

ROYAL COURT
(Samedi Division)

247.

14th December, 1994

Before: The Deputy Bailiff, and
Jurats Orchard and Herbert

Between:

S

Petitioner

And:

C

Respondent

Advocate N.M.C. Santos-Costa for the Petitioner
Advocate M. M. G. Voisin for the Respondent

JUDGMENT

THE DEPUTY BAILIFF: This is a summons issued by the petitioner in this cause, S, seeking maintenance and other ancillary relief from the respondent, C. Although a decree nisi was issued on the 29th October, 1992, we shall, for convenience, refer to the parties as "the wife" and "the husband" respectively. The summons asks the Court to order:-

- 10 "1. That the petitioner should be granted such sums by way of maintenance for herself and the child of the marriage, A, as the Court deems fit;
- 15 2. That the petitioner should be granted such secured provision or lump sum payment, periodical payments and property adjustment order or transfer of property as the Court deems fit;
- 20 3. That the respondent should make such periodical payments, lump sum or sums and/or secured provision as the Court deems fit for the said A including all school and educational fees;
- 25 4. That the respondent makes such other provision for the petitioner and the said A as the Court deems fit; and

- 4 -
5. That the respondent should not (sic) be ordered to pay the costs of and incidental to this application".

5 It is necessary first to adumbrate the story of the marriage and the procedural history which lead up to this summons. The parties were married on the 22nd April, 1972, but had lived together for some four years before the marriage. The wife was then aged 28. The husband was about the same age. She had been married before, but had divorced at the age of 21. At first they lived in a flat in St. Aubin, but shortly after the marriage, they moved to a substantial house in St. Lawrence, Property 1.

10 There was one child of the marriage, A, now aged 17, who was born in 1977. At first the marriage was happy, but things started to go wrong, according to the wife's evidence, shortly before the birth of A in 1977. In 1985, the possibility of divorce was mooted but there was a reconciliation. In January, 1992, however, the wife petitioned for divorce on the grounds of cruelty and adultery. The wife's allegations were denied. On 12th February, 1992, the Greffier, ordered, by consent, the husband to pay the wife maintenance pending suit at the rate of £1,200 per month in addition to other amounts for living expenses. The husband was ordered to pay different amounts in respect of A's education and maintenance.

25 On the 26th August, 1992, the Greffier varied that order by decreasing that the husband should pay the wife maintenance pending suit at the rate of £1,700 per month, with effect from 1st September, 1992, together with certain other expenses of the wife.

30 On 29th October, 1992, an amended petition was placed before the Court. The husband did not oppose the petition and a decree nisi was pronounced on the ground of the husband's admitted adultery with the co-respondent. On the same day, the parties entered an agreement, the principal purpose of which was to provide for the wife's vacation of Property 1 and the purchase by the husband of Property 2 for £187,000 for occupation by the wife and A. This agreement was ratified by the Court on 4th November, 1992. At the same time, the Court ordered that there be joint custody of A with care and control to the wife.

45 The arrangements for the sale of Property 1 and the purchase of Property 2 did not, however, fructify. There was difficulty with the prospective purchaser of Property 1.

50 By the time this difficulty had been resolved, Property 2 had been sold to another party. The husband was anxious to complete the sale of Property 1, but the wife was unwilling to accept the alternative property which he proposed, namely Property 3 in St. Lawrence, and was unwilling to

move out of Property 1 until a property acceptable to her had been purchased. The husband accordingly applied to the Court, on 21st December, 1992 to vary the injunction which restrained him from selling Property 1. The Court granted the application, and varied the injunction so as to permit the sale of Property 1. The wife was ordered to vacate the property by 19th February, 1993. The Court also ordered that if the husband failed to purchase an alternative property for occupation by the wife by 19th February, 1993, he should provide her with rented accommodation of a similar standard to the property in St Lawrence. In fact, these arrangements were never implemented, because the proposed purchaser of Property 1 prevaricated and finally withdrew. The husband and the wife accordingly continued to live in separate parts of Property 1, while discussion ensued between their respective legal advisers as to the provision of appropriate accommodation for the wife. Another prospective purchaser of Property 1 was then found and on 22nd October, 1993 the wife, having changed her legal adviser, on advice, obtained a further interim injunction preventing the sale of the property; this was followed on 5th November, 1993 by an ouster order by which the husband was required to vacate the property. On 2nd December, 1993 the Court commenced hearing two cross-summonses relating to these matters of property but adjourned until 8th December. On that day, the Court ratified an agreement by which Property 1 was to be sold at a reduced price to another purchaser and the husband was to purchase the property Property 4 for occupation by the wife and A at a price of £252,500. It was part of the arrangement that the wife was to contribute £22,500 towards the purchase price by way of interest free loan. It is right here to note that the husband's lawyers, by facsimile of 1st December, 1993, formally reserved the right to argue that Property 4 was an inappropriately expensive property, having regard to the husband's means.

