Neutral Citation no [2003] NIFam 19

Ref:	**GILA4193**
Delivered:	**25.10.03**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

G

Petitioner

and

G

First Respondent

and

J

Second Respondent

GILLEN J

[1] In this matter the Petitioner applies for financial provision under Articles 25 and 26 of the Matrimonial Causes (NI) Order 1978 ("the 1978 Order") as amended. This application is contained in the prayer to a divorce petition issued by the Petitioner. Notice of Intention to proceed with this application is dated the 7th March 1997, the original petition having been issued by the Petitioner on the 19th November 1996 pleading five years separation between the parties. The original application was further supplemented by claims for property adjustment orders by leave of the Master granted the 6th September 2001. When the case started there was also before me an application issued by the Respondent for financial provision pursuant to Articles 25 and 26 of the 1978 Order but it is clear that the Respondent does not wish to pursue that relief. The Respondent had made a further application under Article 12 (2) of the 1978 Order dated the 10th March 1997 applying to the Court to prohibit the granting of a Decree Absolute pending consideration of the financial provision that was proposed to have been made, if any, by the Petitioner for the Respondent. That also has not been pursued. The final application was by the Petitioner pursuant to Article 39 (2) of the 1978 Order for an Order setting aside the transfer by the Respondent to the second named Respondent, JG (John) of premises at

numbers 4/10 Amelia Street, Belfast the application being dated the 8th April 1997.

INTRODUCTION

[2] The Petitioner wife is aged approximately 68. The husband (H) first Respondent is aged approximately 78. The parties were married in April 1955 and there are three children namely J the second named Respondent (who is now aged approximately 46 and is a Farmer and married with five children), W (who is now aged approximately 41, an Agricultural Mechanic who is married with three children) and G (who is now approximately 39, an Electrician and married with three children). Although the matter was not without dispute, it looks as if the husband and wife last lived together in September 1986.

[3] The facts of this case, as they unfolded to me, presented a family riven by matrimonial antagonism and filial dispute. For several years now this family has engaged in disparate legal proceedings one with the other which for the present has crystallised into a situation where the Petitioner, G and W are on one camp and the father and J are in another camp. I found no uplifting thread in the sorry history that was revealed to me and this case, which lasted over many days and ought to have been resolved between the parties without the inordinate expense which this trial has engendered, is but one more illustration of a family at war. It was my clear impression that the parties were simply incapable of resolving any meaningful dispute between them without recourse to lengthy litigation oblivious to the costs incurred or the raw wounds thereby created. I concluded that not only was a clean break solution vital in this case but that steps should be taken to bring some finality to their affairs and reduce as far as possible the propensity to seek out further causes for litigation.

THE ACCRETION AND DISPOSAL OF THE FAMILY ASSETS

[4] Mr Malcolm, who appeared on behalf of the first named Respondent helpfully set out in a well marshalled skeleton article the variety of acquisitions and disposals by both H and his wife. The salient factors emerging from this and from the evidence were as follows:

(a) in 1944 H acquired by inheritance his father's interest in a 44 acre family farm on the Hillhall Road, Lisburn (hereinafter called, "Hillhall"); a residue of 25 acres was left to H's widowed mother and that holding, adjacent to the family farmhouse, included the separate dwelling known as "Holly House" and associated lands;

(b) in April 1955 the parties married and initially lived with H's widowed mother at Hillhall where the three sons were born;

(c) in 1957 H left his employment in a clothing firm and purchased an interest in another clothing manufacturing business WJ McBride and Company;

(d) in 1962 H's mother died and left him the 25 acres at Hillhall. H alleged that his deceased mother wished J to be the ultimate beneficiary of Holly House and the associated lands;

(e) in 1962 WJ McBride and Company Limited purchased factory premises at 4/10 Amelia Street (hereinafter called "Amelia Street");

(f) in 1966 H purchased 15 acres as Ballymullan Road, Lisburn (here and after called "Ballymullan");

(g) in 1971 WJ McBride and Company purchased 125.58 acres at Moorehall from a Frank Fury subject to a writ of residence in the farmhouse for his lifetime (hereinafter called "Moorehall"). At this stage the company changed it name to J&S Graham and Sons Limited (here and after called "the Company");

(h) in 1971 H purchased 108 Finaghy Road South, Belfast;

(i) in 1975 Frank Fury died. The entire family moved from Hillhall to Moorehall. The son J farmed the land at Hillhall.

(j) in 1975 the wife and her sister inherited 32 acres at Moymore, Killylea (here and after called "Moymore");

(k) in 1976 the wife's mother died and she and her sister inherited a 50 acre farm in Killylea known as the "Hill";

(l) in 1997 (or thereabouts) the son J began to farm the land at Moorehall as well as those at Hillhall;

(m) 1978 commenced a series of share transfers in the company. At this time 7,000 shareholding was allocated as one share to the wife, 5,999 to the husband and 1,000 to another person. The husband then arranged for the transfer to the wife of the 1,000 shares formerly owed by this other person. At this stage therefore the husband had 5,999 shares and the wife had 1,001;

(n) on the 30th March 1978 the husband transferred 2,450 of his shares to the wife bringing her holding to 3,459 and reducing his holding to 3,541;

(o) on the 30th March 1978 both husband and wife transferred 40 shares each to W. On the 8th February 1978 a further 400 shares from each of them was transferred to W. A further transfer of 400 shares each was made to W on the 6th March 1980 and on the 30th March 1982 a further 600 shares each was transferred by the husband and wife to W.

(p) on the 30th March 1983 the husband then transferred 680 shares in the company to J. At that stage therefore W had 2,880 shares, the wife 2,019, the husband 1,421 and J had 680 shares;

[5] There then commenced a series of transfers of various properties to the children. The significance of these transfers was a subject of much dispute

during the case and played a crucial role in the arguments that arose out of the disposal of Amelia Street by the first named Respondent, the husband, to the second named Respondent J on the 23rd December 1996 barely four weeks after the wife had issued a petition for dissolution of marriage. It was clear to me that this husband and wife were making provisions for their children as time went on working towards a rough and ready plan whereby each would be provided for commensurately. The nature of the provision was not without dispute between the parties but it looks as if the provision was as follows:-

(i) 1983 H provided £37,500 to J for the purchase of a house and 5 acres at 83 Killylea Road;
(ii) 1984 H transferred 108 Finaghy Road South to G;
(iii) 1989 H provided funds to W to aid in the construction of a house on a site formerly owned by the company;
(iv) on the 19th October 1999 G was married and H transferred to him Holly House;
(v) in 1994 H released a company debt to him of £6,417.29 and agreed to the transfer by the company to W of a building site of 0.628 hectares on which he was constructing his home with financial assistance from the husband;
(vi) in 1994 or hereabouts the wife transferred to W her interest in the 16 acres at Moymore;

