

JERSEY / JUDGMENT

PS -v- HF and SS [2008] JRC 154 (18 September 2008)

[2008] JRC 154

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judgment

Commissioner: 1. In paragraph 68 of its judgment handed down on 12 th August 2008 (JRC 128) the Court asked for more information and to be addressed by the parties before finalizing its orders in relation to the practice. We adopt the definitions contained in that judgment, save that rather than refer to the practice we will refer to "the Company" being P Dental Services Limited which owns the practice. 2. The parties were in broad agreement as to the orders we should give. The only substantive issue that arose was that of security for the sum payable by the petitioner to the respondent for her share of the Company, now quantified as the sum of £95,896.66 payable as to £40,000 twenty-eight days from the date of the order, £27,948.33 six months from the date of the order and the balance of £27,948.33 twelve months from the date of the order. 3. This issue was exacerbated by the respondent hearing through her children that following the substantive hearing the petitioner had applied for a job interview as a dentist in what she thought was Dubai. She swore an affidavit to the effect that unless the petitioner was prevented by order from leaving the Island she would get nothing. 4. Mr Sinel submitted that security over the shares in the Company was not the worth the paper it would be written on. He therefore sought an order that the petitioner be prohibited from leaving the Island until such time as the sums due to the respondent under the Court orders are paid and that in the interim, his passport should be lodged with the Viscount of the Royal Court as security. 5. The petitioner swore an affidavit in response and both parties were briefly cross-examined. The petitioner confirmed that following the last hearing he had applied for a job in Qatar which was advertised in the British Dental Journal, but he had no plans to leave Jersey until he had either sold the practice or otherwise discharged his obligations in this jurisdiction. This had been made clear to his prospective employers in Qatar who were still advertising the position. He had no intention of avoiding his obligations in this jurisdiction and as a professional man would be in danger of losing his practising certificate if he were to attempt to do so. He was quite happy to undertake to the Court that he would remain resident in Jersey until he had paid the respondent the full amount due for her share of the Company. 6. The clear implication of the respondent's affidavit and the submissions made by Mr Sinel were that the petitioner intended to defeat the respondent's rights as a creditor either by abandoning his patients, practice and creditors here (including the bank which has lent the practice loan) or by selling the practice out of the Company and removing the

proceeds from the jurisdiction. 7. We are satisfied from the evidence we have heard that the petitioner is not intending to defeat the respondent's claims and indeed in cross examination the respondent made it clear that she had not intended to imply that it was his intention to do so. There are, therefore, no grounds upon which to make an order requiring him to surrender his passport, an order which we note Scott J. in *Bayer v Winter* (No 2)

(1968) 1 W. L. R. 540 and in the context of freezing orders described as unprecedented. In view of the tensions that have arisen in this case, we will however accept the petitioner's offer of an undertaking to remain in Jersey. 8. In his final comments on the draft directions, Mr Sinel suggested that as an alternative to the surrendering of the petitioner's passport, the respondent should retain her shareholding in the Company pending payment in full. That of course would undermine the whole purpose of separating the parties' joint involvement in the Company but it does in our view lay the foundations for security which we think it is reasonable for the respondent to be given. 9. Notwithstanding Mr Sinel's comments about the value of security over the shares, we propose that the respondent should retain security over the shares in the Company that she is transferring to the petitioner by way of a security interest agreement over those shares, pursuant to the provisions of the Security Interest (Jersey) Law 1983. 10. It is not for this Court to draft the security interest agreement and we very much hope that in view of the costs that have already been incurred in this case, counsel will do their very best to agree the terms without further reference back to the Court. However, we wish to make it clear that:- (i) The obligation to be secured is the sum of £96,896.66 payable by the petitioner to the respondent for the respondent's interest in the Company. (ii) Events of default shall be any failure by the petitioner to comply with his obligations under the order we make today. (iii) Subject to an event of default arising, the voting rights attaching to the shares in which the respondent shall have security shall be exercisable by the petitioner. (iv) The security interest shall rank behind security that the petitioner may wish to provide any bank to secure a lending made for the purpose of discharging the petitioner's obligations to the respondent in respect of the sale of her shares in the Company. 11. On the petitioner undertaking in writing to the Court to remain resident in Jersey until he has discharged the sums due to the respondent under sub paragraph (ii) below, we make the following orders:- (i) By consent, the respondent shall transfer the whole of her interest in the Company to the petitioner and shall resign as a director and secretary; (ii) Subject to sub paragraph (viii) below, the petitioner shall pay to the respondent £95,896.66 which represents one half of the value of the Company (based on a valuation of £265,000 less the practice loan of £73,706.69 on the basis that it is capital reducing) such sum to be paid in instalments as follows: Instalment 1: £40,000 to be paid to the respondent no later than 28 days from the date of the order. Instalment 2: £27,948.33 to be paid to the respondent no later than six months from the date of the order. Instalment 3: £27,948.33 to be paid to the respondent no later than twelve months from the date of the order. (iii) The respondent shall be entitled to a security interest over the shares in the Company transferred by the respondent to the petitioner under sub-paragraph (i) above pursuant to the provisions of

the Security Interest (Jersey) Law 1983 in order to secure the petitioner's obligations under sub paragraph (ii) above. (iv) The petitioner shall pay to the respondent interest on the total sum payable under sub paragraph (ii) above or any unpaid part thereof at the Court rate from 1 st July 2006 (the date the youngest child completed his secondary education) until the date of payment. (v) The total sum payable under sub-paragraph (ii) above or any balance outstanding shall become immediately payable by the petitioner to the respondent in the event that:- (a) the petitioner ceases to reside permanently in the Island of Jersey; (b) the practice is sold by the Company or the shares in the Company are sold by the petitioner to a third party. (vi) Should the petitioner fail to meet the payments as ordered under sub paragraph (ii) above, the respondent shall be at liberty to refer the matter back to the Royal Court and issue contempt and enforcement proceedings. (vii) Paragraph 5 of the consent order is hereby discharged, save that pending the payment of the full amount due to the respondent under sub-paragraph (ii) above the petitioner shall give the respondent or her advisers at least fourteen days notice in advance of any sale, either by the Company of the dental practice or by the respondent of the shares in the Company. (viii) In the event that the respondent is ordered to pay the petitioner's costs for this action or any part thereof, then the petitioner shall be entitled to set off any sums payable by the respondent under such costs order against his obligations under sub-paragraph (ii) above. (ix) By consent that in the event that the petitioner shall become habitually resident in England and Wales and satisfies the jurisdictional requirements of Part III of the English Matrimonial & Family Proceedings Act 1984 he shall make application to the courts of England and Wales for a consent order limited to the making of a pension sharing order pursuant to which the respondent shall receive 50% of the CETV of the petitioner's NHS pension PROVIDED ALWAYS that the respondent shall co-operate fully in the presentation of such consent order and meet her own costs (if any) of such application. (x) There shall be liberty for either party to apply to the Royal Court for further directions. Authorities *Bayer v Winter (No 2)* (1968) 1 W. L. R. 540. Security Interest (Jersey) Law 1983. Page Last Updated: 16 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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