During the course of the hearing, the Court was informed that the parties had reached agreement on appropriate arrangements for A, the child of the marriage, and we were asked to ratify a memorandum setting up that agreement. In our judgment, the agreement makes proper provision for A and we ratify it; the agreement will be annexed to the Act of the Court recording our decision.

During argument, Counsel for the wife told us that he desired to achieve a "clean break" settlement. This was accepted by Counsel for the husband and we have accordingly to consider what is the appropriate lump sum to award to the wife. Article 29 of the Matrimonial Causes (Jersey) Law, 1949, confers a wide discretion upon the Court. The relevant provisions are:

"(1) Where a decree of divorce ... has been made, the Court may, having regard to all the circumstances of the case, including the conduct of the parties to the marriage,

and to their actual and potential financial circumstances, order:-

...

(b) That one party to the marriage shall pay to the other party of the marriage such lump sum or sums as the Court may think reasonable ...

(c) That security be given for the payment of any sum or sums ordered to be paid under sub-paragraphs (a) and (b) of this paragraph;

(2) Without prejudice to the generality of paragraph (1)(b) of this Article, an order under this Article that one party to the marriage shall pay a lump sum to the other party to the marriage -

(a) may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the marriage before the making of an application for an order under this Article;

(b) may provide for the payment of that sum by instalments of such amount as may be specified in the order."

Both parties agreed that in this case conduct was not an issue. In formulating our approach to the decision which we have to make, we have found very helpful the following passage from the judgment of Ormrod LJ in the English case of O'Donnell v. O'Donnell (1975) 1 All ER 993, part of which was cited with approval by this Court in Stanaway-Ivey v. Overland (1980) JJ 233 at 239:

"In approaching a case like the present, the first stage should be to make as reliable an estimate as possible of the husband's current financial position and future prospects. In making this assessment the court is concerned with the reality of the husband's resources, using that word in a broad sense to include not only what he is shown to have, but also what could reasonably be made available to him if he so wished. Much will depend on the interpretation of accounts, balance sheets and so on, which will require in many cases the expert guidance of accountants. It will rarely be possible to arrive at arithmetically exact figures. The court must penetrate through the balance sheets and the profit and loss accounts to the underlying realities, bearing in mind that prudent financial management and skilled presentation of accounts are unlikely to overstate the husband's real resources, and, on the other side, that there may be a great

5 difference between wealth on paper and true wealth. Valuations may overstate or understate the results of realisation of assets, many of which may not be realisable within the immediate or foreseeable future.

....

10 The next stage is to consider the wife's position, not from the narrow point of 'need', but to ascertain her reasonable requirements, bearing in mind that she will have to provide an appropriate home and background for herself and the children."

15 We turn therefore to the evidence concerning the husband's current financial position and his future prospects. The Court heard evidence at length from two experienced chartered accountants, each of whom advanced persuasive arguments on behalf of his client. One valued the husband's assets at a little over £2 million; the other put the value at a little over £1 million.
20 We cannot refrain from observing that justice might be better served in matrimonial proceedings of this kind if the Court were empowered, at the expense of the parties, and in substitution for their experts, itself to call an expert witness whose duty would be to give an impartial assessment of the financial position,
25 untrammelled by loyalty to either party.

