

JERSEY / JUDGMENT

# W -v- X (Matrimonial) [2016] JRC 171A (28 September 2016)

**[2016] JRC 171A**

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[2016] JRC 171A [ New search ] [ Help ] Matrimonial - application by respondent former wife for variation of payment time relating to consent order dated 18 August 2011. [2016]JRC171A Royal Court (Family) 28 September 2016 Before : Judy Marie O'Sullivan, Registrar, Family Division. Between W (former husband) Petitioner And X (former wife) Respondent IN THE MATTER OF W-V-X (MATRIMONIAL) AND IN THE MATTER OF MATRIMONIAL CAUSES (JERSEY) LAW 1949 Advocate M. J. Haines for the Petitioner. Advocate M. E. Whittaker for the Respondent.

## reasons

the registrar: 1. This is an application by the respondent former wife for the variation of the time within which a payment is due under the terms of paragraph 3 of a consent order of 18 th August, 2011. The respondent is not seeking a variation of the amount of the order, only of the timing. History 2. The consent order provided for the transfer of Property 1 ("the property") from a company into the sole name of the respondent, with the respondent taking over sole responsibility for the repayment of the mortgage. The petitioner cooperated in the transfer of the property from the company in which he and the respondent both had shares. 3. Paragraph 3 of the order provided that:- "(a) the Respondent shall pay to the Petitioner the sum of £80,000 payable on the first of the following trigger events: (b) on 31st August 2016; or (c) within 6 months of the death of the Respondent; or (d) on the remarriage of the Respondent; or (e) on the continuous cohabitation of the Respondent for a period in excess of 6 months; or (f) at the Respondent's earlier election;" 4. Interest is to accrue upon the capital sum at the Bank of England Base Rate and is to be paid by the respondent to the petitioner at the same time as the payment of the capital sum of £80,000. The contents of the house were also transferred to the respondent, except for the petitioner's motor bike. 5. The order has a provision at Paragraph 12 stating that:- "there shall be liberty to apply in relation to the implementation and timing of the terms of this order". The indebtedness to Lloyds TSB Offshore Limited (The Bank") in 2005 was

£247,000. In 2011 the property was worth £315,000 and the respondent has since spent about £25,000 on it. 6. The respondent has not paid the £80,000 and interest to the petitioner on the 31 st August, 2016. On the 7 th July, 2016, the respondent brought an application seeking an extension to the original order made by consent, asking that the date for repayment of the £80,000 and interest be extended to the 31 st August "or such other date as the Court may deem fit". She has applied for a variation of the timing because she says she has been unable to raise the funds by way of additional mortgage, or to sell the property. She says she has no other funds to pay the money owed. Works were carried out to the neighbouring property in late 2014 which resulted in the destabilisation of a party wall to which part of the property was attached, causing structural damage to the property. Open position of the respondent 7. The order of 18 th August, 2011, be varied to the following:- The Court noting that the respondent gave an undertaking to the Court at the hearing on the 17 th August, 2016, which will continue in place, and The Court further noting the undertaking of the respondent to use her best endeavours to make the payment of £80,000 due to the petitioner as soon as possible. (i) That the respondent shall pay the sum of £80,000 due to the petitioner under the terms of the order on or before 31 st July, 2017; (ii) That interest shall continue to accrue on the debt on a simple basis at the Bank of England Base Rate until date of payment; (iii) That the respondent shall have liberty to apply for a further extension of time within which the payment shall be made in exceptional circumstances only; and (iv) That the petitioner be ordered to pay the costs of and in relation to this action incurred by the respondent upon a full indemnity basis. 8. Her position is that remedial works to the house, to be paid by the insurers, will be completed, barring any unforeseen matters not yet discovered, by the end of January 2017. Her own bank is not prepared to provide the additional funding until the work is completed and approved by a survey, although they are prepared to consider the increased loan on completion. 9. The Court notes that the open offer is not made on the same basis as the original application, which was that payment of the £80,000 was to be extended to the 31 st August, 2017, or such other date as decided by the Court. 10. Open position of the petitioner: (i) At para 3(b) of the Act of Court dated 18 th August, 2011, the date of 31 st August, 2016, should be replaced by 14 th January, 2017. However, having heard the evidence of Lloyds Bank International, the structural engineer and the builder, the date was amended to the 14 th February, 2017; (ii) That the undertaking given by the respondent in the Act of Court dated 17 th August, 2016, should be retained until the petitioner is paid in full. It should also be permitted to vary or remove it by consent; (iii) The undertaking above should also extend to the respondent confirming that she has not previously, prior to the 17 th August, 2016, signed any documents for the purpose of, or given authorisation permitting, the taking of a charge over the FMH which has not been registered at this time; (iv) It is the petitioner's belief that it is the intention of the respondent to avoid paying him any of the sum due for as long as possible, and that the respondent will seek to link the sale of the house with repayment. The respondent will in this way seek to make application upon application. The Court is invited to resist such an attempt and reject any attempt to make further applications; (v) That the respondent pay the costs of the application on an indemnity basis. Evidence from Lloyd Bank 11. Elizabeth Walton, mortgage manager with Lloyds Bank International ("the Bank"), gave evidence. She was accompanied by Advocate Lawrence, legal counsel for the Bank. She stated that the respondent had come to see