[6] One other background issue was of significance in this case. The parties had separated in September 1986. The wife had continued to live at the matrimonial home at Moorehall and the husband had gone to live at his family home at Hillhall. In August 1987 the husband alleges that he gave his wife £11,000 and kept £5,000 to himself out of savings. He further alleges that on the 28th November 1988 he split between the two of them savings of £101,000,59.78. The wife's case was that after the parties separated, the husband had given her no money, save for these sums mentioned above, to maintain herself and the house where she was living had deteriorated over the years. She described dry-rot, vermin, and general deterioration in what had once been a beautiful house. She said that she started to work in paid employment at first with Victim Support and now works part-time with an income of £1,000.00 per month which is to be reduced giving her part-time status. In addition she has income from rentals of the land at Killylea which she has let at £4,000.00 per annum.

[7] Both the husband and wife gave evidence before me on these background transactions which took place prior to the wife's petition for divorce being issued on the 8th November 1996. Whilst I took into account the fact that the husband is a man of poor health (I was informed by Mr Malcolm that he suffers from Meuniers Disease) and has undergone neuro-surgery on two occasions, I found him an unconvincing and evasive witness. I formed

the impression that despite his current disabilities, he still exhibited the thinking of a shrewd businessman and a wary entrepreneur. On the other hand I found the wife a more forthright and convincing witness albeit it that I doubt that she was the doormat that at times she purported to have been. I did accept her evidence that in essence the husband had been the financial controller in this household. This has been a long marriage and I have concluded that this is a classic example of two hardworking parties making contributions of equal value albeit it in very different spheres of the domestic and business world. The husband was a shrewd and successful businessman and farmer. The wife was an extremely capable and hardworking woman in the context of the family home. I have no doubt that the contribution of each party to this marriage and to the accretion of the family wealth was of equal value. It is not without significance that the husband, in an attempt to retrieve the marriage, wrote to his wife in a letter of the 26th December 1995 the following terms:

> "We both worked hard to build up a successful business, there is no reason why we should not reap the rewards".

[8] The husband sought to argue through Mr Malcolm that this marriage had effectively ended de facto rather than de jure in 1986. Before me he instanced the division of the sum of £101,000.00 or thereabouts which he said had been held in the Channel Islands (albeit he could not remember in whose name the account was) as a final division between the parties. Refuting the allegation by the wife that this was but one of a number of accounts which he held off-shore (totalling she alleged £300,000.00) he argued that the respective claims of the parties were determined at this stage and that the issue should not now be reopened.

[9] In the recent case of *Parra v Parra* (2003) FLR 942 Thorpe LJ said at paragraph 27:

> "The parties have, perhaps unusually, ordered their affairs during the marriage to achieve equality and to eliminate any potential for gender discrimination. They had in effect elected for a marital regime of community of property. In such circumstances what is the need for the Courts discretionary adjustive powers? The introduction of the "no order" principle into section 25 of the Matrimonial Causes Act 1973 might contribute to the elimination of unnecessary litigation. As a matter of principle I am of the opinion that Judges should give considerable weight to the property arrangements made during marriage and, in cases

> where the parties have opted for equality, reserve the exercise of the adjustive powers to those cases where fairness obviously demands some reordering."

[10] In this instance however, I have not the slightest doubt that there was never any intention on the part of either party to terminate the obligations toward each other with the division of this account in 1986. I am satisfied that this was a notion that grasped the husband's imagination sometime shortly before this hearing. It is highly significant I believe that neither of the affidavits which he made in this matter namely that of the 12th May 1997 (12 pages in length and 53 paragraphs) or that supplementary affidavit of 22nd November 2001 made this case in any measure at all. I have no doubt that had he genuinely believed this, it would have been a corner stone of his case as set out in his affidavits. On the contrary I accept the evidence of the Petitioner that this payment in 1986 was merely a recognition by him that his wife needed money to live on and that he was making some belated provision for her in this regard. It was never meant to address the outstanding issues of the other assets. I simply did not believe him when he urged the contrary in the course of his evidence. In my view this is an example of his recognition that the contribution of his wife merited an equal approach in distribution of the assets between each other and that this division of one bank account was but one illustration of the theme that should permeate the resolution of their affairs. Had this not been the case one wonders why he said in a letter of the 27th December 1995 (over 9 years after the alleged distribution) the following:

> "As mentioned on the phone last night I am looking forward to you coming over to see me at Hillhall and make a start at putting our affairs in order. I am now 71 years of age and the sooner this is done the better."

[11] In the event I have therefore determined that the primary assets to be considered in the course of this application are as follows:

(a) Hillhall – which the expert valuers on each side have agreed a valuation of £460,000;

(b) Ballymullan which the experts have agreed a valuation of £86,000;

(c) Amelia Street which, as I will deal with in the course of this Judgment, was belatedly sold, the net proceeds amounting to £437,907.00 (the evidence would appear to be that there was income from Amelia Street to the second named respondent from the date of the transfer by H to the date of the sale of approximately £83,000);

(d) The value of the shareholdings in the company. This is a matter of great dispute and I shall deal with it in some detail in the course of this judgment;

(e) Whilst the above assets were regarded in this case as "the husband's assets", the Hill was regarded as the wife's asset and an agreed evaluation of £160,000.00 was arrived at in this instance.

[12] So far as income is concerned, I have already outlined the income of the wife. The husband alleges that now his only income (after the sale of Amelia Street) was his state pension although it emerged from his evidence that J contributed towards his major bills.

[13] Before outlining the general legal principles that govern my decision together with my conclusions, a number of disparate issues arose in this case which I shall deal with in turn.

