. *T v T* [1996] 2 FLR 640 at 664 H. *Shaw v Shaw*

[2002] 2 FLR 1204 at 1217. *Jenkins v Livesey*

[1985] AC 424 HL. Burns v Burns [2004] 3 FLR 263. Robinson v Robinson [1983] 4 FLR 102. Page
Last Updated: 27 Mar 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/2006/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/p-s-v-c-9-oct-2006-2006-jrc-139a-09-october-2006>

Prepared on 24 October 2026 · Esheria