her. The respondent already had an existing mortgage with the Bank. She said that the respondent explained to the Bank that there had been damage to the property caused by works from the neighbouring property, and the insurers were going to pay for remedial works. The respondent discussed raising funds but Ms Walton informed her that once the building was in good order they should be able to assist her. On the 1 st September, 2016, Ms Walton sent an e-mail to the respondent stating that the Bank would not consider an equity release due to the current state of repair of the property. The property needed to be in good order. The criteria of the Bank was that it could lend up to 90% of the value of a property and five times gross income. However the Bank also looked at affordability of a loan based on net income and liabilities, such as loans, credit cards and children's education costs. The respondent had disclosed her income and on the basis of her income the Bank is potentially satisfied. As regards affordability, the Bank is aware of education costs incurred for her daughter but there is potential to assist. However the property needs to be in good order before the formal processing of an application could be done.

12. The process for obtaining an equity release loan is that an interview would be held and then a case put together within 48 hours maximum, with a decision within three to four days. The property would then be valued, within two to three days. If the survey indicated there was sufficient equity, then it would take up to a week to put forward a full written report. If there was a clean survey, the money could be paid out with one month to six weeks of a clean survey, but normally four weeks.

13. Ms Walton said there was no formal application at present as the Bank is aware of the damage but her understanding was that the security, i.e. the property, will be put in good order and then potentially the Bank can help. The paper value of the property had been £315,000 as at 2011. Ms Walton was asked that as work had been done to the property, does this mean the price of the property had gone up, and she said that potentially this was the case.

14. The Bank had lent a further £50,000 in November 2011 to the respondent and the bond entered into provided that no further charges could be secured against the property without prior consent. On 22 nd September, 2016, Advocate Lawrence wrote an e-mail on behalf of the Bank stating:- "in ordinary circumstances a second charge may be possible but the property ...has suffered damage caused by building work carried out to an adjoining property. .... The damage has had a detrimental effect on the value of the property... there is insufficient equity in the property for further borrowing to be considered." Advocate Haines had drafted a series of questions to ask of the Bank and wanted the questions sent in writing on a joint basis by the lawyers for the petitioner and respondent. Although Advocate Whittaker was not prepared to send the questions on a joint basis she did set out the questions in an e-mail dated the 23 rd September, 2016, to Advocate Lawrence.

15. His response was as follows in an e-mail dated the 23 rd September, 2016:- "The bank is not willing to respond to all the questions... because it does not want to waste time nor costs. The bank is not willing to entertain the equity release at present not least because of the state of the property but also because it has yet to consider the finances of Ms X. Separately, for the avoidance of doubt, a second charge secured against the property would be a breach of Ms X's existing facility. Under the terms of the facility it would be considered a default. The bank does not consent to a second charge being secured against the property." The outstanding debt to the bank is £213,249 at present. Evidence from John Woodward, chartered structural engineer

