

JERSEY / JUDGMENT

Q -v- R (Matrimonial) [2016] JRC 152A (01 September 2016)

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[2016] JRC 152A [New search] [Help] Matrimonial - application by the petitioner for ancillary relief. [2016]JRC152A Royal Court (Family) 1 September 2016 Before : Carol Elizabeth Canavan, Registrar., Family Division. Between Q Petitioner And R Respondent IN THE MATTER OF Q-V-R (MATRIMONIAL) Advocate E. L. Burns for the Petitioner. Advocate M. J. Haines for the Respondent.

reasons

the registrar: 1. The application by the petitioner wife ("the wife") for ancillary relief was heard on the 31 st August, 2016, and the 1 st September, 2016. Judgment was reserved.

Background

2. The wife and the respondent husband ("the husband") met in England in April 2005. Prior to their meeting the husband had lived and worked in Jersey for the whole of his life. He relocated to England in July 2005 to be with the wife. The parties married in December 2005. There are two children of the marriage namely Noah, (this is not his real name) born in 2006, and Isabella, (this is not her real name) born in 2008. 3. The parties lived in the UK until April 2009. It is not disputed between the parties that:- (i) the husband and the wife lived with her parents until they married; (ii) subsequent to the marriage they had lived in two cottages tied to the husband's employment on the farms where he worked; (iii) the accommodation in both cottages had been of a low standard; (iv) the wife had worked full time as a dental nurse until the 38 th week of her pregnancy with Noah. The parties did not agree on:- (i) the financial contribution made by the husband to daily living expenses prior to the marriage; the wife said that the husband did not contribute, the husband said that he did; (ii) the extent of the husband's employment during their time in the UK; the wife said he worked part-time and that his hours were "hit and miss". The husband said that he had had two jobs and guessed that he had only been out of work for about four weeks. 4. The family

moved to Jersey in April 2009 to reside with the husband's parents at Property A, a working dairy farm which will be referred to as "the farm". The wife's evidence was that she was not consulted about the move. It had not been a joint decision. The husband had discussed it with his parents and she had been confronted by them on a visit to Jersey and told that she had to be ready to move by April. She disagreed with Advocate Haines when he put it to her that they had moved to Jersey in order to have a better standard of living as she considered that the accommodation that they had at the farm had also been substandard. The husband had just wanted to take over the family farm and work for himself. The husband's evidence was that his father had offered them the opportunity to run the farm and he had thought it best to come back to Jersey. The last place they lived had not been very nice and this was a better option for the family. 5. It was not disputed that the parties resided in very cramped accommodation in the farmhouse belonging to the husband's parents because they had no money to go anywhere else. The wife said that when they had first moved in there were about six lodgers in the house. The family had one room downstairs and shared everything else with the lodgers. After some of the lodgers moved out they had one room as a bedroom and one room as a playroom/sitting room and shared an ill equipped kitchen and bathroom with the remaining lodger. This had lasted for five years. 6. Both the husband and the wife had worked on the farm. It was not disputed that the wife had worked hard on the farm but received no wages. 7. On the 22 nd June, 2012, the husband's grandfather gifted to the husband and wife jointly an outbuilding on the farm to be converted into accommodation for them. The outbuilding is now known as Property B. 8. The wife and children remained living with the husband's parents at the farm until they moved into Property B in February 2014. The husband remained in the farm with his parents. The wife and children left the farm permanently on the 24 th June, 2014, remaining mostly in Jersey until the 20 th February, 2015. They then moved to the UK to live with the wife's parents, where they still reside. 9. Decree nisi was pronounced on the 17 th June, 2015. 10. The wife is not currently in employment. Whilst living in Jersey she had worked on the farm and from September 2013 to December 2014 she worked as a dental nurse. The husband continues to reside with his parents and to work on the farm. The assets and liabilities Property B (redevelopment) 11. The redevelopment of Property B commenced in or about June 2013. It is not disputed between the parties that the work was carried out by the wife's brother, C. The husband says that C was paid around £170,000 in cash to undertake the redevelopment but no receipts had been provided. It is the husband's case that the redevelopment was not finished and moreover that part of the work was defective and required repair (see paragraphs 35 to 38 below). 12. The husband and wife took out a loan of £130,000 with Acorn Finance ("the Acorn loan") in 2013 in order to pay for the redevelopment. In April 2014 a loan of £170,000 was taken out with Lloyds Bank Plc ("the Lloyds loan") which was used to repay the Acorn Loan and to continue with the redevelopment. Both loans have been referred to as "business loans" but they were, in reality joint mortgages. Monthly repayments on the Lloyds loan are £1,074.72. Initially the husband averred that the first payment was made on the 4 th August, 2014, and that he had continued to make the monthly payments without contribution from the wife. However, during the hearing, he accepted the wife's evidence that two payments