30 It was not contested that the husband had built up over a period of some twenty-five years, a substantial travel business. He had begun operating a small travel agency in 1967. Over the years, it had expanded so that towards the end of the 1980's, the business comprised a group of companies owning not only travel agencies, but also several hotels and an entertainment complex. We shall refer to the husband's business as the "The Group".
35 Some indication of the The Group's success may be gaged by the fact that the husband was able between 1990 and 1993 to withdraw from the business some £1½ million. It was also not disputed that the The Group had, in recent years, suffered a decline in its fortunes, and had been obliged to dispose of some of its capital assets. The causes of that decline were said to be a
40 failure by the Group to respond sufficiently quickly firstly to a changing market place, and secondly to the chill winds of recession. At one stage indeed there was some doubt as to whether the Group's bankers would afford it sufficient financial support to prevent it from going into liquidation.
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50 We interpose here our conclusion on a submission by Counsel for the wife that his client had contributed to the success of the Group and that her contribution was a relevant factor. The basis of that submission was that the wife had undertaken extensive interior design work at the hotels owned by the Group, and had indeed been retained by the Group for that purpose. The scale of the design work undertaken by the wife was disputed by

the husband, but this is not material to our conclusion. We accept that the wife did successfully carry out extensive design work in the hotels, but we conclude that this contribution did not materially affect the fortunes of the Group. Put another way, our conclusion is that the Group would have enjoyed equal commercial success, even if no design work had been undertaken by the wife. The long and the short of it is that the wife possessed a professional skill which she was happy, at the time, to employ in the husband's business. If she had not employed it, the work would have been done by someone else.

The husband placed before us an affidavit of means dated 6th July, 1994 to which was attached a schedule of assets and liabilities as at 16th June, 1994. This schedule had been prepared in consultation with the husband's chartered accountant and expert witness, Mr. Richard Ernest Giles Ireson. Mr. Ireson qualified as a chartered accountant in 1972 and is a partner in the firm Le Sueur Ireson & Co. He is the partner responsible for the audit of the Group. He told us that he had a full understanding of the Group's affairs and that he had been helping the husband in his negotiations with the Group's bankers. We accept that his evidence was given honestly and conscientiously, although naturally he was prone to place an interpretation on the facts which was, within the bounds of propriety, beneficial to the interests of the husband. The schedule, and the evidence given by Mr. Ireson, were in some respects criticized by the chartered accountant called as an expert witness by the wife, viz. Mr. Owen Francis Lynch. Mr. Lynch qualified as a chartered accountant in 1983 and is a partner in the firm of Norman Allport & Co. We accept that his evidence was also given honestly and conscientiously and we attach the same rider as to his desire to present his arguments in the manner most beneficial to the interests of his client. Mr. Lynch lacked the detailed knowledge of the Group's affairs which was possessed by Mr. Ireson, but he was, nonetheless, an impressive witness.

The argument as to the value of the husband's assets was effectively centered around the schedule to his affidavit, and we accordingly set out below a summary of that schedule. We interpose again that it was accepted that the Group was wholly owned by the husband.

THE GROUP

Freehold Property at estimated market value

Hotel 1	1,100.00
Hotel 2	<u>1,300.00</u>

			2,400,000
5	INTANGIBLE FIXED ASSETS		
	Goodwill & Ingoing of Business 1, Business 2, Business 3 and Business 4.		
10		83,216	
	OTHER ASSETS		
	Shares "Guiton Group" at cost	457	
15	Paintings at cost:- "Casting Around" & "Gone to Earth" by G. Wright	9,350	
20	H Holdings Limited (secured)	<u>450,000</u>	
			<u>459,807</u>
	NET ASSETS		£2,943,023
25	NET CURRENT LIABILITIES		(£1,231,787)
	NET ASSETS LESS CURRENT LIABILITIES		£1,711,236
30	LESS CREDITORS DUE IN EXCESS OF ONE YEAR		<u>£176,932</u>
	ESTIMATED NET VALUE OF TRAVTEL GROUP		<u>£1,534,304</u>
35	<u>OTHER PERSONAL ASSETS & LIABILITIES</u>		
	Property 5, a farmhouse in the U.K. at estimated value	550,000	
40	Less Secured Loans on the property		
	Lazard Bros. (Jersey) Limited	(275,000)	
	The Leisure Group Limited	<u>(450,000)</u>	
45			(175,000)
	Property 4, Trinity at cost	252,500	
	Loan re: Property 4	<u>(160,000)</u>	
			92,500
50	Estimated legal costs		<u>(50,000)</u>

TOTAL NET WORTH

£1,401,804

5 We now summarize the evidence which we heard in relation to the above schedule; and our conclusions on the submissions made to us.