16. Mr Woodward had provided a sworn statement. He confirmed that

damage had been caused to the property as a result of works to a neighbouring property, Property 2. Given he was instructed in 2014, he was asked why the remedial works on the respondent's property have still not been completed. He explained that there had been delays as planning had been considering a prosecution. He had been retained by the insurers of the respondent's property in order to oversee works being carried out by the builder. His client is the respondent but his fees are paid by the insurers. He has not been involved with the work at Property 2 but had been in communication about the works being done there. The wall between the two properties had no foundations and started to sink and move so the wall had to be temporarily propped up. There were two stages, namely to stabilise in order to ensure no further damage and then making good the damage. 17. Remedial work had to be designed and planning approval obtained. The first issue was to try and stabilise the dividing wall. Emergency concrete was put down, but this interfered with the permanent work so it needed to be removed, but ensuring the wall did not drop down. This had to be done in short steps of a metre at a time. In the bundle is a site visit report he made on the 4 th December, 2015, to Property 2 and a further visit on the 14 th January, 2016. The target date for removal of the shoring at Property 2 had been before Christmas 2015, but this was not done until February 2016. In January 2016 at a joint meeting arranged with the engineers for Property 2 to agree the works to be completed to remove the shoring he noted that Ms X- the respondent- was "concerned about the works and would like the works concluded as soon as practical." He said the respondent had expressed her concerns about the time it was all taking. There was nothing in writing but there had been frequent phone calls, especially during the early days when nothing appeared to have happened. In the report of January 2016 he had also stated:- "Making good any repairs should ideally be undertaken a few weeks after the shores are removed to give the building a change to adapt". He was asked about the timing of works, and he said he should have written "months" instead of "weeks" in his January report. 18. By 1 st March, 2016, the shoring on the property side of the wall was removed so observation could begin. By March 2016 he was satisfied the works next door had been done but he did not know if the movement had ceased. In March 2016 he had emailed the respondent following a meeting to say "a few weeks". In his statement he said that a period of three to six months to check if there is any movement is normal but ideally you would want to wait twelve months. He received an e-mail from the loss adjusters in May asking about the remedial works with a chase up on the 5 th July as he had not responded to the loss adjusters. He did not recall having any conversation with the respondent about how important it was to her for the work to be completed prior to the 31 st August. By July 2016 he said he was satisfied there was no further movement, and a meeting took place on the 14 th July, 2016, when a schedule of works was drawn up. He was asked why work did not commence in June as if it had, he would not be giving evidence in court, but he said he could not recall why the meeting did not take until the 14 th July. 19. In his written statement Phase 1 of the works which are external were to take about six to ten weeks, Phase 2 which is internal eight to ten weeks and then a couple of days for Phase 3 namely tarmacking the drive. Most of Phase 1 has now been completed. Because the house is occupied, this has a bearing on the length of Phase 2. The potential problem on Phase 2 is the investigation in the bedroom adjacent to the party wall and to the ceiling. If water has got in, there is a possibility of rotting timbers so stud work would then need to be replaced. He said that Phase 2