had been made from the joint account in June and July 2014. He also said that "I said I would take it on". The wife accepted that she had not made any contribution to the Lloyds loan since August 2014 as she could not afford it. Her evidence was that she had believed that Property B should be rented out in order to cover the Lloyds loan repayments. The husband denied that it had ever been suggested that Property B should be rented out. Property B (the sale) 13. Property B is a two storey barn conversion located in the middle of the farm complex which comprises a working dairy farm with cattle sheds, outbuildings, a dairy and storage units. It has restricted parking for two vehicles but there is no garden or patio area. 14. On the 30 th November, 2015, an order was made, by consent that Property B should, on joint instructions, be sold for the best possible price. A valuation of Property B at £485,000 had been obtained from Reynolds Chartered Surveyors at the time of the Lloyds loan application. After the order for sale other valuations were obtained from Bull & Co (£450,000), Broadlands (£275,000) and Maillard's (£425,000). It was agreed that Property B should be marketed by Mr Steve Toudic ("Mr Toudic") of Maillard's at an asking price of £450,000. 15. Mr Toudic was called to give evidence. He confirmed that Property B had been marketed by Maillard's and initially there had been some interest. There had been 18 viewings since marketing commenced in December 2015. He had sent out 216 sets of details, 2,394 people had viewed Property B on the website. His view was that Property B had been well exposed to the local market. Mr Toudic had received consistent feedback from people who had viewed Property B. Prospective purchasers had not been interested because of Property B's situation in the heart of a working farm, the fact that there was no garden, the natural smell of the farm and the inevitable issue with flies in the summer months. The price had been reduced to £400,000 in February 2016 because there had been no offers, not even any indication of interest. One offer of £380,000 was received in March 2016 which both the husband and wife were prepared to accept. The people who had made the offer had been cash buyers. They had instructed a surveyor to inspect the property before instructing lawyers. The surveyor raised the issues of the lack of amenity space, restricted parking, the farmyard smell, the flies, and the noise. He also commented on the fact that the house was finished very basically and that there were signs of water ingress around some of the windows. The surveyor had also noticed that on the planning application there was amenity space highlighted on the drawings and on the permit but that area was not being included in the sale of Property B. The couple withdrew their offer on the advice of the surveyor. 16. Mr Toudic confirmed that he was still marketing Property B but although he had received countless calls on a regular basis from interested parties, once he had outlined the location and the lack of amenity space, the enquiries were not taken any further. One other person had shown interest in Property B if certain terms could be agreed, e.g. the purchase of additional land adjacent to Property B. Nothing further happened as his terms could not be agreed. 17. A further problem had recently come to his attention with regard to prospective lenders. Mr Toudic had experienced a similar situation with the sale of an apartment situated above a commercial business. He had found only one lender willing to provide funds for a unit above or forming part of a commercial enterprise. In anticipation of the hearing he had made enquiries of other mortgage lenders but he had formed the opinion

that any mortgage lender would be concerned about lending on a residential property in or over a commercial enterprise. 18. Mr Toudic suggested that the water ingress should be repaired as it was off-putting to potential purchasers. 19. Mr Toudic recommended that the price be further reduced to £360,000 in order to try and gain interest from a new price range of applicants. The husband had agreed to this but the wife had not. Mr Toudic felt that there was no avenue left for him other than to reduce the price and he "firmly believed " that the price needed to be reduced in order to sell Property B. His advice would be to seriously consider an offer of £300,000 if a cash buyer came along. He said that Property B was one of the most difficult properties he had been asked to sell in his 26 years as an estate agent. Both prospective purchasers and lenders would be concerned about selling on Property B in the future. 20. The wife gave evidence that she believed that the husband and his family did not want to sell Property B and were doing as much as they could to frustrate the sale by e.g. not tidying up around Property B or by parking vehicles in front of it. The husband confirmed that the family wanted to keep Property B but denied that the family was trying to frustrate the sale. He did offer, at the hearing, to tidy up around Property B. In an email dated the 18th April, 2016, to Advocate Haines from the husband's father he said:- "If a third party were to purchase the property it would severely impact upon operating the farm for the following reasons: There are animals in the back yard and a big shed which cause a certain amount of smell and flies from the manure and silage even more. Smell when the manure is loaded into the muck spreader in the back yard to cart away (sic). There are bulls on the farm and animals do get loose occasionally, tractors are in and out, sometimes with big machinery. The large milk lorry comes every day to collect the milk, they have to turn into the back yard and reverse to the dairy. The dairy nuts are delivered once a week and for at least half an hour they pump the nuts into a big container, this causes a loud very loud noise." 21. Also in that email the husband's father stated:- "The barn was given to R by his grandfather D to convert so that he and his family would have somewhere close to his work place to live as he has taken on the farm and dairy herd. My father would not have given it had he thought it would not remain as part of the farm property." The wife did not agree that it was intended that Property B should be retained as part of the farm. The grandfather had gifted the Property B building to the husband and the wife so that the family could have a home. The husband gave evidence that he believed his grandfather would not have gifted Property B to them if had thought that Property B might be split off from the farm. The fact remains however that Property B was gifted to the husband and wife jointly and my notes of the hearing on the 11th November, 2015, when the order for the sale was made, clearly show that Advocate Haines stated on behalf of the husband that he agreed that Property B should be sold. The farm business 22. The farm is a dairy farm. The business is run through E Limited, a family owned company ("the company"). The husband is a director of the company and holds one of its nine issued shares. He left school at the age of 14 and went to work on the farm. He gave evidence that he has no other skills or qualifications. He had worked there since leaving school, apart from his time in the UK. 23. The husband gave evidence that the farm has 88 cows which belong to the company. The wife believed that the cows belonged to the husband as he had stated in his affidavit of means in the "Capital: other assets section"