10 Hotel 1

Mr. Lynch argued that the value of Hotel 1 was £1,275,000. The basis of his argument was a letter written by the Group's bankers (National Westminster Bank plc) to Coopers & Lybrand on the 9th September, 1994 in which it was stated:

15 "The Hotel has been sold, subject to contract, to [an individual] for a consideration of £1.275M, of which £350,000 is to be paid upon exchange of contracts with the remainder being paid on 7th October, 1995.

20 The evidence of Mr. Peter Lewis Taylor, the chief manager of the National Westminster Bank in Jersey was more equivocal. He understood that negotiations were continuing and that the terms of any sale were not yet finalized. The evidence of the husband was that he would obviously seek to obtain the best possible price. He hoped to achieve £1.1 million, subject to planning permission for re-development being obtained. The valuation of Mr. Gerald Francis Trevor, an experienced local valuer, was that the hotel's current market value was £1.1 million.

30 Mr. Voisin referred us to a number of authorities on the question of the proper approach to the valuation of assets. In Stanaway-Ivey v. Overland, (1980) JJ 233 at 238, Crill, Deputy Bailiff, as he then was, stated:-

35 "...where the Court is faced with a number of conflicting valuations as regards property, it is prudent to take the lower valuation in attempting to arrive at a calculation of the husband's assets (PvP [1978] 1WLR 433). As will be seen, we have done this in the case of the respondent's property assets in Jersey".

40 The adoption of the lower valuation in relation to a single asset is no doubt in general the course of prudence. But where the value of a series of assets falls to be assessed, it would in our judgment cause injustice if we were in each case blindly to adopt the lowest valuation. Our task is to endeavour to penetrate the evidence in order to arrive at the underlying reality.

50 On the evidence it is possible that Hotel 1 will be sold for a price higher than £1.1 million. That possibility does not, in our judgment, entitle us to assess the value of the

hotel at this stage at a higher figure. We adopt Mr. Trevor's valuation and assess Hotel 1 as being worth £1.1 million.

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Hotel 2

The husband valued Hotel 2 at £1.3 million. He explained this by saying that he had taken a mid point figure between Mr. Trevor's market valuation of £1.45 million and the forced sale value of £1.2 million. Mr. Lynch invited us to accept the market valuation of £1.45 million. We see no reason for not doing so. There is no question at present of selling Hotel 2 and if it were to be sold, there is no reason why a sale should not be achieved on an orderly basis. We accordingly assess the Hotel 2 as being worth £1.45 million.

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Intangible fixed assets

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Much argument was addressed to us about the value attributable to the goodwill of the travel agencies. As appears from the above summary, Mr. Ireson at first valued this at £83,216. Mr. Ireson had averaged the annual profits of all the agencies and assumed the value of the goodwill to represent a 25% return on capital. The average annual profit was £20,804 and the value of the goodwill was thus £83,216. This valuation was criticized by Mr. Lynch as not taking sufficient account of the goodwill to be attributed to the agency trading as Business 4, which was the only agency to have traded at a profit during 1992 and 1993. If the profits of Business 4 were averaged over three years and the same formula of a 25% return on capital applied, the value of the goodwill of that agency was £204,000. He suggested that the other agencies, notwithstanding that they were trading at a loss, did have a goodwill value which he estimated at £46,000, making a total of £250,000. Mr. Ireson's response to this was that the travel agencies in the Group were integrated and that it was difficult to isolate one agency from the others. Business 4 enjoyed certain management and other services from the Group's head office which were reflected in the accounts of that agency. The budgets, cash flow forecasts and marketing were all dealt with at head office. One would need to deduct a management charge of between £25,000 and £30,000 per annum from the profits of Business 4 if the goodwill of the agencies were to be separately addressed. Having performed that exercise, Mr. Ireson adjusted the value of the goodwill of the agencies to £100,000. We accept Mr. Ireson's analysis and we value the goodwill of the agencies at £100,000.

