4PB, 6th Floor,
St Martin's Court,
10 Paternoster Row,
London, EC4M 7HP
T: 0207 427 5200
E: clerks@4pb.com
W: 4pb.com

P v P (Financial Provision: Clean Break: Costs Schedule and Schedule to Judgement)

[2002] 2 FLR 1075

22/05/2002

Barristers
Private: Jonathan Cohen QC

Court
Family Division

Facts
The parties were in a dispute regarding the financial settlement to be reached in their divorce. They had two main assets: a company which both had established and run, and which they owned as equal shareholders, and land on which their business was located, also owned in equal shares. The total net value of all the assets was just under £2.5 million. Both sought a clean break settlement. A preliminary issue arose as to whether the settlement should take into account the possibility that planning permission might be obtained so that the land could be sold off for residential development, which would greatly increase its value. The wife contended that the chances of obtaining permission were good and that the parties should enter into an option agreement with a development company with an option price of £4 million. The husband put the chances much lower but asked for an adjournment if his Lordship agreed with the wife.

Held
Held – ordering the wife to transfer her interests in the company and land to the husband, the husband to pay a lump sum of £925,000 to the wife, periodical payments and school fees for the children, and each to transfer to the other certain other assets –

(1) The evidence of the husband's expert was to be preferred to that of the wife in considering the prospects of obtaining planning permission. Accordingly, it would not be fair for the parties to enter into an option agreement and there should be no adjournment of the proceedings. The land value taken for the purposes of the proceedings ignored any, or any significant, figure for 'hope value' in respect of planning permission, leaving a figure of £1.5 million.

(2) The approach to the s. 25 exercise as set out by the House of Lords in White v White required that reference to equality as a yardstick did not mean only equality of capital based on the snapshot valuations before, or found by, a court. Future income and prospects were also relevant. It was axiomatic that the court should have regard to the nature of the relevant assets and to issues such as affordability. Thus, liquidity issues, difficulties in borrowing and the nature of the assets could be reasons for departing from equality.

(3) It was not helpful to analyse the percentages of the awards made in ‘post-White ‘ cases in order to arrive at the appropriate figure for the wife in the present case. Such an approach ran counter to that set out in the statute and to its application in White v White itself.

(4) Allegations and counter-allegations of conduct were irrelevant to the determination of the case. The history of the marriage and the business strongly supported a conclusion that a 50/50 split in the ownership of the company and the land represented a fair division between the parties, even if one ignored White v White .This meant that additional factors and reasons relied on by either party to support a departure from equality would have to be compelling.

(5) It being agreed between the parties that the husband would continue to run the business from the present site, it would be a terrible unfairness to the wife if planning permission were ultimately to be granted and she did not share in the increased value of the land. To avoid such unfairness, there should be a claw back in the wife’s favour of half of any increase.

(6) The husband would benefit from his continued running of the business from remuneration and benefits-in-kind which would no longer be available to the wife, whose income was likely to be considerably less than his. The growth in the value of the company was also likely to be considerably higher than that achieved by the wife’s capital. Accordingly, she should receive 54.3% of the total assets and the claw back, and the husband should receive 45.7%.

(7) The wife’s late raising of the ‘option issue’ and her pursuit of it on poor and unconvincing evidence had precluded sensible discussion on the ‘planning issue’ and lengthened the trial unnecessarily. This should be reflected in an order for costs against her. The wife was to pay 80% of the costs of both sides, up to and including the main hearing relating to the ‘planning issues’ and the option and claw back to be taxed or assessed on an indemnity basis. Thereafter each side was to bear their own costs, to be taxed on a standard basis.

Permission
Reproduced with kind permission from Justis