that:- "E Limited herd of dairy cows held in the sole name of the respondent" and put a value on them of £42,300 which, she said, should be taken into account in these proceedings. Other assets 24. The schedules of assets filed show that neither the husband nor the wife have significant amounts of cash in their bank accounts nor do they have any liabilities other than the balance outstanding on the Lloyds loan and legal fees. The wife stated in her schedule that she has legal fees of £85,227.60 and the husband stated in his schedule that his fees amounted to £108,500 as at the 16 th August, 2016. Both parties were on legal aid. 25. The husband has a private pension which had a CETV of £18,992 as at April 2016. He had taken out the pension when he was 16, i.e. 13 years before the marriage. 26. The wife was cross-examined at length by Advocate Haines on the value and ownership of two horses belonging to her. I accept the evidence of the wife that the horses have little or no value and therefore I did not consider the horses to be assets which need to be taken into account in the final division of assets. Income positions 27. The husband's sole income is from the farm at £26,000 net p.a. paid at the rate of £500 per week (£2,166.66 per month). 28. The wife has not been employed since returning to England. The husband pays maintenance for the children at the rate of £100 per week, she receives child benefit of £34.40 per week, tax credits of £117.44 per week and employment support allowance of £125.05 per week. Her annual net income is therefore £19,598.28, (£1,633.19 per month). Inheritance prospects 29. The wife's mother is 67 and her father is 74. She has six brothers and sisters and therefore her prospects of inheritance are low. She believed that the husband would inherit the farm in due course. She also believed that the husband would remain living with his parents and not move into Property B or anywhere else. 30. The husband's mother is 65 and his father is 67. Both are in good health. He has one sister but he did not know if the farm would be left to both of them. The husband said that he would be disappointed if he did not inherit the farm as it is his "life's work not just a job". The husband had already inherited £25,000 from his grandfather, £16,500 of which he said he had invested into the redevelopment of Property B. Liabilities 31. Neither party claimed in the schedule of assets to have any outstanding liabilities other than the Lloyds loan. The wife's open position 32. The wife sought an order that:- (i) Property B should be sold as soon as possible; (ii) the costs and disbursements of the sale and the balance of the Lloyds loan should be paid from the proceeds of sale; (iii) the wife should either receive £170,000 from the net sale proceeds or alternatively, she would transfer her interest in Property B for a consideration of £170,000 and her release from the Lloyds loan; (iv) the husband should retain his pension and his interest in the farm and the herd; (v) child maintenance should be paid at the rate of £50 per week for each child until they each attain the age of 18 or cease full time education, including tertiary education, whichever is the later; (vi) child maintenance should be increased annually on the anniversary of the order in accordance with the percentage increase in JRPI over the preceding 12 months; (vii) spousal maintenance should be paid to her at the rate of £1 p.a. until the youngest child attains the age of 18 or ceases full-time education, including tertiary education, whichever is the later. The husband's open position 33. The husband sought:- (i) the repayment by the wife of £4,981.57 being one half of accounts in respect of electrical work, building work and decoration that the husband had

recently paid due, he said, to the defective workmanship of C (collectively referred to as "the invoices" and dealt with in greater detail in paragraphs 35 to 38 below); (ii) payment of one half of any future remedial works; (iii) the repayment by the wife of £13,435.23 being one half of monthly payments the husband had made in respect of the Lloyds loan and an order that future payments should be paid equally; (iv) no order with regard to the farm business and/or the herd as these have no value and do not belong to him; (v) an order that the husband and the wife should retain their own bank accounts and personal items; (vi) the value of the wife's share or interest in his pension should be discounted to £3,124.31; (vii) an order for the payment of ongoing child maintenance at the rate of £100 per week, being 20% of his net wages, until Noah reaches the age of 16 or completes secondary education, whichever is the later, thereafter reducing to 15% of his net wage until Isabella attains the age of 16 or completes secondary education whichever is the later; (viii) an order that child maintenance should be increased annually in accordance with the increase in JRPI and reviewed if either child goes on to tertiary education, or in the event of a material change in the circumstances of the husband or the wife or the children; (ix) the dismissal of any claim for spousal maintenance; (x) repayment by the wife of loans totalling £15,037.96 which he claimed he had made to her before the marriage ("the loans"); (xi) the respondent should be paid the sum of £33,454.46 (being the total of the sums referred to in (i), (iii) and (x) above) out of the net proceeds of sale; (xii) the balance of the net proceeds of sale should be divided 60/40 in favour of the wife; (xiii) a costs order against the wife. 34. In the email dated the 18th April, 2016, (referred to above) the husband's father made an offer to buy out the wife's share of Property B for the sum of £110,000 which, he said, his brother would help him to raise. He had also offered to take on responsibility for the wife's share of the Lloyds loan. It was confirmed at the hearing that this offer was still on the table. Specific issues The invoices 35. The wife gave evidence that when she moved out of Property B in June 2014 very little work needed to be done to finish the property. She gave examples such as seals around the doors, an air test was required and glass needed to be put in some of the windows. There had been a "tweaking list" from planning. She did not know why the electrical works had been done because the electrics had been signed off by a professional electrician. The work had not been fully completed because the husband would not allow C to come back and finish the work. There had been no major works left to do. She had not been consulted by the husband with regard to any work which he had commissioned resulting in the invoices being raised. She did not know if this work had been carried out at Property B as she had not been there at the time. She recalled that the husband had rushed to get the windows fitted and she did not believe that the fitter had been qualified. This, she thought, might be the reason for the water ingress. 36. The husband produced copies of the invoices showing that an electrician had been paid £3,923.99 and a builder had been paid £6,033.15 for work carried out on Property B. The husband said that the works had been necessary to get Property B through planning. The husband agreed that he had not consulted the wife before asking for the work to be carried out. He confirmed in cross-examination that he had not obtained other estimates for the work. He had not advised C of his intention to arrange for the work to be carried out because C was not coming back. His open position stated that