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Property 5

We come now to the value of a property in England. The property is owned by a company incorporated

in the British Virgin Islands called H Holdings Limited, which is in turn owned by the trustees of a discretionary trust. Nothing turns on this for present purposes because the husband accepted that the trustees would, in effect, respond to requests made by him. The property was accordingly treated as one of the husband's assets. It was purchased in 1987 for £387,000. The site upon which the farm stands is apparently a site of special interest. The farm is not a working farm. There is a certain amount of pasture land attached to it which is rented out to a farmer. It has a particular attraction for the husband because it enables him to indulge his hobby of participating in point-to-points and hunter chase races. The wife asserted that he owned some sixteen horses, but this was denied. The husband claimed that the number had been higher, but that it now stood at seven. In his affidavit, he had assessed their value at £25,000, but in his evidence he said that he had sold a horse in July and would now put the value of the remainder at no more than £16,000 or £17,000. He employs a manager who carries out various odd jobs and looks after the horses; the manager is paid £150 per week and has the use of a flat. He employs a groom during certain months of the year at £100 per week; the groom is also given accommodation. Finally, the husband employs a cleaner for two mornings a week. The husband admitted that the restoration of the farm and the execution of improvements carried out since 1987 had been expensive. He estimated that he had spent some £1,000,000 on the property. He now regards it as his home. He lives part of the week in Jersey, living in a flat at Hotel 2. For the remainder of his time, he lives at Property 5. We have recounted this in some detail, not because it affects the value of the property, but because it is relevant to the conclusion at which we have arrived.

The husband put before us an updated market valuation by Messrs. Lane Fox of Cirencester in the sum of £585,000. We accept that valuation and we assess the value of Clattinger Farm in that amount.

Property 4

Both parties agreed that the sum of £22,500 should be deducted from the cost price of Property 4, this being the amount of the interest free loan provided by the wife.

Other deductions

We come now to further deductions which Mr. Voisin submitted should be applied in arriving at the net worth of the husband. The first relates to the losses which, it is said, have been made by the Group and will be recorded in the accounts for the year ended 31st October, 1994. Such losses will clearly affect the net asset value of the Group and thus the net worth of the husband. The evidence was not, however, by any means clear

cut. Mr. Ireson testified that on the figures available to him at 31st July, 1994, it appeared that the Group would achieve a break even for the year. However, it was necessary to charge depreciation of £94,000 and another £55,000 in respect of the husband's increase in salary from £55,000 to £110,000. That would mean a loss for the year ended 31st October, 1994 of £149,000. He agreed under cross examination by Mr. Costa, however, that there had been an element of double counting in writing down the values of the hotels and adding depreciation. He accepted, and Mr. Voisin later conceded, that £34,000 could be allowed against the figure for depreciation which he had suggested. That would reduce the Group loss for 1994 to £115,000.

The husband's evidence about the 1994 loss was based, he said, on additional information as to the Group's performance in August and September. The information had only just become available and Mr. Ireson had not seen it; nor indeed, as Mr. Costa later reminded us, had Mr. Lynch, or those advising the wife seen it. The husband estimated the Group's losses for 1994 at £250,000. We do not feel able to accept the husband's evidence on this point. It is true that Mr. Ireson, in his letter of 3rd November 1994 to Mr. Voisin, which was, by consent, placed before the Court, appears to endorse that figure. He refers to a "budgeted loss year ended 31/10/94" of £200,000, adjusted by the additional salary of £55,000 for the husband, making a total of £255,000. But it is not clear that Mr. Ireson has applied his independent judgment to this forecast and he has certainly not been cross examined upon it. More importantly, the base material was not made available to the wife's advisers. We therefore accept the evidence of Mr. Ireson as given viva voce and we deduct £115,000 from the net asset value of the Group, to take account of trading losses during 1994.