AMELIA STREET

[14] As I have indicated, when this case commenced there was before me an application pursuant to Article 39 (2) of the 1978 Order as amended claiming to set aside the transfer of the Amelia Street site to the second named Respondent and further ordering the second named Respondent to account for all the income which had been received during the period of the alleged "ownership" of Amelia Street together with interest amounting to a figure which the evidence revealed is approximately £83,000.00. In the course of the hearing, after a number of days protracted valuation evidence about the site, I was informed that the parties requested an adjournment for several months in order to effect a sale of the property. I am informed this exercise has been carried out by the second Respondent to a third party with the Petitioner's written consent. In the event it is my conclusion that technically there may not be any need now to make a ruling on this aspect of the case on the basis that the Court can no longer set aside the disposition of Amelia Street. Properly Mr Malcolm has conceded that this would not preclude the Court from taking the view that it should approach the case on the basis that the sum obtained should be taken into account as a matrimonial asset. For the removal of any doubt however, I wish to make it clear that had I concluded that the matter did fall to be determined by me pursuant to Article 39 of the 1978 Act, I would have unhesitatingly come to the conclusion that the disposition in December 1996 had been carried out with the intention of defeating the claim for financial relief of the Petitioner and I would have made an order setting aside that disposition. I am of this view for the following reasons:

(i) under Article 39 (9) where, as in this instance, a disposition had taken place less than three years before the date of the application, there is a presumption, unless the contrary is shown, that the

person who disposed of the property did so with the intention of defeating the applicant's claim for financial relief. I am satisfied that the presumption was not rebutted in this case.

(ii) I did not believe the first named Respondent in his evidence before me when he asserted that this transfer of Amelia Street to the second named Respondent in December 1996 was simply part of the process of dividing the assets between the children and, in his words, to "even things up if I should die". He also added that he felt that death duties would be avoided if he signed this property over 7 years before he died. It is clear that both the mother and father had engaged throughout the marriage in a policy of passing on certain monies and assets to the children in the manner outlined. Such periodic distributions cannot be weighed with a jeweller's scales and I reject the approach adopted by Mr Malcolm on behalf of the first Respondent who sought to ascribe specific values to each disposition. To do so fails to look at the overall picture. I am satisfied that the Petitioner was telling me the truth when she said that the general plan, in a very loose and uncomplicated fashion, broadly envisaged J, the first born son, and now a Farmer, eventually obtaining Hillhall and Ballymullan (which he now farms), the son W1 to receive Moorehall, the Petitioner's family farmstead (and this was what was revealed by the unfolding nature of the share transfers to him), and G, who had an aptitude for business was to benefit from the business and commercial potential of Amelia Street. It emerged in cross examination of the first named Respondent and through discovered documents, that for a number of years G had been dealing with the potential of Amelia Street. A firm of town planners and architects Ostick and Williams had been involved in assessing the potential. Professional advisors including Lambert Smith Hampton – Agents and Development Consultants, Ostick and Williams – Architects and Bailie Connor Partnership Quantity Surveyors had all been engaged in a development appraisal as early as 1989 for this property. A document before me in the plaintiff's bundle of disclosures at page 422 revealed that that appraisal had been carried out by those experts specifically on behalf of the first named Respondent and G. As recently as the 26th January 1996 Lambert Smith Hampton wrote to G (found in the disclosure of documents at page 409) making various recommendations about the site. Paragraph 3 of that letter declared:

> "Once outlining planning permission has been granted, I would recommend that the property is openly marketed with a view to attracting a suitable tenant. The rental achieved will obviously

> be dependent upon the size of the development and the specification required.
>
> I trust the above is satisfactory for your immediate purposes and look forward to hearing from you once you have had an opportunity to consult with your client."

(iii) In light of the years of involvement of G in this property, without any obvious involvement from any of the other two brothers, I simply disbelieved the first Respondent when he declared that it had been his intention always to give this property to J. Moreover he admitted that he had not told G that it was going to J and recognised that J would have been surprised to learn that it was going to him. It beggars belief that, if, as the first Respondent conceded in cross examination, J had nothing to do with the proposals or plans for Amelia Street before it was transferred to him, and that all the negotiations and dealings had been carried out by G and his father over a number of years, somehow the overall plan was always that the property would go to J. I much prefer the wife's evidence in this regard and I consider that the husband's untruthful evidence on this topic was but one more instance of his generally evasive and unconvincing account to me.

(iv) In cross examination it was put to the first Respondent that it was always his intention to leave Hillhall and Ballymullan in his will to J and that that was going to be part of the plan. The first named Respondent was particularly evasive when being questioned on this matter simply stating on a number of occasions, "a will can be changed". Moreover he ignored the possibility that provision could have been made for J by transferring the farm at Hillhall to him subject to a life interest for the first Respondent.

(v) The timing of the transfer to J was also highly significant being carried out, as I have already indicated, scarcely one month after his receipt of the wife's petition for divorce. I have no doubt that there was a clear connection between these two events and it was a deliberate attempt to dispose of property with the intention of defeating or reducing the applicant's claim for financial relief.

[15] Mr Philip Caughey a member of the Chartered Institute of Accountants and the Director of Personal Tax Affairs in Goldblatt McGuigan, specialising in capital gains tax and Income Tax, was called on behalf of the Petitioner to deal with the capital gains tax implications arising from this disposition and sale. His evidence proceeded on two alternative scenarios. One was that the property was sold by the first Respondent and the other that the property was sold by the second Respondent. I pause to observe at this stage to indicate that the company auditor Victor Coleman had carried out a

CGT calculation. It was symbolic of the rancour existing between the parties in this case that even though the gap between the experts was somewhere between £10,000.00 and £16,000.00, on the two calculations, rather than an agreement being reached without the need for the witnesses to be called, no compromise was reached. I do not know where the blame rests for this failure to reach an accommodation on a figure which paled into insignificance in terms of the overall estate in this matter. Mr Caughey was also recalled to quantify the rentals which had been received from Amelia Street during the period in question notwithstanding the fact that Mr Hall, Accountant on behalf of the first respondent and Mr Caughey had, at the Court's exhortation, eventually agreed the CGT figures. Irrespective of any other Order for costs in this case, I rule that the Petitioner should bear the costs of Mr Caughey.

[16] In the context of Amelia Street, Mr Martin on behalf of the Petitioner argued that not only should the net sum of the sale (after deduction of Capital Gains Tax which I hold to be £437,000) be taken into account but also the £83,000.00 which Mr Caughey estimated to be the value of the rentals received subsequent to the disposition to J in 1996 together with interest. The interest point by itself seems to me to be unrealistic calculated as it was on the basis that the rental received would have generated compound interest in a bank account on a quarterly basis. I would not have taken the interest into account. In any event I am not prepared to take the remaining sum into the family pool. I am satisfied that if this disposition had not been made, the rental received would have be regarded as income for the Respondent much in the same way as the Petitioner has received income from her employments. I entertain strong suspicions in any event that the rental was used to the benefit of both the first and second named Respondents with each of them recognising why the disposition had been made. I am therefore satisfied that this amounted to income spent by the first and second named Respondents over the years and to which the Petitioner would have taken no objection had the improper disposition not been made. Accordingly I do not propose to take the sum of £83,000.00 into account in assessing the pool of assets to be distributed in this case.