"The Respondent has paid recently...." these two specific sums and "The Respondent should be repaid" £4,981.57 (the correct figure should be £4,978.57). In his evidence he admitted that he had not paid the invoices himself but that they had been paid by the company. 37. The husband was asked by Advocate Burns why the wife should pay him one half of the invoices. His reply was because she owns one half of Property B and the company will have to be paid back. When asked why he had not shown this as a liability in his schedule of assets and liabilities he replied that he did not have any liabilities. He admitted that he would not have to pay anything back to the company. He was asked whether or not he would ask his father for money if further work needed to be carried out on Property B. His response was that he would either ask his father or the company. 38. At the hearing the husband had tried to introduce an estimate of essential works, of approximately £7,000, which he said would be required to be carried out before Property B could be rented or sold ("the future works") which, he said arose from the shoddy workmanship of C. He had not provided the wife the opportunity to inspect the property to see if these works were in fact essential or required at all and the husband had objected to C being called as a witness. The husband was therefore given the option by the Court of either agreeing that C should be given the opportunity to inspect Property B and give evidence or excluding further reference to the specific cost of his claimed future works. The husband chose the latter option. The loans 39. In his statement made on the 11 th July, 2016, the husband stated:- "At the time that I met the Petitioner, and having moved into the home of her parents, I was told by the Petitioner that she was in substantial financial debt". He was therefore claiming repayment of the loans referred to in paragraph 33(x) above. 40. The wife denied this claim. She had had a Barclay card but she had been paying it off. She had had a car loan of about £5,000. The husband and the wife had discussed these and they had jointly decided that these would be paid off. It was her evidence that, as far as she could recall, any other amounts paid into the joint account by the husband would have been used for the benefit of the family e.g. to pay for furniture or as payments towards the cost of the wedding. At no time had the payments been referred to as loans. 41. In his evidence in chief the husband (contrary to the statements made in his open position) confirmed that he did not consider any of the payments referred to in paragraph 33(x) as loans. He agreed with the wife's evidence that the payments had been discussed and joint decisions made. He agreed that the money would have been used for purchasing items for the home and/or for the wedding. The pension 42. The husband started paying into his pension in 1992, some 13 years before the marriage. The husband in his open statement submitted that the value of the pension should be discounted by 30% to £13,294.96 because it is illiquid and then a further discount applied in respect of the years the pension had been paid before the marriage. This would bring the value of the pension down to £6,248.63. The wife's position was that the husband "shall retain his interest in his pension with Clerical Medical (£18,992.80)..... and the Petitioner will have no claim thereon". Health of the parties 43. The wife gave lengthy evidence on her health issues which do not need to be set out in great detail in these reasons. She has had issues with her joints since childhood. The husband was aware of this and he was also aware of the many appointments she had had with her general practitioners and hospitals. She has

degenerative discs, she suffers from severe asthma, pain in her joints and loss of sensation in her neck and arm. At the husband's request, she produced a lever arch file containing her medical records from the UK and Jersey and copies of her applications for benefits. 44. The wife had been advised by her GP in the UK to see if she was entitled to any benefits as she had been unable to work because of her health problems. She applied for an Employment and Support Allowance ("ESA") in November 2015. In a report by a Mrs Gill Griffiths dated the 4th February, 2016, it was stated that:- "On the 29/01/16 Q was examined by a Health Care Professional of the Medical Services in connection with the Work Capabilities Assessment. Having considered the available evidence, the Decision Maker has decided that Q has scored 15 points from the appropriate descriptors and has limited capability for work..... Q continues to be accepted as having Limited Capability for Work and is still entitled to Employment and Support Allowance (Income Related)/Credits. The Decision Maker has also considered limited capability for work related activity..... Q has limited capability for work and has limited capability for work related activity. She continues to be entitled to ESA and will be placed in the Support Group. The prognosis is 3 years from the 29/01/16" 45. In a letter dated the 12th July, 2016, Dr U Wieshman, Consultant Neurologist at The Walton Centre NHS Foundation Trust wrote:- "This is to confirm that Q attends the neurology clinic at The Walton Centre. She has severe and disabling chronic back pain with reduced mobility of her lumbar spine and a weakness of hip and sensory disturbances in her right leg. She also has a right sided postural tremor. Her symptoms, particular (sic) her pain, significantly interfere with her life. She requires further treatment at the Walton Centre." 46. The husband said that his health was good as evidenced by the fact that he works on the farm seven days a week.

Submissions

47. I only propose to summarise the parties' respective submissions but, when determining this application, I have taken all the matters raised into account. 48. The submissions made by Advocate Burns on behalf of the wife can be summarised as follows:- (i) There is no reason why the husband's pension should be discounted. In *U v V*

[2014] JRC 027A it had been held that:- "From the cases it can be seen that there is no right figure and no wrong figure in respect of discounting pensions. Discounts have been applied in an arbitrary way with a view to achieve fairness on the facts of each case". (ii) The husband's interest in the company should be recognised and taken into account at the value of £42,300. (iii) The wife gave evidence of the state of her health. She has no earning capacity because of her inability to work. Her only income is the child maintenance paid by the husband and the benefits she receives in the UK. The wife had said in her evidence that she would want to return to work and also gave evidence of her desire to set up a business making and selling gluten free products. (iv) The husband should pay her nominal maintenance until the youngest child finishes school because of the uncertainty with regard to her earning capacity and health. (v) The likelihood of the husband inheriting the farm should be taken into account. (vi) The Court should have regard to the s.25 factors in

this needs based case where the welfare of the children is paramount. The wife wants to buy a property near to her family and the school the children now attend. Her open position was therefore that she should receive the majority of the proceeds of sale namely the sum of £170,000. A sale of Property B at say £350,000 would give 70% of the equity to the wife leaving the husband with cash equity of £12,185, his pension of £18,992 and the herd valued at £42,300, a total value of £73,477. Alternatively the husband, with the assistance of his family, could buy her out for £170,000. A fixed sum should be ordered rather than a percentage as the husband's family would know exactly what sum they would have to raise to keep Property B. (vii) No deductions should be made in respect of the additional work carried out at Property B as the husband had not consulted her about the work, the wife did not have the opportunity to inspect Property B to see if the works were necessary, the husband had not obtained any other estimates and he had confirmed in his evidence that he had not paid the invoices himself. He does not have to repay the company. The wife believed that the water ingress might have been caused because the windows had been badly fitted. (viii) The wife should not be held responsible for one half of the payment of the Lloyds loan as she had suggested that the payments could be made from renting out Property B. (ix) The husband had agreed in his evidence that his income needs were less than the figures set out in his affidavit of means. He had always lived with his parents and there was nothing to suggest that this situation would change. (x) Advocate Burns referred to O v O

[2005] JLR 535 in which the Court held:- "The primary consideration when making a distribution was the need to provide a home for the Wife and the minor children, and subsequently the husband. As was typical in ordinary cases such as the present, having made provision for housing the wife and children, the parties' limited assets were insufficient to allow for an equal division between them." The Court had awarded the wife in that case approximately 70% of the assets. In the case of O'H v B