could take the eight to ten weeks because of the different trades that need to be organised and co-ordinated, and the plastering needs to set before the decorating is done. When Phase 3 is completed he makes a final inspection but planning is not involved in signing off the works. He was asked how much longer the works would take and indicated that there was no reason why Phase 1 and 2 could not overlap, and the investigations begin now. He advised eight to ten weeks for Phase 2 but he is not doing the work, but he is an expert at what needs to be done. He was asked if realistically all the work could be completed by early January and he agreed but said that at Christmas builders shut down, so maybe this would mean the end of January. He agreed he could sign off Phase 2 straight away if completed by Christmas, but normally he signed off at the end of the work, and there may therefore be a slight increase in his fee for coming to check Phase 2 had been completed. Tarmacking could be completed by early January. Based on his experience, he could not see significant complications arising in respect of the remedial works. Evidence of Paul Sowney 20. He has provided a sworn statement. In 2014 he had been employed as a builder to carry out work at Property 2, but is now also doing the remedial works at the property. As a result of initial work he discovered that the wall between Property 2 and the property had no foundations and started to sink, and caused cracks and danger. Investigations had to be carried out and the wall on either side temporally propped up. There were then delays with planning as there needed to be retrospective planning permission and work started in October/November 2015. The shoring up was removed at Property 2 at the end of February 2016 and the shoring at the property was removed at the end of April beginning of May. He said the shoring was not removed until then to make sure nothing else was moving. He confirmed a schedule of works was produced at the meeting referred to by Mr Woodward on the 14 th July, 2016. 21. The remedial work at the property started on the 22 nd August, 2016. Items 12 to 15 of Phase 1 items needs to be done which will take a further two weeks. He said he is going back to the site on the 28 th September, 2016, to arrange access with the neighbour who needs to use the passageway as the passageway will be dug up, and this work will take two weeks from access being granted. He confirmed he could start work on Phase 2 before 1 was finished and indeed could start Phase 2 next week. Phase 2 was eight to ten weeks, but he said he did not know how long it would take "we had to come up with something." He does not know what will be found when the wall is opened up. He said he couldn't definitely say Phase 2 could be finished before Christmas in case something goes wrong, but he confirmed he could start the investigative work early and Phase 2 might be finished before Christmas. If Phase 2 is finished then the tarmacking would be done. He confirmed he could work on the site every day and if working on the property over the Christmas period, he would make sure he had everything on site so the fact that the builder's merchants were shut would not affect the work. Evidence of the respondent 22. She provided a sworn statement. Her intention had been to re-mortgage or sell the property to pay the £80,000 plus interest to the petitioner. However, due to structural damage she has not been able to raise the finance to do so and/or to sell the property. The damage had been caused by works at Property 2 and there was a possibility of prosecution which led to delays. Emergency work needed to be done, and then there were delays in obtaining retrospective planning consent for work at Property 2, and Mr Sowney's wife died. She was told by both the builder and engineer that no work could be done until next door Property 2 was stabilised and sorted out. She provided

e-mails which she had exchanged with the builder, and the loss adjuster. She said she regularly communicated with the builder, engineer and loss adjuster but she "felt at their mercy as they were the experts." She assumed the experts knew what they were doing. She was referred to the report of the 14 th January, 2016. It states inter alia "Ms X was concerned about the programme and would like the works concluded as soon as is practicable." On the 5 th May, 2016, she asked for the loss adjusters to contact her as a matter of urgency as she had no information as to what was happening. She was referred to an e-mail she sent to the Loss adjuster of the 9 th May, 2016: "I understand that nothing is happening with my house until the work is completed at Property 2 and then we have to wait for twelve weeks to determine if there is further movement in my property. Only then my understanding is will exploratory works commence to determine the extent of damage to my property. I cannot put into words how frustrating this has been and is having gone since November 2014. My house is currently devalued at a time I had intended to be putting it on the market to pay for a divorce settlement this summer." In the e-mail she asked if anything could be done and whether they would pay for a bridging loan. However this was not agreed. There were a number of e-mails asking what was happening. She said she was not a builder so if he says to leave things as long as possible to settle she did not have the experience to contradict this. 23. The respondent said she tried to contact the petitioner to warn him there may be a delay in raising the money. Some time was spent in considering when she did so but lawyers first got involved when Mourant Ozanne for the petitioner wrote to the respondent on the 7 th June, 2016, following an e-mail she had sent to him on the 18 th April, 2016. In that e-mail she had proposed that from the £80,000 owed a deduction be made towards their daughter, Child 1's university costs, as the respondent says she is paying these. Child 1 has now started the second year of a four year course. The proposal for an off-set was rejected as the petitioner wanted the £80,000 by the 31 st August, 2016. On the 7 th July, 2016, her advocate spelled out the problem she had about raising the money by 31 st August, 2016, due to the condition of the property. She asked for an extension of time to the 31 st August, 2017, but hoped the work would be done within six months from the date of the letter, and would then take steps to re-mortgage or sell. She also asked for maintenance for Child 1 and a summons was filed for an extension until the 31 st August, 2017, the petitioner to be estopped from enforcement proceedings until adjudication and for maintenance until Child 1 finished her current university course. 24. The respondent gave evidence that she has a job where she earns £68,000 gross per annum. She has a very busy job and was in a "horrible" situation as she was trying to get the building sorted out. She was asked why, if earning £68,000, she had not managed to put aside money to pay off the petitioner given five years has elapsed before the order was made. She gave evidence about the two daughters, one of whom Child 2 lives independently but she retains a room for her as she has "emotional difficulties" although she left home in 2012. She said she was supporting Child 1 through university. Child 1 has lots of work placements in the UK but the property is her home base. However, the respondent's evidence is that she is not relying on the fact that she is paying for Child 1 to justify not paying the money. 25. She said an estate agent came to view the property but he needed £300 for a written valuation and she could not pay for this. She received a verbal valuation indicating the property may be "worth £300,000 to £325,000 currently but the work must be finalised." In her written evidence she confirmed she had spoken with her Bank and had been