[17] One further matter requires to be looked at in this context. During the course of the hearing, Mr Malcolm on behalf of the first Respondent argued that it would be unfair to set aside the disposition by the first named Respondent of Amelia Street to the second named Respondent whilst ignoring the disposition by the Petitioner of Moymore to W in 1994. I find this purported analogy without merit. In the first place, no application has been made before me or any other Court to set aside the disposition of Moymore. Mr Martin on behalf of the Petitioner correctly argues that Article 39 determines the dividing line between historical dispositions which are relevant and the value of which should be attributed to the transferor spouse and those which should not. No such application was ever made with

relation to Moymore and I confess that I find the suggestion by Mr Malcolm that the first named Respondent did not wish to add to the litigation to be somewhat curious in light of the enthusiasm with which a number of other aspects of litigation have been pursued within this family. I regard the disposition of Moymore, unlike that of Amelia Street, to have been simply part and parcel of the swings and roundabouts of disposing of property by these two parents to their children over the years. I therefore do not take it into account in looking at the family assets now to be disposed of.

DELAY

[18] Mr Malcolm raised the question of delay on the part of the Petitioner in seeking relief in this case. The principles governing delay in ancillary relief are tolerably clear. They can be summarised as follows:

1. Any delay in bring the application for ancillary relief is plainly one of the circumstances of the case which has to be taken into account in the exercise of the Court's discretion under Article 25.
2. Delay in presenting or prosecuting a claim and an inability to show need when the claim is determined may result in a smaller award than in a case where the claim is brought promptly (or indeed no award at all) (see Chambers v Chambers (1979) 1 FLR 10)
3. In D v W (1984) 14 Fam Law 154 the Court said:

> "There are certain detrimental consequences of delay. The first is that delay engenders bitterness and hostility between the parties which is detrimental to the whole family and in particular to any children of the family. …. delay inevitably increases costs. …. further with the change in property values and with inflation as it is in our present economic situation, as well as with the change in the parties' own situations and the commitments that they take upon themselves, the whole case can be materially altered and the ability of the parties to cope with any orders that the Court might otherwise properly have made upon the merits of a case may be put in jeopardy".

4. On the other hand there are cases where delay in bringing an application is justified and indeed there have even been incidents where the Courts have adjourned applications for ancillary relief in order to await specified events (an indeed occurred in this case in relation to the sale of Amelia Street).

5. It is important to appreciate however that delay goes not to the jurisdiction (jurisdiction is not limited by time under the 1978 Order) but rather to the exercise of discretion.

[19] Mr Malcolm, in the course of extremely lengthy written submissions in this case, argued that delay on the part of the wife in initiating and progressing her application has made it difficult to quantify with any precision the disparity in the respective financial positions at the time of separation in 1986. His argument is that if she was entitled to eject her husband from the marital home as allegedly she did in 1986, she was equally entitled then to bring an immediate Petition for divorce on the ground of his unreasonable behaviour. He goes on to argue that if she had done so and sought immediate ancillary relief then it would be his submission that she stood no reasonable expectation of obtaining any form of relief save possibly to ask for a distribution of the savings. He went on to argue that it was not unreasonable after the 1988 division of the bank account that I have referred to earlier in this judgment for the husband to conclude that he and his wife had settled any financial claims they could bring against each other. He further submits that there has been unacceptable delay between the disposition of December 1996 and its current determination.

[20] I am totally unpersuaded that the passage of time between the parting of this couple and the institution of proceedings has materially altered the case in any way or has changed significantly the Respondent's own situation or commitment. The various dispositions that have been made to the members of the family (with the exception of the Amelia Street disposition with which I have already dealt) were part of the overall approach which this husband and wife would have adopted in any event in relation to their children. With the exception of the Amelia Street disposition I see no evidence of intent on the part of either party to dissipate their assets or to arrange financial affairs so as to maximise a claim against an unsuspecting spouse. I do not believe for one moment that this first named Respondent thought that the division of the sum of £100,000.00 or thereabouts in 1988 somehow ended any claim whatsoever that the Petitioner would have on the remaining outstanding capital assets. This is an experienced and shrewd businessman and as I have indicated his letter of December 1995 makes clear that he wished to make "a start in putting our affairs in order". The complete absence of any protestation in the course of the ensuing correspondence from solicitors on his behalf to the effect that he had altered his situation on foot of the delay or to make any reference to same in the course of his affidavits all served to reinforce my view that this case has not been materially altered or changed by the passage of time since these parties separated. On the contrary during that period and up to date there have been a series of Court appearances touching upon the matrimonial assets. In particular the company issued proceedings against J arising out of the use and occupation by him of the lands at Moorehall without paying rent. This was a protracted

piece of litigation commencing in 1997 and eventually resolved at the beginning of the year 2000 on terms that J would pay to the Plaintiff £30,000.00 for his use of the lands and that he would agree to enter into a lease on or after the 1st January 2000. That proposed discounted rental has still not been determined. In addition during this period proceedings were issued on behalf of G against the first named Respondent for adverse possession of lands between Holly House and the Respondent's lands at Hillhall.

[21] These family disputes all further serve to illustrate that the disposition of the family assets have been a hotly contested issue for some time in this family and the final resolution of the matter that now comes before me is but part of an unfolding scene which has not come as a bolt out of the blue to either of the Respondents. I do not consider therefore that the passage of time has had any material effect upon the issues now before me and I am satisfied that neither party to this claim has altered their position significantly as a result thereof. Any delay therefore should not play a material part in the exercise of my discretion.

[22] Mr Malcolm finally drew my attention in this aspect to Primavera v Primavera (1992) 1 FLR 16. In this case the Court of Appeal held that a wife's disposition of her inheritance from her mother was a circumstances which the Court was required to have regard to when making an Order under the Matrimonial Causes Act 1973. Clearly if one party deliberately divests himself or herself of assets (as I have found the Respondent H did here in the case of Amelia Street) that is an important factor. That principle however is wholly inapplicable in this instance where the parties have been working on a somewhat piecemeal ad hoc disposition of funds to their sons over a protracted period. In effect the present situation is no different from virtually every other elderly couple who entertain thoughts about providing for their adult children but who at the time of break-up of the marriage must deal with the assets that are then outstanding.

VALUE OF THE SHAREHOLDING IN J & S GRAHAM AND SONS LIMITED

[23] A great deal of time and energy was taken up and expended in this case dealing with this issue. Two distinguished accountants namely Mr Michael Gibson from Goldbatt McGuigan (a witness who specialises in mergers, acquisitions and share valuations) appeared on behalf of the Petitioner and Mr Adrian Hall of Adrian Hall and Company an equally distinguished accountant appeared on behalf of the first named Respondent.

