

ROYAL COURT
(Family Division)

122.

27th June, 1996

Before: The Deputy Bailiff, and
Jurats Potter and Quérée

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| <u>Between:</u> | Dennis John Quérée | <u>Petitioner</u> |
| <u>And:</u> | Emma Woolhouse | <u>Respondent</u> |

Appeal by the Respondent against the Order of the Greffier Substitute, Family Division, of 16th August, 1995: (1) that the *nue propriété* of the former matrimonial home be transferred by the Respondent to the Petitioner, subject to a reciprocal transfer of the usufructuary life interest therein by the Petitioner to the Respondent; (2) that the Court have power, in the event of non-co-operation by either or both parties in the said transfers, to draw up the necessary deed of contract to be presented, if necessary, to the Court by the Viscount; and (3) if the Petitioner should choose to sell his interest in the property, acquired by virtue of the said Order, the proceeds of sale be divided in the following proportions: 1/5th to the Respondent; 4/5ths to the Petitioner.

Advocate A.D. Hoy for the Petitioner.
Advocate B.E. Troy for the Respondent.

JUDGMENT

5 THE DEPUTY BAILIFF: This is an appeal filed by the Respondent wife
against a decision of the Deputy Greffier 16th August, 1995. We
have not treated the appeal as a full rehearing by calling
witnesses; we have a transcript and all the documents that were
presented to the Greffier in two large files before us. The point
that we have to decide is in any event a narrow one and is really
based on the way that the Greffier exercised his discretion. The
wife, at the time of the hearing before the Greffier, was 65. The
parties were married on 27th July, 1989. They purchased jointly a
10 property 22 Clos des Pas, Green Street, for which the
consideration was £31,000 for the realty and £4,000 for the
contents. That sum was funded by a loan of £23,500 from the
husband's mother, broken up as an unregistered bond of £16,500
and, apparently, a verbal promise to repay the further £7,000; and
15 then £7,000 in favour of National Westminster Bank Finance (CI)
Ltd secured on the property and £1,500 provided by the husband
from the sale of his motorcar.

We should add that when the parties married they adopted the wife's daughter from a previous marriage. That daughter is now 29.

5 The home, we are told, is worth about £115,000.

10 The divorce was obtained after five years' separation but before that, when financial matters were causing the fabric of the marriage to tear apart, an agreement was entered into which gave the wife security of occupation in the house. We agree with the Greffier - it is a strange document. He described it as "*reading something like a lease*". There were provisions in it to allow the wife to take in lodgers; the property is, apparently, semi-detached but has, perhaps, two lettable rooms. The wife was to pay the Parish occupiers' rate and half the foncier rate and half of the insurance premiums. However one looks at it, it clearly was not a clean break agreement.

15 At one point Advocate Hoy attempted to argue on decided cases that the agreement should not have been interfered with all but very quickly he conceded that argument as untenable because paragraph 5 of the agreement reads:

20 "*That this present agreement shall not estop either party from a) instituting any proceedings for a divorce on any grounds that exist or may be alleged to exist at the date hereof or at any future date save that neither party shall allege that the other is in the state of desertion, or (b) in the event of certain proceedings seeking a variation of the terms of this present agreement*".

25 We have, in any event, no doubt that there is sufficient in Articles 27, 29A and 33 of the Matrimonial Causes Law to allow us to vary this agreement.

30 We have the position that the wife lives in the property, the husband lives in his mother's house, apparently caring for it as she in turn lives in a nursing home, being of feeble health. That constantly drains into her capital reserves. The mother's home is worth some £250,000 and we feel that, following Ostroumoff -v- Martland (1979) JJ 125, the expectancy of an only son inheriting that property should have been taken into account.

35 We agree with Advocate Hoy that there is some difficulty in reading the Greffier's judgment because on p.6 it says:

40 "*I have excluded the likely possibility of the husband's inheritance from his mother as being too remote for the purpose of these proceedings*".

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The Greffier goes on to say a little later in his reasons "In making this decision I take into account the husband's obligation to pay back £23,500 to his mother or her estate which might prove academic because I assume that he will in due course stand to benefit in her estate". We note this particularly because the husband in his affidavit before the Deputy Greffier says of his mother's property "I anticipate that this property will be devised to me on my mother's death".

We have a wife who has to maintain this property with apparently some £22,000 in savings. She has a car about ten years old that she can still drive. She is no longer employed by the nursing agency but continues for the time being to be paid by them and we presume that her leaving that employment was because of her age. She is apparently actively looking for alternative work. She has earnings of £375 per month from her Jersey pension, £65 from her English pension and £30 per month from her savings. She still has to maintain and upkeep the property.

The husband having in effect purchased the house now lives in and maintains his mother's house. It seems to us that to order the sale of the property would serve nobody's purpose and we feel that we will be guided in that by the words of the Court of Appeal in O'Connor -v- O'Conner (1974) JJ 179 where they said:

".... this is not a penal jurisdiction but a discretion to achieve the best possible result in equity".

We can see that the occupation of this house may become more important as the wife grows older. She has, it is true, never made a claim for maintenance but her financial position may change. We have, with counsel, examined the alternatives of perhaps a different form of ownership such as "moitié par moitié en indivis". But we cannot agree - and we do not think now that there is much disagreement between counsel - that this will advance matters. The Greffier's judgment is, in our view, fair to both parties. The husband owns the property subject to the wife's life enjoyment. If the husband wishes he can sell the house but the wife will then have 20% of the sale proceeds. We always have to bear in mind that despite the way that the funding was arranged the parties agreed that the property would be purchased in their joint names, but we are certain, having heard counsel this morning, that joint ownership will only lead to intense problems. What can be more equitable than the wife having security in the house which the husband owns but can only sell subject to her life enjoyment and if, on the sale, he yields up to her 20% of the net sale proceeds?

We would say this: we feel that the Deputy Greffier's reasons need some clarification. We will order that the life enjoyment will terminate so that the sale can take place if the wife should die but also if she should remarry, or cease to live in the house

as her place of principal residence for more than three months. During the time that she has the life enjoyment of the property she must maintain it in accordance with customary law paying all the usual outgoings of a *usufruitier*.

Authorities

Rakusen & Hunt: Relevance of Existing Agreement.
: A home for the parties to the marriage.

O'Connor -v- O'Conner (1974) JJ 179.

Ostroumoff -v- Martland (1979) JJ 125.

Morgan -v- Morgan (1977) 2 All ER 515.