

HONG KONG / JUDGMENT

BAM v. DJM nee W**[2022] HKFC 58**

COURT

Family Court

DECIDED

22 March 2022

CASE / FILE NUMBER

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bjbj FCMC 9713 / 2011

[2022] HKFC 58 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 9713 OF 2011

BETWEEN BAM Petitioner and DJM Respondent nee W

Coram: Deputy District Judge Peter Barnes in Chambers (Not open to public) Dates of Hearing: 25
28 January 2022 Dates of written closing submissions: 16 February 2022 (P) and 18 February 2022
(R) Date of Judgment: 22 March 2022

J U D G M E N T (Variation of Order)

A. The Application On 19 March 2014, this Court (Melloy J) handed down judgment (the Judgment) on the parties respective claims for ancillary relief, following a four-day trial in January of that year. Part of the Order upon the Judgment (the 2014 Order) provided for the Petitioner/husband (who I will refer to for convenience as , although the Decree Absolute was pronounced in 2014) to make ongoing periodical payments of maintenance to the Respondent/ wife () for their joint lives in the sum of HK\$20,000 per month, and child maintenance of HK\$25,000 per month for N, their son, until his 18th birthday or the completion of his full-time education, whichever is later. N was born in December 2004 and is now 17 years of age. He is still at school. On 19 January 2021 H filed a Notice of Application for Ancillary Relief the Application) to vary the maintenance payments to W and for N. By the Notice, H seeks the following relief:

1. Sub-paragraphs 104(3) and 104(4) of the Judgment herein dated 19 March 2014 be varied so as to absolve the Petitioner from any outstanding, or future, payment obligations;
2. Any and all outstanding execution(s) against the Petitioner or his bank accounts, whether by way of garnishee proceedings or otherwise, be halted;
3. Further or alternatively, such orders as the Court thinks just and fair and in comity with the anticipated decision of the German Appeal Court referred to in the 2nd affirmation of the Petitioner herein; and
4. No order as to costs. As suggested by the Notice, H had previously sought similar relief in a Court in Germany, where W and N have lived since 2012. He had filed two applications there, one to stop maintenance payments to W, and the other to reduce the maintenance for N. H considered the German Court to be in a better position to re-assess W's needs and those of their son. Pending the outcome of those proceedings H ceased all payments under the 2014 Order with effect from 1 July 2020. The applications in Germany were not successful. The decisions of the District Court of Hamm both dated 7 January 2021 are exhibited to H's affirmation in support. H appealed against the dismissals of his applications but withdrew the appeal in April 2021, choosing instead to pursue the present Application in Hong Kong. As at the first day of this Trial the combined arrears under the two maintenance orders stood at \$844,437 (exclusive of interest) being HK\$20,000 x 19 months = HK\$380,000 for spousal maintenance and HK\$25,000 x 19 = HK\$475,000 for maintenance for N, less HK\$10,563 being the amount recovered as a result of a garnishee order absolute in December 2020 (the Accrued Sum). The primary basis of H's Application is his claim that there has been a significant and adverse change in his financial position and his ability to pay: he points to a substantial drop in his monthly income since 2015, and to the fact that three business ventures into which the bulk of his savings were invested have not been successful, at least to date. He says, additionally, that because of this drop in income and the failed investments, he has incurred substantial debts in complying with the 2014 Order through to mid 2020 and in meeting his own expenses. His position is that he has done all he can to maximise his earnings and his return on investments, but that he is simply no longer able to meet his ongoing obligations under the Order, let alone the Accrued Sum. He seeks an order discharging his obligation to make payments to W and for this to be backdated to July 2020 and further proposes that in respect of N, all outstanding payments be discharged, with a substitute order that he make payments at the rate of HK\$6,000 per month from 1 September 2022 when he hopes that one or other of his current business ventures may start turning a profit or at least return some of his invested capital. W (also acting in person) opposes the application. She says that her needs are at least as much as were identified at the Trial and that if anything they have increased. She has significant health issues which restrict her own ability to work and support herself and N and her health has further declined since 2014. Her case is that H has under-utilised his earning capacity, and deliberately so. She argues that, in any event, the application is most unfair to her and to N: while she has been conservative with her finances, H has expended his capital on risky and

ultimately unsuccessful investments, and that neither she nor N should suffer as a result of these poor investment decisions. She asks that the application be dismissed and that there be full payment of the Accrued Sum. B. The Law By virtue of Section 11 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) the Court has the power to vary or discharge certain orders for financial relief, including an order that one party to a marriage make periodical payments to the other party under s. 4(1)(a) of the Ordinance, and an order for payment of child maintenance by periodical payments, under s. 5(2)(a). Section 11(7) of the Ordinance provides that