informed that "once the work was done they are optimistic I will be able to draw down against the equity. However the value of the property at the time is vital." If the loan is refused, she will have to sell the property but will receive "little equity from the house." 26. She was asked why she is seeking a delay, now until the 31 st July, 2017, to pay the petitioner. In her statement she wrote that the earliest the work would be signed off was at the end of January 2017, then the earliest the bank could release funds, if they agreed to do so, would be the end of March 2017, five to six weeks after signing off the works. If she cannot raise the funds, then she would put the house of the market and give herself about five months to sell it. She now also has legal costs to pay off. 27. In August 2011 the property had been valued at £315,000. She borrowed £50,000 from the Bank and half went on legal costs arising from the divorce and the other half for refurbishment of the property. The current balance on this additional borrowing is £45,203 and the £247,000 loan is now £165,385 so the total owed at the hearing is £213,249. If £80,000 is added this would mean a total of borrowing of £293,249 plus interest. 28. She said she had not got a surplus put aside. When she saw the Bank they went through her finances but the Bank "alluded to the fact I can re mortgage." As a result of these proceedings she now has legal cost of £17,000 and she needs to pay the costs, but when she saw the Bank she did not have the costs debt. She may therefore need to borrow about £100,000 in total. The legal fees may take her beyond what the Bank can offer her. She said she has given the matter some thought and she could seek a personal loan and raise as near as possible to the £80,000 with the Bank. She has spent £25,000 on doing up the property so it was put to her that in the five years, the value of the property has increased. She said she would like to think so but she is not an expert. If she put the property on the market now the problem would be for a buyer to get a mortgage on the property in its current state; her Bank said they will not value until the work is completed. Her preferred method is to re mortgage to pay off the petitioner. She would like to think, based on her discussions, she can raise the money based on her income. Evidence of the petitioner 29. He said that after waiting five years he trusted the £80,000 would be paid to him on the due date. i.e. the 31 st August, 2016. He confirmed the respondent had not paid him at present. In addition to transferring the house over in 2011, the respondent had the contents of the property and the car. He said he was devastated about being asked to wait longer for his money. He is very worried the respondent will drag matters out as she has no incentive to pay him. He lives in accommodation with a bed/living room and a separate toilet and kitchen which suffers from damp. He cannot afford to move into a leased property. He is not tied into a leased property so he only needs to give four weeks' notice. He has made enquiries about purchasing a cheap one bed roomed flat. The longer he leaves it the older he gets in terms of purchasing a property and he is concerned about rising house prices. He says he earns £22,000 gross and gets £1,833 net per month paying £500 per month rent. In addition he has debts of £7,500. He has not had a holiday for six years. The £80,000 was not linked to the house, and he considers her failure to pay "makes a mockery of the order." He signed the order because an exact date was given for payments of the money. 30. It was put to him that but for the damage on the property the respondent would have no difficulty in raising the £80,000 to pay him off. He said if the order read "unforeseen circumstances" he would not have signed, and he trusted she would make the payment on the date. 31. He was aware building work was taking place at Property 2. He could not see if there had been internal damage to the property as he had not

been inside, but he said it looks like the work has nearly finished outside. He accepted he had not attended the meeting with the builder and structural engineer but he could not afford to take time off work when he could be working. He confirmed he was prepared to wait until the 14 th February, 2017, for his money but no later. He felt she considered him as a soft option. The Law 32. The application to vary the 2011 Order is made pursuant to Article 33 of the Matrimonial Causes (Jersey) Law 1949 ("the Law"). It is accepted by the parties that the Court has both jurisdiction and power to make that amendment. The issue is whether the Court should do so and on what terms. "33 Power to vary orders (1) The court may from time to time discharge or vary any order made under Article 25, 27, 28, 29, 30 or 31 or suspend any of the provisions thereof temporarily or revive the operation of any of the provisions so suspended.[59] (2) In exercising the powers conferred by this Article, the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage." 33. I was referred to a number of cases both Jersey and English but the Jersey court has a wider power to vary including L v V