[2007] JRC 069A the wife was awarded just over 68% of the assets. In light of these cases Advocate Burns submitted that the wife's claim of 70% was not unreasonable. (xi) As an alternative to a share in the sale proceeds of Property B, she noted that the husband had given evidence that he has sought extra funds both from his father and the company when he has been short of money and she submitted that with the offer of £110,000 there was extra money available to pay the wife £170,000. 49. Advocate Haines' submissions on behalf of the husband can be summarised as follows:- (i) Advocate Burns had asked the court to make an order against the company and he submitted that the court does not have the power to do that. (ii) Advocate Burns had incorrectly interpreted the company accounts; she had not called the accountant to give evidence. The husband had produced a letter from the company's accountant, dated the 15 th April, 2016, in which it was stated:- "In the above liquidation situation the proceeds from the sale of stock would accrue to the company. This comprises mostly livestock and a small amount of seed stock. These are included in the balance sheet at a nominal valuation....." Advocate Haines stated that as the letter had not been challenged on behalf of the wife, it should be accepted that the

herd is owned by the company. (iii) The husband's father and uncle had offered £110,000 and there was no other money available. (iv) There was no certainty over the eventual sale price of Property B but there was certainty about the offer of £110,000. (v) A settlement tied into the sale of Property B would cause further uncertainty, emotional pain and harm to the parties and might potentially result in further proceedings. (vi) The costs of the case exceed the assets. (vii) If the E family were to retain ownership of Property B they would have to stop the water ingress and to attend to the other essential building works, estimated at just over £7,000. (viii) If the court were to make an order in the terms of the offer made, then the cost of essential future works to Property B should be deducted from that figure. (ix) If the court felt that it could not make such an order then the only available course of action would be to set out the percentages that would be awarded to each upon the sale of Property B. In doing this, account should be taken of the sums of money paid by the husband for the invoices, the Lloyds loan payments made by the husband, half of which was £13,435.82, the contribution of £16,500 from his inheritance and the £15,037.96 which represents "contributions" (the former loans) which he made towards the marriage. (x) Future Lloyds loan payments should be paid equally as should the rates and insurance for Property B either by equal contributions at the time they are due or with the wife's contribution being taken off the top of the share of the sale proceeds or the lump sum. The wife had frustrated the sale by not agreeing to reduce the sale price and, he said, she had done this because she was not having to pay anything towards the Lloyds loan or the other items. (xi) Advocate Haines outlined various hypothetical scenarios. The Lloyds loan is £157,968.79 and on a sale of Property B costs should be allowed at 2%. If Property B sold for £360,000 the equity would amount to £194,831.21. If it was sold for £300,000 the equity would be £136,031.21. One half of the total amounts paid made by the husband in respect of the Lloyds loan and the repairs to Property B amounts to £18,417.39 which should be paid back to the husband. The husband wanted to achieve a clean break. If a sale price of £350,000 were to be achieved after repayment of the Lloyds loan and sale fees, the equity would be £185,031.21. On a 60/40 split the wife would receive £111,018.72 and the husband £74,012.48. One half of the building costs and the Lloyds loan should be taken from the wife's share and paid to the husband bringing the wife's share down to £92,602.97. (xii) The future works were essential in order to complete Property B so that it could be inhabited. The wife had given evidence that this was included in C's price and he would have completed all of the work. The husband however submitted that C had never given a quotation and therefore there was no way of knowing what was to be included in the agreed price. The agreement had been verbal and payments made in cash. Both the husband and the wife had benefitted from the works. (xiii) It would be unfair if the wife did not contribute to the Lloyds loan payments which the husband had made. The husband had paid the Lloyds loan because his parents had guaranteed the Lloyds loan and if he had not paid it Lloyds would have pursued his parents. The wife's income is £19,600 and she could have afforded to pay a contribution. Her horses were a luxury not a necessity, and, he submitted she had a surplus of £700 - £800 per month. The wife had said that she had not contributed because she wanted Property B rented out. Advocate Haines

submitted that there was no documentation in which the wife indicated that she wanted Property B to be rented out and that it was fanciful of her to say that she had wanted it rented out. He submitted that the court should not accept oral evidence - it should test it against common sense and documentary evidence. He submitted that the lack of documentary evidence showed that the wife's oral evidence could not be believed. (xiv) It was not disputed that the husband owns one share in the company. The letter from the accountant was unchallenged and the letter had made it clear that the company is not profitable. The accounts showed that £26,000 was being paid to the husband and Advocate Haines submitted that this figure was shown in the accounts as directors' remuneration. The company has no money available to it. The company does not own any land or buildings. (xv) Advocate Haines submitted that the wife had not disclosed her two horses in her schedule of assets, she had taken two cars when she left the Island and he estimated a value of these assets to be between £4,000-£6,000. (xvi) With regard to the husband's pension it was taken out when he was around 16 and he had therefore had the pension for 13 years before marriage which should be taken into account. He had calculated the value of the pension to be taken into account by discounting the pension by 30% and then by deducting a percentage for 11 years pre-marriage arriving at a figure of £6,248.63. He suggested that this should be set off against the personal assets of the wife resulting in the only asset being Property B. (xvii) Advocate Haines submitted that the overall objective was to achieve fairness, there should be no money discrimination between the homemaker and the earner and the starting point should be the yardstick of equality which should only be departed from for good reason. The court should aim to give the parties an equal start on the road to independent living. (xviii) He accepted that this was a needs based case with limited assets. The assets should be divided fairly to take into account the housing and financial needs of the parties and the other s25 criteria. (xix) He referred to the case of *B v C & D*

[2009] JRC 036A with regard to spousal maintenance and he relied on the following passage:- "On the matter of spousal maintenance, my decision is that it should be phased out, now that the wife is capable of supporting herself, even if it means that she has to ask for assistance from income support. I do not think it is the duty of the court to balance the incomes of parties after their divorce, even if it means that one party will be capable of saving to buy their own property and the other will not. At the time of the decree nisi it appears that the payment of spousal maintenance was a means of enabling the wife to obtain financial independence. I think she has now achieved that". He said that although the husband has more income money goes further in England. Therefore the wife is better off in terms of income and there should be no need for a spousal maintenance order. (xx) He also referred to *U v V*. In that case the wife wanted between 55