[24] In assessing this aspect of the case I was unimpressed by the time expended on cross-examination of these witnesses as to whether, and if so in what circumstances, any agreement had been reached between them on instructions as to the appropriate approach. Weaving my way through the

various allegation and counter allegations that were put, I have concluded the following matters:

1. Goldblatt McGuigan (GMcG) initially reported (on the 16th January 2002) setting out valuations of the various assets based on valuations by Alexander Reid and Frazer and Tim Martin and Company. At that stage no discounts were applied to the value of the individuals shareholdings in the company. It was common case that in essence the assets of the company comprised the farm and property comprising Moorehall together with approximately 38 acres situate on the opposite side of the Killyleagh/Killinchy Road known as Gilmore's farm, the plant and machinery on the farms and also certain creditors which were primarily rents owed by J but which had never been paid by the second Respondent. No discounts were applied for the value of the individual shareholdings on the basis that the requirement was an assessment of the overall capital value of the assets less attributable taxation.
2. Adrian Hall and Company delivered a response dated the 17th June 2002 suggesting, inter alia:

   (a) deferred tax should only be deducted if the assets were to be sold or the company wound up or liquidated;
   (b) minority discounts should apply unless the company was to be wound up or liquidated;
   (c) the holdings of the Petitioner and W should be treated as one on the basis that they were allies and essentially in one camp;

3. Whatever the route by which this was achieved, the fact of the matter seems to be that the two accountants, irrespective of whether or not Goldblatt McGuigan had instructions to agree this, were themselves prepared to agree the following:

   (1) minority discounts should apply to the value of the shareholding in the company.
   (2) accordingly discounts were agreed that would apply if:
       (a) each holding was valued separately (this was the position held by Goldblatt McGuigan);
       (b) the Petitioner and W were to be treated as one shareholder (this was the position held by Adrian Hall and Company);
       (c) the Petitioner and W were to be treated as one shareholder and the first Respondent and the second Respondent were also to be treated as one shareholder;

(3) discount for the lease granted to J was to be applied;
(4) no deferred tax was to be applied.

4. Adrian Hall and Company sent a further letter of the 29th November 2002 confirming the discount for the lease figure as set out by the valuation of Tim Martin and Company. This letter also put forward a further scenario with the Petitioner, W and J to be treated as one shareholder.

[25] It appeared therefore that, as one would have expected from such distinguished professionals, these accountants had agreed figures for various scenarios. Essentially the case at point between the two of them was whether individual shareholdings should be valued as individual assets or whether they can be added together and valued on a combined basis.

[26] Mr Gibson produced an document (entitled exhibit "P7" which set out inter alia, the adjusted net value (which was agreed) of the assets of the company as £1.006 million, with discount for the lease for J (again agreed) bringing the figure down to £7,801,000.00. The document then goes on to set out the rival values of the individual shareholdings depending upon whether for example the holdings are all treated separately or various holdings are amalgamated. I have appended to the back of this judgment the document P7 for ease of reference in order to easily set out in composite form the figures thereby produced. In each instance, a discount was agreed by both accountants.

[27] In addition during the course of the hearing there was produced by Mr Malcolm a number of other figures – helpfully set out in exhibit R1, R2 and R3 – the following calculations:

> In R1 discounts made by Mr Hall including provision for deferred taxation adjusted net value and minority discounts treated separately and also amalgamated. In document R2 a lengthy document set out various proposed capital adjustments between the Petitioner and the Respondent crediting the wife with the value of Moymore (notwithstanding that this had been transferred by her to G in 1994) and also on the basis that the lease now outstanding on the property was surrendered to the company or assigned to the Petitioner. There was thus a series of calculations based on crediting the wife with the value of Moymore and transferring the shares of the Petitioner to the first Respondent in order to allegedly achieve equality in shareholdings in both family camps. Many of the calculations on behalf of the Respondent were premised on the basis of an open offer made by the second named Respondent that he would agree to surrender his lease over the lands at Moorehall to the company or to the Petitioner and vacate the lands at some undefined future date

within the next two years. Further it was offered that the second Respondent would undertake to transfer his shareholding to the Petitioner as would the first Respondent. I shall deal with this offer in a separate heading of this judgment.

In arriving at an appropriate valuation of the shareholdings in this company I have come to the following conclusions:

1. Counsel were unable to provide me with any adequate authority or precedent (and indeed neither accountant could provide me with any precedent or reference in any valuation textbook) where the holdings of two or more individuals have ever been treated as a single asset in circumstances such as this. Mr Gibson informed me that he had reviewed a number of valuation textbooks in this matter and could find absolutely no precedent for such a suggestion. Mr Malcolm did draw my attention to Barclays Bank Limited v IRC (1960) 2 AER 817 where the House of Lords had held that a testator did have the control of a company within Section 55(1) of the Finance Act 1940, by virtue of the fact that he held shares as an individual in his own right and also was entitled to vote as a trustee for a further allocation of shares (making together more than half the total of the issued ordinary shares). That is wholly different from amalgamating the separate holdings of two or more individuals and to treat them as a single asset. In tax valuations, the only occasion where shareholdings are valued on a combined basis is in inheritance tax valuations for husband and wife under the Inheritance Tax Act 1984 (formerly the Capital Transfer Tax Act 1984).

2. Merely because the interest of two shareholders may presently coincide and their combined shareholdings at one moment in time enables them to control the company does not in my view provide any basis for valuing their shares as one unit. To do so would ignore the personal relations of shareholders eg W and J together hold sufficient shares to control this company and, as Mr Gibson recorded "an auditor would appear to be making a dangerous assumption if I were to rely on the current relationship between two shareholders as a cornerstone of his valuation".

[28] Mr Gibson went on to record that the underlying approach in share valuation is "willing buyer, willing seller". The articles of association of this company state that if a shareholder wishes to sell shares, they are to be valued by the auditor at "fair value". He failed to see how the auditor in evaluation could take into account other shares that were not for sale. Even if two

shareholders offered their shares for sale simultaneously it is difficult to argue that the auditor should value each holding by reference to the other.

[29] The position is that W holds 2,880 shares, the Petitioner holds 2,019 shares, the first Respondent now holds 1,421 shares and J holds 680 shares. These are illiquid assets and vary in size. Consequently for example W, holding 41.1 per cent of the shares in the company will have his share value discounted by 60 per cent at one extreme and J, holding 9.7 of the shares has his valuation discounted by 80 per cent. This meant in terms that if all the holdings were treated separately and valued on the simple minority discount basis, the Petitioner's 2,019 shares were worth £79,000.00 and the Respondent's 1,421 shares were valued at £40,000.00. The argument went that if one amalgamated W and the Petitioner's holdings, giving a joint total of 70 per cent, her valuation became £169,000.00 and if one amalgamated W's, the Petitioner's and John's holdings, her valuation became £203,000. These are but illustrations of the wide variations depending on the approach taken.