[2004] JRC 033 at paragraph 13 which states: "13. Both counsel agreed that the Court's jurisdiction to vary a consent order was wider than the equivalent jurisdiction in England. English courts may vary orders for periodical payments but have no jurisdiction to vary an agreed lump sum payment. This Court has a wider jurisdiction which is set out in Article 32 of Matrimonial Causes (Jersey) Law 1949 , as amended, in the following terms:- '(1) The Court may from time to time discharge or vary any order made under Article 25, 27, 28, 29, 29A or 30A of this Law or suspend any of the provisions thereof temporarily or revive the operation of any of the provisions so suspended. (2) In exercising the powers conferred by this article, the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage.'" 34. There was an issue about hearsay evidence. The petitioner's advocate objected to an e-mail dated the 1 st September, 2016, which stated that the Bank would not consider an equity release loan due to the current state of the property. He had said it is hearsay and fails to address "important matters." 35. I was referred to the Civil Evidence (Jersey) Law 2003 and in particular Article 3(1): "3 Admissibility of hearsay evidence (1) Evidence shall not be excluded on the ground that it is hearsay. Notice of proposal to adduce hearsay evidence (1) Subject to the following provisions of this Article, a party proposing to adduce hearsay evidence in civil proceedings shall give to the other party or parties to those proceedings - (a) such notice (if any) of that proposal; and (b) where so requested, such particulars of or relating to the evidence, as is reasonable and practicable in the circumstances to enable that party or parties to deal with matters arising from the fact that evidence is hearsay. Power to call witness for cross-examination on hearsay statement Rules of Court may provide that where a party adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine that person on the statement as if that person had been called by the first-mentioned party and as if the hearsay statement were that person's evidence in chief.

Considerations relevant to weighing of hearsay evidence In estimating the weight (if any) to be given to hearsay evidence the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence." 36. Advocate Whittaker said that on an erroneous basis of law, because Advocate Haines wanted the statements from the bank excluded, Liz Walton from the Bank had to be called leading to £1,500 plus GST for the Bank's cost plus adding to the respondent's legal costs and £1,920 to deal with issues as to the bank's evidence. These costs she submitted could have been avoided. 37. She also said there were wasted costs because the petitioner did not meet with the builder and loss Adjuster. 38. There were costs overnight as the petitioner had demanded financial information from the respondent and then announced it was not needed the following morning. 39. She referred to the rule 47(4) of the Matrimonial Causes Rules 2005: "(2) The parties must help the Court to further the overriding objective of dealing with cases justly which includes saving expenses and dealing with matters proportionally." She said the issue was a straightforward question of whether the respondent can be granted an extension and whether the respondent wait for the £80,000 plus interest. The loss to him is his inability to pay his debts but no other hardship. 40. The costs incurred she submitted are wholly disproportionate and much costs incurred by matters "fallen by the wayside." 41. £500 she submitted was spent on arguing whether there legally can be a variation of the date of payment when clearly there can be, £750 with regard to the charge, £1,920 on hearsay arguments, £350 on the additional bundle plus £1,500 on the cost for the Bank, totalling £5,000 in respect of the respondent's total bill of £17,000 to £18,000. Decision 42. The reason for this hearing is because the respondent had failed to pay £80,000 plus interest by the 31 st August, 2016. She filed an application asking for a year in which to pay the money "or such other date as the Court deems fit". I find she was planning to raise the money by an equity release loan and was confident she could do so, but has been unable to raise the money due to damage to the property which is now being put right. I find that the respondent did make enquiries as to how the work was progressing and accepted as she was not a builder or quantity surveyor, she relied on the advice of Mr Woodward and the builder as to how long the works would take. It seems however she did not make it clear why she needed the work to be done as soon as possible. There appears to have been a gap when Mr Woodward was being chased by the loss adjuster as to what was happening. There was a meeting in July 2016 with the lawyers and experts which the petitioner did not attend but his lawyers were there to discuss the timetable for schedule of works. Having heard evidence from Mr Woodward and Mr Sowney, the remedial works may be completed as early as the 10 th December, and the works could be signed off by as early as the 17 th December, 2016, by Mr Woodward. However, he has allowed for problems being discovered behind the interior walls and the different trades needed in respect of interior works. He and the builder indicated the works could be completed by December, or by early January 2017, but once the investigation is done they will know better. Mr Sowney stated he could work over the Christmas period if required to get the work done. 43. Under her proposals, the respondent continues to reside in the property