The second deduction which we were invited by Mr. Voisin to make related to the costs of disposal of the property. We were asked to deduct £90,000 representing 3% of the value of the two hotels and Property 5. We agree that the anticipated costs of disposal are a proper deduction. However, it appears to us that the anticipated costs should be restricted to the property or properties, the sale of which is presently in contemplation. It is clear from the evidence that there are plans to sell Hotel 1 and that there are no plans to sell Hotel 2.

As to Property 5, Mr. Costa argued that its sale was a necessity. The husband, however, said that he could only sell the property at a considerable loss on the investment which he had made, and that he had no present intention of selling it. The order which we are about to make would not necessarily require the sale of Property 5. We propose, therefore, to allow a deduction of 3% on the value of the Hotel 1, which we have assessed at £1.1 million. The deduction therefore amounts to £33,000.

The result of our conclusions on the arguments addressed to us on the value of the husband's assets are set out below in tabular form.

5	THE GROUP		
	Hotel 1	1,100,000	
	Hotel 2	<u>1,450,000</u>	
10			2,550,000
	Intangible fixed assets		100,000
	Other assets		
15	Shares Guiton Group		457
	Paintings at cost		9,350
	H Holdings Ltd.		<u>450,000</u>
20			<u>3,109,807</u>
	<u>Less:</u> Net current liabilities	1,231,787	
	Creditors due in excess of one year	176,932	
25	Provision for losses in year to 31/10/94	115,000	
	Provision for costs of disposal of property	<u>33,000</u>	
30	Net value of Travel Group		<u>1,556,719</u>
			<u>£1,553,088</u>
	OTHER PERSONAL ASSETS & LIABILITIES		
35	Property 5	585,000	
	<u>Less</u> secured loans	(725,000)	(140,000)
	Horses		17,000
40	Property 4 Trinity	252,500	
	Less secured loans	(160,000)	
45	Loan from S	(22,500)	70,000
	Estimated legal costs		<u>(50,000)</u>
50	<u>TOTAL NET WORTH</u>		<u>£1,450,088</u>

We turn now to the question of the husband's future prospects, which are of course closely allied to the prospective

fortunes of the Group. Mr. Ireson told us that the measures taken to create economies, in particular the slimming down of the head office costs, should impact upon the profit and loss account of the Group during 1995. He predicted a profit of £150,000 for that year. The husband was not quite so optimistic. Nevertheless, he said that he was reasonably confident, given time, about the future of his business. Having considered all the evidence, our conclusion is that the husband's financial fortunes are at their nadir. We accept his prognostication that in due time there will be a return to reasonable profitability.

What then are the reasonable requirements of the wife? Clearly she needs a home and a reasonable income. It was put to us very forcefully by Counsel for the husband that Property 4 was an unduly generous provision. He pointed out that the wife had originally been prepared to accept a property valued at £187,000. Furthermore, when the Court heard submissions relating to the eviction of the wife from Property 1 in December, 1992, the Court had ordered that, in default of agreement on a suitable property, the husband should rent a property of a similar or equal standard to Property 3 (asking price £185,000) for occupation by the wife and daughter. These are powerful submissions. However, this Court is now better able, after hearing evidence and argument over several days, to make an informed judgment than was the Court sitting to hear an interlocutory application on a narrow issue in December, 1992. We have heard that the husband's home, Property 5, is a property upon which he has expended some £1 million. It is true that in the currently depressed state of the housing market in the United Kingdom, it is now said to be worth only £585,000. Nevertheless, the husband clearly expects its value to rise. He is unwilling to sell now at a price which would involve a substantial loss. The husband has net assets approaching £1.5 million. Taken in the round, the amount contributed by the husband towards the price of Property 4 was not, in our judgment, an unreasonable provision to be made towards the cost of securing a proper home for the wife.

We turn now to the question of a reasonable income. Mr. Voisin submitted that the wife had a capacity to earn money as an interior design consultant. Evidence was given that she had studied at an Art College and had begun, but not completed, a course as a display artist. Some years ago, she had, as we have already described, carried out interior design work for the Group in the sense of choosing colour schemes and appropriate furnishings and fittings. More recently, she had gained a commission through a friend to carry out similar work in a local hotel, for which she had been paid a small fee. The wife told us that she was willing to try to obtain work, but that she was not confident of obtaining it. She called as a witness, Mrs. Lyn Margaret Ogden, who is the assistant manager of an employment

agency in St. Helier. Mrs. Ogden's evidence was that it was very tough for a person of the wife's age, without formal qualifications, to find work. We accept that evidence. The earning capacity of the wife is in our judgment too uncertain to be accorded any weight, and we discount it.