- 60% of the asset value. The court should be consistent and start at an equal division. Invariably, where the wife has the children, her share will be greater than the husband's share. However the husband's needs should also be taken into account. He referred to paragraph 29 of the judgment which sets out nine reasons why it would be appropriate to

depart from an equal division. Only three of the nine reasons were relevant to this case, namely the wife's earning capacity being lower than the husband's, the two young children for whom the wife cares. The wife's ability to enhance her career prospects and improve her earning capacity had been restricted by having to care for the children. Advocate Haines accepted that the wife should receive more than 50%. (xxi) He cited a further passage from *U v V* :- "In order to depart from the yardstick of equality, the wife must show good reason for a departure from a 50/50 division. As Lord Nicholls said in *Miller v Miller* : "When the partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less." "The departure from equality is also only equitable where the parties' needs can be met. If there is a departure from equality in this case, the husband's needs would not be met. It was submitted that the husband's needs are greater than the wife's and the Court should therefore strive to make an order which would allow the husband to keep the FMH in order to provide an appropriate home for the children and so that he does not become the poor relation. The Court should seek to stretch the assets of the parties to allow both parties to be housed and for their reasonable needs to be met." The court must try to be fair to both sides. (xxii) With regard to the pension, part of it was acquired prior to the marriage and that period before the marriage should be taken into account and be removed from the value of the pension. He further submitted that as the pension was illiquid it should be further discounted. (xxiii) In *U v V* the pre-marriage pension had been removed from the calculation. The court has a discretion which should be consistently exercised. He urged that the pension should be discounted down to 70%. (xxiv) Both parties are of similar age, they have similar incomes and they had similar family support. Both had lived (and still live) with their parents apart from the time they were married. (xxv) Advocate Haines submitted that the wife's needs would be met either by renting accommodation or by continuing to live with her parents, i.e. the standard of living to which she was accustomed. If she felt she needed to buy a property without a mortgage then she should be realistic about her price range and the funds available to her. She should not require an expensive property near to the children's school. She would not be able to afford the type of property she wants in the areas she wants even if she was awarded £170,000. The wife had not produced any documentary evidence of her mortgage capacity or any details of rental properties, which, he said, suggested that the wife will continue to reside with her parents. (xxvi) He claimed that her desire to try and establish a business from home was "fanciful". She had no training to run a business and no experience. He submitted that this was just an idea she had made up in order to get more money. (xxvii) The husband, he said, must have the chance of moving towards independent living and not continue to live off the charity of his parents. He should not be reduced to poverty. (xxviii) Other matters to be taken into account were the husband's inheritance, the £15,000 contributed by the husband and the fact that Property B had been a gift from the husband's grandfather, all factors which should prevent the move away from equality. (xxix) With regard to costs, Advocate Haines submitted that it had been necessary to call Mr Toudic as a witness and his costs should be paid equally by the parties. (xxx) The husband made an application for costs. In April 2016 the wife had asked for 100% of the equity and that had

prevented discussions for settlement. The wife has now dropped the percentage down to 93% of the equity, an extreme proposal, which was so unreasonable and the reason why the parties had run up legal fees of £200,000 in total. Advocate Haines submitted that no compromise can be reached in any case where one party wants everything. It had been "outrageous" to ask for 100% of the asset value. In addition, the hearing in April had been delayed because, he said, the wife had refused to disclose the fact that she was receiving ESA. He therefore averred that the wife should make a contribution of £5,000 towards the husband's costs. 50. Advocate Burns in reply submitted:- (i) The costs of future repairs to Property B are unknown and should be disregarded. (ii) Advocate Haines had claimed that the wife had frustrated the sale of Property B and had never suggested renting Property B. Advocate Burns produced correspondence dating back to November 2014 showing that the wife had suggested renting out the property. (iii) The husband had given evidence of his inheritance of £16,500 being put towards the redevelopment of Property B. There had been no documentation to suggest this payment had been made and as Advocate Haines himself submitted, that without documentary evidence, oral evidence should not stand alone but should be excluded. (iv) The husband had stated in his affidavit of means that the herd of dairy cows were held in his sole name. She submitted that the cattle do belong to the husband. (v) Advocate Haines had exaggerated the value of the wife's car and the horses. (vi) The wife had not agreed to call Mr Toudic as a witness and could not see the benefit of him being called. The wife should not therefore have to be responsible for one half of his fees for attending. The evidence which he had given had been provided in correspondence and the only additional advice he had given was that the water ingress should be rectified before Property B could be marketed for sale or for rental as it was putting off prospective purchasers or tenants. (vii) Advocate Haines had omitted to advise that the husband had been ordered on the 26 th October, 2015, to make an open offer to the wife with regard to the price he could afford to pay her for her interest in Property B. He had offered to pay her the sum of £60,000 but had not agreed that she should be released from the Lloyds loan. That had been the only offer made on the husband's behalf by Advocate Haines. There had been no further formal offers nor a counter offer to the letter sent to him on 22 nd July, 2016, stating that the wife would settle for £170,000. There had been no reasonable attempt to settle and no costs order should be made. The case had not been settled because there had been no sensible proposals for settlement from the husband. The Law Section 25 of the Matrimonial Causes Act 1973 51. Where there are minor children, the first consideration must be given to their welfare, and particular regard must be given to the matters set out in section 25(2) and (3) of the Matrimonial Causes Act 1973 . The first consideration is therefore to provide a home for the wife and the children, and subsequently the husband. This is a needs case, and as is often the situation, a case where the assets available for division are minimal. I will deal with each section in turn and apply the facts of this case to them. 52. The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire. (i) The husband's