pending payment of £80,000 until on or before 31 July, 2017. In her skeleton arguments dated the 14<sup>th</sup> September, 2016, she asked to extend the period to the 31<sup>st</sup> July, 2017, or as otherwise set out in her open position. Her open position then asked for liberty to apply for a further extension of time within which the payment shall be made in "exceptional circumstances" but it transpires this means if she has been unable to raise the money, has placed the property on the market and the house is not sold by the 31<sup>st</sup> July, 2017; this additional extension was not included in her application. Even if placed on the market, there is no guarantee she will find a buyer. There is no incentive for her to pay the petitioner in a timely manner; she could put it on the market at an unrealistic market price and delay paying the petitioner despite what she says to the contrary. It is clear that the petitioner does not trust her, and gave evidence that he had trusted her to pay him on time but she failed to do so. I accept his view that there must be certainty. The fact that she also raised the position regarding providing housing for the daughters, including Child 2 who has not lived at the house for some years, but still has a room, indicates that she is reluctant to sell. 44. The respondent argues she needs time after the work is signed off to see if she can raise the money. She has not checked about any borrowing to pay her legal fees but indicated she would seek a private loan. It is accepted that the Bank said they could not consider an equity release loan until the building works have been completed. However, the Bank indicated that the respondent had disclosed her income and on the basis of her income the bank is potentially satisfied and as regards affordability, they are aware of Child 1's education costs but there is potential to assist. The property will be put in good order and then potentially the Bank can help. The petitioner stated she was on course immediately before the damage to the property to raise the finances to pay him off and was thwarted by the damage. So once the work completed and damage made good, she should again be on course to raise the money. Her advocate emphasised she has no debts and a good record of paying. She appears to satisfy their lending criteria save as to having a valuation. The Bank will lend up to 90% of the value of the property. When she saw the Bank they went through her finances but the Bank "alluded to the fact I can re mortgage." However she may need to make alternative arrangements for all or part of her legal fees. 45. If she puts in a formal application for an equity release loan the Bank, who are already familiar with the matter, could put together a case within 48 hours maximum with a decision within three to four days. The property would then be valued, within two to three days. The issue is how much the property will be worth, but it is accepted on her behalf that there may be an enhancement in value as she has spent money on the property and part of the property will have just been redecorated. If the survey indicated there was sufficient equity, then it would take up to a week to put forward a full written report. If there was a clean survey, the money could be paid out within one month to six weeks of a clean survey, but nearer four weeks. The surveyor said the works do not need to be signed off by the planning department. Thus if the work is completed by mid-January, rather than before Christmas, allowing for a further seven weeks, the date of the 7<sup>th</sup> March, 2017, is reached. 46. The respondent has legal fees of £17,000 to £18,000 and there are bank fees of £1,500 plus GST. Her open