In her affidavit, the wife included a schedule of her expenditure over the period of eight months from 1st January to 31st August 1994. Some of the items were challenged by the husband as being excessive or extraordinary. Much of the expenditure was, however, accepted by the husband as reasonable. We found the husband's tabular analysis of the wife's schedule very helpful in arriving at our conclusion. Our conclusion is that the reasonable requirements of the wife to run the house, feed herself, and live a modest but comfortable life amounts to £20,000 per annum net of tax.

We have now to consider what is an equitable lump sum to award to the wife, bearing in mind the findings which we have made. In effecting a redistribution of assets, we have to try, as submitted by Counsel for the husband, to do justice to both parties. The aim is, so far as possible, to place both parties in as advantageous a position as they would have been if the marriage had subsisted. We note that the marriage itself lasted for twenty years and that the parties had lived together for four years before that. Our judgment is that the application of the one-third ratio will result in as equitable a redistribution as is possible in the circumstances and we accordingly award the wife a lump sum of £482,500, to include Property 4.

We recognize that the husband would at present find it very difficult to raise the cash necessary to meet this award. Mr. Voisin submitted that the husband would need three years to clear the loan of £160,000 secured upon Property 4. We accept that submission and we order that the husband shall convey Property 4 to the wife free of all charges and encumbrances on or before 30th November, 1997. In the meantime, he will, of course, remain responsible for the payment of the interest due on the loan. In other respects, the wife will assume responsibility for the maintenance and upkeep of the property. The remaining capital sum of £252,500, i.e. £482,500 less £230,000, will be paid on or before 30th November, 1999. We have fixed this relatively long period because we are conscious of the difficult financial position in which The Group finds itself. On the assumption that Hotel 1 is sold in the near future, it would, however, be possible for the husband, by selling Property 5, to raise capital at a much earlier stage. On the other hand, the early sale of Property 5 would give rise to other problems. First, the husband would realize a considerable loss on his investment. Secondly, he would need to find alternative accommodation. We therefore propose to fix the interest payable on the outstanding capital sum at a rate which will encourage the

husband to pay the capital sooner rather than later. We note that Mr. Voisin for the husband suggested that interest should be paid at the rate of 12% per annum on the (admittedly much smaller) capital sum which the husband was proposing to pay. We accordingly adopt that figure and we order that, pending payment of the capital sum of £252,500, the husband will pay interest at the rate of 12% on any outstanding capital balance. We order that the interest will be paid monthly in arrears on the first day of each month, by standing order into a bank account in the name of the wife.

It only remains for the Court to deal with the question of security for payment of the amount now due to the wife. During argument, it was agreed between Counsel that the appropriate solution to this problem was an acknowledgement by the Travtel Group of liability, jointly with the husband, for the amount due. We accordingly order that the husband procure the execution by the Group of a promissory note acknowledging its indebtedness to the wife, jointly with the husband, in the sum of £482,500.

Authorities

- Urquhart -v- Wallace (1974) JJ 119.
- Ostroumoff -v- Martland (1979) JJ 125.
- Stanaway-Ivey -v- Overland (1980) JJ 233.
- O'Donnell -v- O'Donnell (1975) 2 All ER 993.
- Howarth -v- McBride (1984) JJ 1.
- Preston -v- Preston (1982) 1 All ER 41.
- Smith -v- Smith (1983) 4 FLR 154.
- Potter -v- Potter (1982) 3 All ER 321.
- B -v- B (1989) 1 FLR 119.
- S -v- S (10th May, 1988) Times.
- Le Couillard -v- Falle (4th February, 1988) Jersey Unreported.
- Speck -v- Caro (19th November, 1993) Jersey Unreported.
- Boyd -v- Alsford (15th March, 1994) Jersey Unreported C.of.A.
- Lapidus -v- Carter (28th November, 1985) Jersey Unreported.
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