[30] Mr Malcolm argued at length that it was iniquitous that the value of the company assets should be subject first to reduction from over £1,000,000.00 to £800,000.00 by virtue of J's lease (given that there is further litigation pending to evict him) and that there should be a further discount, amounting he says in total to £518,000.00 by virtue of the minority interests discount factor. I have concluded that this argument ignores entirely the fact that it is axiomatic that a minority shareholding of less than 50% has, unless the ownership of other shares is very fragmented, very little power or control and so must be valued primarily by reference to the expectation of dividend receipts, or if by reference other factors, then at a heavy discount to majority shareholders. The topic of share valuation is extremely complex and I consider that principle (in the absence of any authority to the contrary) and pragmatism (the inherent danger of relying on current relationships to value shareholdings) point clearly in the direction suggested by Mr Gibson for the valuation of the shareholding by way of appropriate discounting.

[31] Mr Malcolm then sought to argue that the company was being run as a quasi-partnership and that accordingly it was permissible to value the shares pari passu without any discount. Certainly this notion appears never to have occurred to Mr Hall his own accountant until this trial commenced and was never put forward by either of the accountants for purposes of discussion. Unabashed by the late entry of this submission and in my view, the lukewarm support now of his own expert Mr Malcolm relied upon Re Bird Precision Bellows Limited [1986] 1 Ch 168 to argue the proposition in this case that the shares should be fixed pro rata according to the value of the shares of the company as a whole without any discount because the individuals represented a minority holding. The *Bird* case was factually wholly different from the present position. That case concerned a company which was formed to combine one party's expertise in the manufacturing of precision bellows

with the general experience of two others in financial, commercial and industrial matters. For several years the company's affairs had worked smoothly and prospered until in a spirit of mutual recrimination, at an extraordinary general meeting two of the directors were removed. The Court held that Section 75 of the Company's Act (under which the Petitioner's had presented their petition to wind up the company) conferred on the Court a wide discretion to do what was fair and equitable in all the circumstances so as to put right the unfair prejudice to a Petitioner and cure it for the future. That discretion extended to the terms of an Order for the purchase of a Petitioner's shares under Section 75(4)(d) of the Act so that the proper price for a Petitioner's shareholding was the price which the Court, pursuant to that discretion, determined to be proper in all the circumstances. This is therefore not analogous to the present private family arrangement where the family is at loggerheads with each other.

[32] I share the views of Mr Gibson this case, who had considered in the course of the hearing the facts of *Bird Precision Bellows Limited*, that it was inappropriate in this instance to regard this company as a quasi-partnership and that the conventional minority discount should apply. Essentially Mr Gibson argued that if one attributes a pro rata valuation, it is being done in circumstances where no one is going to give the minority shareholder a non discounted value. The reality is that the true value of shareholding, given the family circumstances, must reflect a discounted value. If the company of course was liquidated all shareholders would get full value but that is not what is going to happen in this instance. The reality of the case here is that if any one of these parties tried to sell their shareholding, they would get a value based on the discounts that have been indicated in this case. There is no question here of the shareholders being oppressed (and no application to the Court has been made to that effect) and there is no evidence before me that there is any intention to liquidate this company at this stage. I should add that Mr Hall, in the course of his evidence before me, indicated that when he was discussing the matter with Mr Gibson, he had difficulty seeing how the company could be a quasi-partnership given that there were two camps. Far from being a friendly family affair, this was a company riven with shareholder dispute. In cross-examination Mr Hall said "where parties are not working together it is not a quasi-partnership in my view".

[33] It is not surprising to find problems such as this arising at the intersection of family law and company law. As Bodey J pointed out in Mubarak v Mubarak [2001] 1 FLR 673 "company law is predominantly concerned with parties at arm's length in a contractual or similar relationship" [as in the Bird Precision case] but that on the other hand family law is "concerned with the distributive power of the court as between husband and wife applying discretionary consideration to what will often be a mainly, if not entirely, family situation." The structure of company law is

clearly found here but the courts must be wary to ensure it is not too rigidly applied.

[34] I have come to the conclusion that it is appropriate in this case that the conventional approach of discounting minority shareholding should be adopted in the particular circumstances of this case. I therefore conclude that the discounted valuation of the Petitioner's shareholding is currently £79,000.00 and the discounted valuation of the first Respondent's shareholding is £40,000.00.

THE OFFER

[35] When this case commenced, the second named Respondent J was represented by Ms Gregan but during the course of the hearing, by agreement between the first Respondent and the second Respondent, Mr Malcolm represented both interests. Mr Malcolm at the outset of the hearing and during the course of the hearing made a two-fold proposal:

(a) That the lease currently held by J at Moorehall (and which by agreement reduced the overall capital value of the Moorehall property by £225,000) would be surrendered by him to the Petitioner or to the company. It was argued that this proposal would end the family friction, free up the lands at Moorehall for lease, development or sale at market value and would thus entitle the Petitioner, at her election to assign that lease at a premium to a third party or sublet it at full market value and realise the difference to her benefit. J was prepared to give an undertaking to the court that he would do this (the court not being in a position to order such a surrender).

(b) The second Respondent also undertook to the court through counsel that he would agree to transfer his shares in the company to the Petitioner. The first Respondent subsequently also gave a similar undertaking that he would transfer his shares as part of the resolution of this matter to the Petitioner. Mr Malcolm argued that the undertaking by the second Respondent could be enforced by committal or by him executing any relevant documents on his behalf in order to ensure it could be enforced. The argument here on behalf of the Respondents was that if the shareholdings of each of the Respondents were both transferred in their entirety to the Petitioner there would be no impediment to treating the resulting arrangement as a quasi partnership and no reason for not valuing the shareholdings on a pro rata basis. In terms it is argued that there would no longer be any realistic possibility that a minority shareholder would find him or herself with shares which had been valued on a pro rata basis and for which there was no actual market.

[36] The second Respondent filled out these undertakings by indicating through counsel that he would undertake that at any time within 18 months

as might be agreed or in default of agreement determined by the court, he would vacate the premises at Moorehall, surrender his lease either to the Petitioner or to the company and that both he and the first Respondent would immediately transfer their shareholding in J & S Graham & Sons Limited to the Petitioner.