position is now that this may affect her ability to raise the money from the Bank, and she may have to sell the property, thus delaying the time of payment to when she can sell which may be later than July 2017. Although she indicated she was on course to pay the petitioner if the building problems had not occurred, it is submitted she may not be able to raise the money by the 31<sup>st</sup> July, 2017, due to her legal fees. However she gave evidence that she would seek a private loan in respect of any money she cannot borrow from the Bank. 47. The respondent's current total borrowing is now £213,249. Therefore if further borrowing of £80,000 plus some interest is obtained to pay the petitioner, the total borrowing increases to about £296,000. On her income of £68,000 gross times five times equals £340,000. 48. Having heard from the Bank, Mr Sowney and Mr Woodward the petitioner has now agreed to wait until the 14<sup>th</sup> February, 2017, for the £80,000 due to him plus interest, but I am extending this period until the 7<sup>th</sup> March, 2017. I had invited the parties to try and negotiate on the basis of the petitioner's revised position at the end of the first day of hearing but was told this would not happen. It was unlikely agreement would have been reached if the respondent continued to insist on there being liberty to apply for an extension of time after the 31<sup>st</sup> July, 2017. I do not consider the petitioner should be put in a situation where potentially he could wait some time for his money when his evidence, which I accept, is that he needs the money now, and is clearly upset about the delay. He is in poor accommodation and whilst the respondent may argue he chose to remain there it is clear that his finances are not good, and he has not wanted to be bound by a lease. 49. With regard to costs, I consider this is not a case where costs should be ordered. Neither party has achieved their open position. The petitioner in any case is no longer seeking costs. As to the issue of hearsay evidence, the petitioner's advocate wrote of the information from the Bank on the 19<sup>th</sup> September, 2016, that it is "incomplete and fails to address important matters." The e-mail on behalf of the Bank from Advocate Lawrence dated the 23<sup>rd</sup> September, 2016, may be technically correct but does not give the full picture as it says "the bank has yet to consider the finances of Ms X." However there had been discussions about affordability as confirmed by Ms Walton. The respondent had made an application to the bank and the respondent herself confirmed the Bank had gone through her finances, although she does not say so in her written statement. Ms Walton stated on the basis of the respondent's income the Bank is potentially satisfied. As regards affordability, the Bank is aware of education costs but there is potential to assist. I accept it was therefore very useful for the Court to hear the evidence from the Bank to confirm her finances had been analysed, to hear about the criteria for obtaining a loan and how long it will take to process a formal application. I therefore do not award the respondent the costs of the Bank and Advocate Lawrence's attendance at Court. As for the evidence from Mr Woodward and Mr Sowney, they indicated the work could be done before Christmas 2016. With regard to Rule 47, this applies to both parties. The matter did not settle prior to the hearing. The petitioner did make concessions as to the date of payment, but the respondent sought to potentially extend the time whereby she pays the petitioner. By taking this stance I accept that it meant that the petitioner considered he had to contest the proceedings. With regard to the

summons regarding registration of the charge, I was addressed on this but will not be adjudicating on this, but do observe that the wording of the original order does not specify that the money owed is secured on the property. 50. With regard to costs incurred overnight, the respondent did introduce information about her finances. The petitioner then did seek information and having "taken stock" overnight did not pursue the matter. I order that costs be awarded to the respondent for having to provide the information in the sum of £350 to be taxed if not agreed. 51. Both agree that the undertaking the respondent gave on 17 th August, 2016, remains in place, to be varied by consent. 52. Thus at para 3 (b) of the Act of Court dated 18 th August, 2011, the date of 31 st August, 2016, should be replaced by 7 th March, 2017. The undertaking given by the respondent in the Act of Court dated 17 th August, 2016, shall be retained until the petitioner is paid in full. It should also be permitted to vary or remove the undertaking by consent. There is to be no order as to costs save that the petitioner pay £350 of the petitioner's costs to be taxed if not agreed. Authorities Matrimonial Causes (Jersey) Law 1949. L v V

[2004] JRC 033 . Civil Evidence (Jersey) Law 2003. Matrimonial Causes Rules 2005. L v V

[2004] JLR Note 6 . C v D

[2013] JRC 056 . C v D

[2013] (1) JLR Note 11. E v F

[2014] JRC 184 . In the matter of L (Matrimonial)

[2015] JRC 119 . Pennington v Pennington [1985-86] JLR Note 10c. Knight v Elwell [1977] JJ 177. Hamilton v Hamilton

[2013] EWCA Civ 13 . Masefield v Alexander [1995] 2 FCR 663 FLR 1. Page Last Updated: 07 Jun 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: [https://www.bailii.org/je/cases/UR/2016/2016\\_171A.html](https://www.bailii.org/je/cases/UR/2016/2016_171A.html)

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