income now and in the future The husband's income of £26,000 net per annum is unlikely to increase in the near future if at all. He gave evidence that he had only worked on dairy farms. He was asked what he would do if the company was wound up. He replied that he would look for other work but dairy farming is on the decline and it would be difficult. In reply to a question from Advocate Burns, the husband said that he did not receive any income from the company by way of director's remuneration. (ii) The wife's income now and in the future The wife has no income other than the benefits she receives as set out in paragraph 28 above which she said she did not expect to change until her next ESA assessment. She gave evidence that upon her return to the UK she had looked for work but had been unable to find anything suitable. She had been unable to return to work as a dental nurse as she would not have been able to obtain the necessary insurance because of her hand tremor. She subsequently became unfit to work and had applied for the ESA. She did say that she would like to look into setting up her own business, run from home, making gluten free cakes and specialty products and selling them to cafes. If she could do so, then she said she would need a property with an additional room to use as a commercial kitchen. Another alternative she had thought of was making jewellery. She was unable to say what income might be produced from either of these ideas. 53. The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future . (i) The wife's needs The wife needs to provide a home for herself and the children and in her evidence she said that she wanted to remain close to her parents and family. The children had settled at the school near her parents' home and she felt it was important for them not to have to change schools. She explained that the area is comprised of a mixture of housing. Properties in the poorest areas are cheaper to buy or rent but these areas are usually dangerous areas in which to live. Other areas such as where her parents live, were safer areas to live in. She said that she wanted a 3 bedroom house with a kitchen, bathroom and an additional room for her business. She had produced sale details of numerous 3 bedroom properties in areas which she considered suitable ranging between £170,000 and £180,000. The husband had also produced sale details of numerous flats at prices ranging from £75,000 to £115,000 but in answer to questions put to her by Advocate Haines, she said that these were either too far away from the children's school and/or situated in highly undesirable and unsafe areas. She wanted to purchase a house preferably without having to raise a mortgage. Advocate Haines put it to her that her housing needs could be satisfied by renting a property or remaining with her parents. She did not agree - her need was to provide a house suitable for the children. The husband and wife had built Property B as a home for the children. It would not be right to have to live with her parents just as it had not been fair or right to live with the husband's parents. (ii) The wife was questioned in detail about her expenditure, specifically with regard to her horses but this was in relation to the claim by the husband that she should contribute towards the Lloyds loan (which will be dealt with later in these reasons). Both parties had agreed that maintenance for the children should be paid at the rate of £100 per week. The wife sought spousal maintenance of £1 p.a. but the husband wanted a clean break. Registrar O'Sullivan in an extract from one of her reasoned judgments helpfully summarized case law which led

her to the conclusion that clean breaks can be ordered in Jersey [2012]- Matrimonial - a clean break 2 - Nov - 2012 . I do not need to repeat that extract. (iii) The husband's needs The husband gave evidence that he needs to buy a decent second-hand car for himself as the wife had taken two cars with her when she returned to the UK. (iv) The husband said that he will have to find a place to live. He would ideally like to buy a property, possibly a one bedroomed flat. He thought that if the Lloyds loan was repaid he might be able to raise a mortgage of £130,000. Advocate Burns asked him why he wanted to move out from his parents' property now. He replied that he wanted to move on as he might meet someone and want to get married. He had only lived with his parents because he did not have the money to live anywhere else and that was why Property B was being built. 54. The standard of living enjoyed by the family before the breakdown of the marriage . This has been dealt with above and was not disputed. 55. The age of each party to the marriage and the duration of the marriage. The husband is 39. The wife is 39. It was a ten year marriage (to the date of decree nisi). 56. Any physical or mental disability of either of the parties to the marriage. The health of the parties has been dealt with in paragraphs 43 to 46 above. 57. The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family. (i) The wife has been the main carer for the children throughout the marriage. She worked until Noah was born, she worked on the farm and she went back to work as a dental nurse in order to help pay for the Lloyds loan. She will continue to be the main carer for the children. (ii) It was submitted on behalf of the husband, having agreed that the loans were not loans that these amounts of money were contributions to the marriage which should be taken into account. It was also submitted that his inheritance of £16,500 should be taken into account. 58. The conduct of the parties, if that conduct is such that it would be in the opinion of the Court inequitable to disregard it. There is no such conduct to be taken into account. 59. The value to each of the parties of any benefit which, by reason of the dissolution of the marriage that party will lose the chance of acquiring This is not applicable. Decision 60. This has been a particularly difficult decision to make because of the unusual circumstances of this case and one that neither the husband nor the wife will be satisfied with. The nature of the assets, or rather the lack of realisable assets, has made it impossible to give the parties an equal start on independent living. 61. Child maintenance (i) Child maintenance should be paid at the rate of £50 per week for each child until they each attain the age of 18 or cease full time education whichever is the later. (ii) Child maintenance should be increased annually on the anniversary of the order in accordance with the percentage increase in JRPI over the preceding 12 months. (iii) There shall be a review of child maintenance in the event that either or both of the children go on to tertiary education (including vocational courses) or in the event of a material change in the circumstances of the husband or the wife or the children. 62. Spousal maintenance I accept the wife's evidence that, due to her health issues, she will be unable to return to gainful employment in the near future. However she is in receipt of benefits and therefore has an income sufficient for her present needs. I agree with Advocate Haines that there should be a clean break in this case and therefore the application for spousal maintenance is dismissed. 63. The value of the pension As in U v V I am going to