[37] The Petitioner finds such propositions unwelcome and indicated a reluctance to accept them. The reasons were as follows:

(a) It was alleged that the proceedings in the Chancery Court concerning the rights to farm the company lands at Moorehall had been lengthy and acrimonious. Despite an agreement having been reached in writing, further formal proceedings were issued in the Chancery Division before an agreed interpretation of the said terms of the settlement could be arrived at. Even now it would appear that the terms of that agreement have not yet been fully implemented because the parties have not agreed on a rent. The evidence of Mr Tim Martin, called on behalf of the Petitioner, was that the second Respondent had simply refused to authorise Mr Press, the second Respondent's estate agent, to negotiate or agree the rent which the second Respondent would be liable to the pay the company.

(b) There is a clear dispute existing between the second Respondent and the Petitioner as to whether or not the second Respondent has complied with the covenants in his lease requiring maintenance of the lands and gateways. The Petitioner gave evidence that outbuildings had been damaged, and that a farmyard starting from the Petitioner's back door was strewn with farming detritus. Whether this is factually true or not, the fact remains that protracted litigation, apparent resolution of issues and even court settlements have failed to resolve the issues between these parties precipitating endless further litigation and emotional stress to all the parties. This clearly translated itself into the approach of counsel to the case with each side peppering their submissions with scarcely veiled personal attacks upon the parties. I have no doubt that any undertaking to be relied on in this case would result in endless dispute as to the nature and timing of its implementation, inevitably leading to further litigation.

[38] That in itself would have been sufficient to persuade me that the offer was a wholly inappropriate manner in which to dispose of this case. There are also practical and legal difficulties in effecting such an arrangement. These include:

(a) The lease in question is between the company and the second named Respondent. It is the company who would have to agree to the surrender of the lease and as I have indicated I do not consider that the Petitioner has a controlling shareholding. The company therefore might not agree to accept the surrender. The very fact that this lease, which is to be surrendered, was

entered into during the currency of these ancillary relief proceedings illustrates perhaps that the present volte face is going to be regarded by the Petitioner, perhaps justifiably, as a pure tactical move which will serve to further engender dispute.

[39](b) So far as the transfer of the shareholding by the second Respondent is concerned, again problems arise as to the manner in which the company could be compelled to accept such a transfer. I have perused the memorandum and articles of association of the company. Under the heading "Transfer and Transmission of Shares", paragraphs 5 and 6 state as follows:

> "5. The Directors may at any time in their absolute and uncontrolled discretion, and without assigning any reason therefore refuse to register any proposed transfer of shares, whether fully paid or not, and whether the company has or has not a lien thereon, and clause 19 of table A shall be read as hereby modified.
>
> 6. Save as hereinafter provided no share shall without the consent of the directors be transferred to a person who is not a member so long as any member or other person selected by the directors as one whom, in the interests of the company, it is desirable to admit to membership is willing to purchase the same at the fair value thereof as fixed in accordance with clause 8 of these articles."

Clearly therefore there is plausible room for argument that the directors in their absolute discretion could refuse to recognise any transferred shares and this in itself could feed the insatiable appetite that this family seems to have for further litigation.

[40](c) The Petitioner has argued that she is opposed to a transfer of shares as it would upset the balance between her and her son William. If the scheme contained in the open offer was imposed, it would allegedly have the effect of pitting the Petitioner against William. The sad history of this family dispute indicates to me that alliances could shift and change easily. On the other hand if the second Respondent wishes to realise his shareholding in the company, the articles of association provide a mechanism for the purchase of same with the additional provision for the independent valuation of a shareholding. Moreover if he believes that the company is being conducted in a manner which unfairly prejudices his position, the Chancery Court provides an avenue for seeking compulsory purchase of his shares at a fair value as fixed by the court in determination of the application.

[41] Mr Malcolm's submissions that these problems could be solved in the context of a raft of further litigation simply underlines the dangers that such a proposition would trigger. He suggests that if the directors fail to register the shares, then proceedings should be taken to challenge that on the basis that the discretion had not been exercised in good faith in the best interests of the company. Alternatively he suggests that the Petitioner and the Respondent might seek the protection the of the court under Article 452 of the Companies (Northern Ireland) Order 1985 and an appropriate remedy under Article 454. Leaving no stone left unturned to further this proposition, Mr Malcolm further suggests that the Petitioner, at her election, could bring about a situation where the Respondents would constitute themselves as trustees for her of their respective shareholding in the company and undertake to exercise their voting powers in her direction and hold any dividends or distributions for her benefit.

[42] Even a cursory consideration of these propositions reveals the inherent unlikelihood of amicable resolution occurring and points almost inevitably to yet further expensive and time wasting litigation in which, I fear, neither side in this unhappy saga would hesitate to engage.

[43] I have come to the conclusion, as I will shortly outline, that the only appropriate manner in which to resolve this unhappy matrimonial breakdown is to adopt that approach suggested by the Petitioner whereby a disposition is fashioned to some extent out of the cross generational family ties, an effective balance being obtained by use of the liquid funds from the sale of Amelia Street to ensure that each party has a sufficient income in the future. This, rather than the complex system of transfer suggested by the Respondents will hopefully serve to effect a clean break and reduce the appetite of these parties for further litigation.

<u>LEGAL PRINCIPLES</u>

[44] The court clearly has a broad discretion in awarding ancillary relief under Articles 25 and 26 of the 1978 Order. The underlying principle in according such a broad judicial discretion is to enable the court to tailor financial solutions to the needs of specific individual parties. It is significant that there is no overarching statutory principle as to how that discretion should be exercised except for the provisos specifically set out. A court must give first consideration to the welfare of minor children (this does not apply here), it must consider the possibility of a clean break or, as a minimum, the termination of the couple's financial obligations to one another as soon as possible after the divorce and the court must have regard to all the relevant circumstances. A checklist is set out in Article 27 detailing the relevant circumstances for example the earning capacity of the parties, their needs and the duration of the marriage together with other grounds which are now so well known that it would be tautologous of me to repeat them. However it

must be appreciated that whilst these statutory provisions represent criteria that must be actively considered when exercising the Article 25 discretion, they do not add up to one all encompassing principle against which to judge the appropriate outcome of the exercise of the discretion.

