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

D v D (2012)

[2012] EWCA Civ 1641

11/12/2012

Barristers
Private: Jonathan Cohen QC

Court
Court of Appeal (Civil Division)

Practice Areas
Financial Remedies

Summary
In ancillary relief proceedings, a wife was entitled to a lump sum of £2.2 million which included some of the value of a hotel business which her husband had inherited. Although the judge had erred in concluding that the hotel business had effectively no value at the time the husband acquired it, his assessment of the appropriate split of assets was not infected by that error given the wife's contribution to the business and the difficulty in effectively valuing the business at the time of the transfer to the husband.

Facts
The appellant husband (H) appealed against a decision to award the respondent wife (W) a lump sum of £2.2 million in addition to the matrimonial home in ancillary relief proceedings.

H had inherited sole control of a hotel business from his father, who had in turn inherited the business from his father. When H and W had entered into their relationship, H owned the hotel property jointly with his two sisters. He subsequently bought out his sisters to become the sole owner of the properties as well as the business. The judge found that at the beginning of H's and W's relationship, the net assets in the business apart from the hotel properties themselves were effectively nil. He concluded that W had made a high contribution to the hotel's success and that it would be impossible to identify H's and W's differing fractions of contribution, and accepted W's argument that one-third of the available assets should be attributed to H and excluded from the sharing principle, and the remaining two-thirds should be divided between her and H.

H submitted that the judge had denied him relief from the general sharing principle to reflect the fact that a substantial part of the available assets had derived from family inheritance and inter-generational transfer. He argued that the judge should have identified the value of the inherited assets, ring-fenced them, and removed them from the tally of assets properly available for division by the court, and following that course he should have awarded W a lump sum of £1.5 million instead of £2.2 million.

Held

The judge erred in accepting that the business itself was of effectively no value at the date H acquired it from his father, but the result he ultimately ordered was not infected by that error. In light of the financial information available, the business would have had some value at the date of transfer to H. However, valuation experts were not pressed to provide a valuation of the business at that time, and such a valuation would have been a difficult exercise, Whiteman Smith Motor Co Ltd v Chaplin [1934] 2 K.B. 35 considered. It was unlikely that the value of the business was as significant as H had suggested, and in any event W's commitment had played an important role in maintaining such value as it had. Further, W had conceded that one-third of the total net assets should be extracted and protected from her claim, and had demonstrated that the judge had acted on that concession, without which the award might have exceeded £2.2 million. The effect of the order was to give W approximately one-third and H two-thirds of the total available assets, and that reflected the derivation of the hotel and its trade. Accordingly, it was inappropriate to interfere with the judge's assessment of the appropriate split of assets (see paras 16-17, 27-28, 33-34, 36 of judgment).

Appeal dismissed