

H v H (Lump Sum: Interest Payable)

[2006] 1 FLR 327

16/06/2005

Barristers

Private: Jonathan Cohen QC

Court

Family Division

Facts

Following a hearing of the wife's ancillary relief claim, the husband was ordered to pay a lump sum of £2.4m, and, until that sum was paid, he was to continue to pay the mortgage on the matrimonial property, the mortgage on the property in which the wife and children were living (cost about £90,000 pa), plus periodical payments of £3,917 per month. It was expected that the wife would use about half the lump sum to purchase a home, and that the remainder would be invested. Under the terms of the order, it was clear that the court expected the immediate sale of the matrimonial property, with an equity value of about £6m. However, the husband was anxious to retain the property if he could, and sought time to pay the lump sum without selling the property. The resulting order provided for payment of the £2.4m within 30 days, and, in default, the property was to be sold forthwith on the open market, with other consequential provisions. The husband was unable to raise the additional finance, and on the due date issued a summons for the time period to be extended. Unfortunately, this came before a different judge, as the original judge, a deputy, was away. The parties then agreed that arrangements for the sale of the property would proceed, but the husband would be given more time to raise the lump sums. The outstanding issue was whether the husband should pay interest on the lump sum until he had made payment in full. Interest at the prescribed rate would amount to a maximum of about £125,000 pa net. The husband's position was that although interest did run, there should be a deduction for the benefit which the wife was receiving in the form of housing and periodical payments, at a current cost to the husband of £137,000 pa net. The wife accepted that the periodical payments should be deducted from the interest payable, to prevent a double benefit, but did not concede that there should be any deduction for the benefit of occupying a property whose mortgage was being paid by the husband.

Held

Held - refusing the wife's application -

(1) The benefits which the wife was receiving, under the interim provisions of the order, were far more than the equivalent interest which she would have received had the £2.4m been paid on the due date. The wife's housing was a vital part of the interim situation, and was an extremely valuable benefit. Renting a similar property would cost a sum in the region of the annual cost of the mortgage. Had the wife received the lump sum in full she would have had to use half of it to rehouse herself and the

children, and would have earned interest only on the remaining £1.2m. There should not be any 'double counting'. It was not appropriate for there to be any interest directly payable until the lump sum was due. It would be sensible for parties to make this clear in future by using appropriate wording in the court order (see para [12]).

(2) Parties should always attempt to make arrangements for this type of hearing to be before the judge who dealt with the case. If the judge was a deputy, the arrangements might require a little bit more preparation, but it was not beyond the wit and intelligence of solicitors/counsel to arrange a telephone or video hearing at times that were convenient to the parties and to the judge (see para [6]).

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