[45] Judges at first instance in the Family Division should be mindful of the admonition of Thorpe LJ in Parra v Parra [2003] 1 FLR 942 at page 949 para 22:

> "… the outcome of ancillary relief cases depends upon the exercise of a singularly broad judgment that obviates the need for the investigation of minute detail and equally the need to make findings on minor issues in dispute. The judicial task is very different from the task of the judge in the civil justice system whose obligation is to make findings on all issues in dispute relevant to outcome. The quasi-inquisitorial role of the judge in ancillary relief litigation obliges him to investigate issues he considers relevant to outcome … But this independence must be matched by an obligation to eschew over-elaboration and to endeavour to paint the canvas of his judgment with a broad brush rather than with a fine sable. Judgments in this field need to be simple … in structure and simply explained."

[46] The House of Lords considered the content of the overarching objective of fairness recently in White v White [2001] 1 AC 596 with the attendant proposition that fairness, particularly in cases where large sums were involved, was achieved by checking any proposed award against the yardstick of equality. Thus the House of Lords did not advocate in that case a presumption of equality of division but did bring equality into consideration as a criterion by which to measure the fairness of the award. The court therefore reserved to itself the possibility of varying an award away from equal division if fairness itself required a departure from the principle of equality.

[47] Recently Lambert v Lambert [2003] 1 FLR 139 has reiterated the concept of fairness as equality. In Lambert Thorpe LJ determined that the contributions of each party must be of equal value, despite the contributions being made in the very different spheres of the domestic and business worlds. Because business success is more easily measured than domestic or family success, that does not mean that a finding of exceptional business success should be arrived at more readily than a finding of exceptional domestic success.

[48] In summary therefore these authorities make it clear that the court has a very broad discretion to make financial awards under Article 25 and has, in big money cases, increasingly chosen to guide the exercise of this discretion by the overarching objective of fairness. The courts have chosen to measure fairness of outcome by adherence to the principle of equality unless there is good reason for variation such as wholly exceptional contributions by one party to family welfare.

[49] As I have already made clear in this case I am satisfied that there must be no gender discrimination in measuring the spouses contributions in this and I am absolutely satisfied that not only the court but indeed the parties themselves have recognised the equality of their contribution. However I think it is important to recognise that the law requires the Article 25 exercise to be carried out and that whilst, per White v White, fairness of an award should be checked against the yardstick of equality, the courts must be wary of relying too heavily on formal equality as a means of ensuring real fairness at the expense of applying the tests in Article 25.

[50] Applying a pure equality test in this instance, and paying at least lip service to the generational ties to each party of the property concerned, a 50/50 split between the parties could lead to the following solutions:

(a) The husband would retain –

(i) Hillhall valued at £460,000

(ii) Ballymullan valued at £86,000

(iii) discounted shareholding valued at £40,000

giving a total capital asset value of £586,000.

(b) The wife would retain the Hill valued at £160,00 and her share discount at £79,000 making a total of £239,000.

[51] This would leave outstanding the liquid assets of £437,000 being the net value now that I have arrived at in the case of Amelia Street. By giving £45,000 of that sum to the husband and £392,000 of that sum to the wife, one would arrive at a joint equal figure of £631,000 each. That would be the approach on a basis of pure equality.

[52] I have come to the conclusion that that would be inequitable. It would involve the wife having 89% of the liquid assets from which to maintain herself and her capital assets and leave the husband only 10.3% of the liquid

assets. That in my opinion would pay insufficient attention to Article 27(1)(a) and 27(1)(b) which enjoins the court to have regard:

(a) To the income, earning capacity, property and other financial resources which each of the parties of the marriage has or is likely to have in the foreseeable future.

(b) The financial needs, obligations and responsibilities which each of the parties of the marriage has or is likely to have in the foreseeable future.

[53] It was argued before me that the Respondent husband has only his State pension as a source of income. The Petitioner wife submits that the Respondent husband should be fixed with the notional rental income from the letting of his lands at Hillhall and Ballymullan which at one stage he claimed were let free of rent to the second named Respondent but which subsequently emerged as providing the basis for the second Respondent making some provision for H for large items. I have already dealt with the notional income from the rentals at Amelia Street. It was also argued before me that the first named Respondent had access to a number of off-shore accounts which he had not disclosed. So far as this latter point is concerned, whilst I harbour some suspicions about the sources of income open to this first named Respondent, I am not satisfied that such allegations have been proved to the appropriate standard on the balance of probabilities and therefore I am not prepared to ascribe any other sums to the Respondent. The Petitioner is presently employed under a temporary contract to work with Victim Support, she receives a rent income of £3,973 from conacre letting of her lands at the Hill and she receives a director's salary of £1,000 per year and also a State pension of £40 per week. Whilst I am satisfied that the Respondent is in a position to supplement his income from rentals which the second Respondent could pay for farming the land at Hillhall Road at Ballymullan (particularly since as I have found I consider that inevitably these lands will accrue to him at the latest upon the death of the first Respondent), nonetheless I think it would be unfair to make such a large disparity between the husband and wife in terms of the available liquid asset. I must of course bear in mind that the Petitioner is considerably younger than the Respondent by 10 years and may require maintenance for a longer period. I also accept the evidence put before me that she will require to spend a not inconsiderable sum in renovating and maintaining Moorehall. Both parties did enjoy at the very least a modest standard of living prior to the breakup and in recent years. I am anxious to ensure that that standard of living can be preserved as far as possible. The first named Respondent is in indifferent health and I see no real opportunity for either of them to generate any further material income in the future. Despite the exhortation by the Petitioner for me to take into account the husband's conduct in divesting himself of his interests in Amelia Street and his alleged failure to make full and frank disclosure, I am not

persuaded that conduct is a factor which requires to be taken into account in this case.

[54] Accordingly, I have concluded that the husband should retain Hillhall, Ballymullan and his discounted value of shares of £40,000 and that from the sum of £437,000 now on deposit arising of the sale of Amelia Street he should have the sum of £100,000. The wife will retain the Hill, her shares in the company worth £79,000 on a discounted value, and she shall have the major share of the sale proceeds of Amelia Street namely £337,000.

[55] In terms this means that the husband will receive 54.35% of the assets and the wife shall receive 45.64% of the assets. As I have said, I consider that it is appropriate to depart from equality in this case to the degree that I have set out on the basis that the necessity to provide an appropriate disposal of the liquid asset of £437,000 determines that this should be the case.

[56] So far as the costs of this case are concerned I echo the words of Thorpe LJ in Parra v Parra [2003] 1 FLR page 952 where he said:

> "We will have to deal separately with the allocation of costs, but one cannot leave the substantive part of this appeal without a sense of despair at the financial haemorrhage which this litigation has now inflicted"

on these two parties. This is a case that I have no doubt could have been settled amicably with a modicum of common sense and good will which appears to have been sadly lacking in this instance. I intend now to set a separate occasion for the hearing of the arguments on costs save for those indications that I have already given in this judgment.