discount the pension for the 13 years it was in existence prior to the marriage bringing the value down to £8,705 although this does not have a material effect on the decision made. The husband will retain his pension. 64. The herd The company accounts which were produced and the letter from the accountant, are, in my view, evidence that the herd belongs to the company and should not be included as an asset of the husband. 65. The loans The claim for repayment of the loans naturally fell away when the husband confirmed that none of the amounts claimed in his open statement were loans. 66. Payment of the Lloyds loan Advocate Haines cross examined the wife at length in relation to her expenditure. Normally such cross examination would be conducted in relation to the amount of maintenance required but in this case, it was, in my view, designed to show that the wife could have afforded to pay one half of the Lloyds loan repayments as they became due. I accept the evidence of the wife that she had no surplus income with which to contribute towards the Lloyds loan and that she had expected Property B to be rented out in order to assist with the repayment of the Lloyds loan. Despite Advocate Haines' submission that there was no documentary evidence to suggest that Property B should be rented out, Advocate Burns had produced to the husband an email from Advocate Lucy Marks (then acting on his behalf) to Mrs Harding on the 10 th November, 2014, in which she said:- "R has advised me that the Planning Department have advised that certain works need to be corrected/carried out before the property can be 'signed off'..... This work needs to be undertaken before the property can be signed off and rented (my emphasis). R is obtaining a quote for the works and is hoping he can get this resolved as soon as possible. I will provide you with a copy of the costs of having to do this work when received". The breakdown of costs had never been provided. In a letter to Advocate Marks dated the 25 th November, 2014, Mrs Harding referred to:- "the ongoing delay in marketing the property for rental I therefore propose to include an instruction to Thompsons to market the property for rental in the joint letter which I will prepare as soon as I can". The husband at first said in his evidence that he could not remember the wife asking for Property B to be rented out. When Advocate Burns asked him why he had not rented out Property B he replied that he had been advised by, he thought, Advocate Marks not to rent it out until "we knew what was happening". 67. Property B has been unoccupied since June 2014. In my view, Property B could, and should, have been rented out whilst a buyer was being sought. The rental received would have covered the Lloyds loan repayments with any balance being used to supplement the income of the husband and the wife. For whatever reason, the husband and/or his family had not wanted Property B to be rented and I do not I accept that the wife should be penalised for this by having to repay one half of the amount claimed by the husband. 68. The invoices As stated above, the company paid the invoices and the husband confirmed that the company does not need to be repaid. It is not fair therefore in any calculation to make the wife pay for something (a) which she did not agree to or (b) have the opportunity to comment on and (c) which the husband himself is not liable to pay. 69. Property B At a Case Review Hearing on the 26 th October, 2016, I was advised that the husband would like to purchase the wife's interest in Property B. I made an order that the husband should provide full details of the amount which he could borrow to do this, either on his own or with his parents.

Photographs of Property B and its surroundings were produced for that hearing and the issue of what would happen if Property B could not be sold was raised for the first time. The offer made by the husband was that he could pay the sum of £60,000 but the wife would not be released from the Lloyds loan. This was not, understandably in my view, acceptable to the wife. 70. The offer from the husband's father to pay her £110,000 and take over responsibility for her half of the Lloyds loan was made in his email dated the 18 th April, 2016. The wife has asked as an alternative to a share of the sale proceeds that her interest in Property B should be purchased for £170,000, a difference of £60,000 between the two figures. I have, on more than one occasion during these proceedings, expressed my concern as to what might happen if a purchaser for Property B could not be found. It is disproportionate that more than £200,000 of legal fees have been incurred because a compromise could not be reached between these two figures bearing in mind the value of the assets in this case. 71. I do not believe, having seen the photographs and listened to the evidence of Mr Toudic that a suitable cash purchaser will be found. I am therefore going to order that a fixed sum be paid by the husband to the wife and that the wife's share in Property B be transferred to the husband. It will be for the husband to decide whether or not an interest in Property B should be transferred to his father and/or his uncle. 72. What amount should the wife receive? I do not agree with the argument put forward on behalf of the husband that as there is only £110,000 available then that is what the wife should receive. I have to consider it in the light of the assets available for distribution. 73. The first question I had to decide was the value to be attributed to Property B for the purpose of these proceedings. It was not an easy decision to make but having listened to Mr Toudic and his suggestion that the parties should seriously consider any offer of £300,000, I decided to use this figure. The costs of transfer of houses in matrimonial proceedings are £5 for each page of the contract, an £80 registration fee and Jurats' stamps of £20. For the purposes of my calculations I estimated that the fees would not exceed £200. Therefore deducting the mortgage of £158,000 and the fees of £200 result in a notional "net equity" of £141,800. Advocate Haines submitted that a 60/40 split would be appropriate in this case. The wife had requested almost 70%. 60% of £141,800 is £85,080. The husband has offered to provide her with £110,000 which is 77.6% of £141,800. In all the circumstances I think that this is a fair figure. The wife will transfer her share in Property B to the husband as soon as possible. The husband shall obtain her release from the Lloyds loan. The costs of the transfer are to be paid jointly. 74. I understand that the wife will be disappointed that she will probably not be able to purchase the property she would like but she will be able to rent a property in a suitable area. The husband said that he might like to purchase a small flat but having heard all the evidence, in particular his prospect of inheriting the farm, I agree with the wife that he is unlikely to move out of the farm. If he does get remarried then he will, of course, be able to live in Property B. 75. Costs This case should not have resulted in a two day contested hearing after such a great length of time. I agree with the wife that it had not been necessary to call Mr Toudic as he had not said anything more than was evidenced in correspondence from him. I therefore order that the husband should be responsible for the payment of Mr Toudic's costs. I do not accept that the wife should make a contribution towards the

husband's costs. A substantial part of the hearing was taken up with evidence about the loans and the invoices and other matters which were agreed by the husband in his evidence. A great deal of time was taken up, as set out above, questioning the value of the horses and the wife's expenditure on them. Whilst criticism of the wife's offer was made, no counter offer had been made on behalf of the husband. I do not consider it appropriate to make any order for costs in this case. Authorities In U v V

[2014] JRC 027A . O v O

[2005] JLR 535 . O'H v B

[2007] JRC 069A . B v C & D

[2009] JRC 036A . Matrimonial Causes Act 1973. [2012]- Matrimonial - a clean break 2 - Nov - 2012.
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