- (7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates . In *AEM v VFM (Variation of Maintenance)* [2008] 3 HKLRD 36 the approach to be taken on such applications was summarized (para 14 of the judgment of Hon Cheung JA): Principles on variation
3. The traditional approach to variation was not to re-fix afresh the amount of maintenance but to consider the amount of change in the actual means of the parties so that the new order should merely be increased or decreased roughly in proportion to the change of means: *Foster v. Foster* [1964] 3 All ER 541, Jackson s *Matrimonial Finance and Taxation* 7th Ed. Ch. 3. 131.
4. The modern approach as required by section 11(7), is for the Court to consider all the circumstances of the cases. The Court is not required to proceed from the starting point of the original order but look at the matter afresh. *Flavell v. Flavell* [1997] 1 FLR 353 at 357B following *Lewis v. Lewis* [1977] 1 WLR 409 and *Garner v Garner* [1992] 1 FLR 573.
5. Any change in any of the matters to which the Court was required to consider when making the original order was one of the circumstances to be considered.
6. Almost invariably, an application to vary an early periodical payment order will be brought on the basis that there has been some changes in the circumstances since the original orders was made, for example, continuing inflation; the increased costs in supporting a growing child and that one party may be more adversely affected than another by the increase in the costs of living; *Garner v. Garner*.
7. An increase in the wealth of the husband was a relevant factor to be taken into account: *Primavera v. Primavera* [1991] 1 FLR 156 and *Cornick v. Cornick (No. 2)* [1995] 2 FLR 490.
8. At the same time the basis and intended effect of the original order are relevant factors to which the Court on variation should pay regard and there should not be a radical departure from the approach taken by the parties themselves when they had entered into an agreement embodied in a consent order: *Boylan v. Boylan* [1988] FLR 282. It naturally follows from the fact that an increase in the wealth of the paying party is a factor to be taken into consideration, that a decrease in that party s wealth and income must also be relevant

to such applications, although this fact alone will not lead to the Court granting the application. In the next paragraph of his judgment in *AEM v VFM*, Hon. Cheung JA added a note on the principle of backdating the order to vary: Principle on backdating of order

1. The court has an almost unrestricted power to vary its own order retrospectively and to backdate any variation which it makes in a pre-existing order beyond the date of the application for variation.
2. In practice, orders are not usually backdated to a date prior to the notice of application to vary unless the justice of the case so requires. C. Background Paragraphs 3 to 5 of Her Honour's Judgment set out the background of the parties relationship, marriage and separation:
3. The Husband came to Hong Kong in 1994 en route to Canada and was approached while he was in the territory to work as a squash coach for a private club. He was 36 years old at the time and had no tertiary educational qualifications. He had had a varied working life up until that point that included working on the oil rigs and he was also a talented sportsman. He particularly excelled at playing squash. The parties met whilst travelling in Indonesia and their friendship gradually developed into a relationship which was conducted at first at long distance. The wife eventually joined the husband in Hong Kong in 1997. They married later that year on the 31 July 1997 in Germany after a relatively short period of cohabitation. As I have said both parties are ex patriates the wife is from Germany and the husband is from Canada. In contrast to the husband the wife is very well educated and holds two master's degrees in the field of music and performance. She is also an accomplished musician. Whilst in Hong Kong the wife worked mainly as a private piano teacher, although she also worked on a part time basis from time to time for professional organisations such as the Academy of Performing Arts. The wife is 11 years younger than the husband. She is now 44 and the husband 55 years of age.
4. Recognising that he could not easily continue to work as a squash coach as he got older, the husband began to look for other career opportunities. In 2000 he took a position that would enable him to forge a career in the finance industry beginning first in the field of corporate training and later moving into or Funds of Hedge Funds. In 2004 he set up his own business with one other partner and in 2007 he successfully sold his share of the business for US\$950,000. The couple profited as a result of his change in career path. Consequently they purchased a home in Hong Kong and a holiday home in Boracay Philippines. The wife was responsible for the significant renovation of both properties. In August 2010 the husband left a salaried corporate position and although he later became involved in a new set up this was not successful. He did not return to paid employment until shortly before the trial. In the interim it is the husband's case that the parties had no alternative but to live off capital.
5. The parties separated on the 21 June 2011. In July 2012 the wife left Hong Kong with the child of the family, N to live in Germany, following a difficult and acrimonious relocation trial. N is now 9 years of age having been born on the 30 December 2004. H is now 63 years

of age, and works as a Responsible Officer with an asset management company based in Hong Kong. W is 52. In her updated Form E for this Application she describes herself as housewife/teacher and says she is employed by her parents, essentially as a carer, working 10 hours per week in this role. During the hearing she told the Court that she had not been successful in pursuing her career as a music teacher or in piano performance due in part to debilitating health conditions and the lack of demand from students in her area of Germany. This is not dissimilar to how she presented at the trial in January 2014, 8 years ago. Two properties a flat in Hong Kong and a holiday home in Boracay formed the bulk of the matrimonial pot to be divided. Having determined the matrimonial pool of assets available for distribution, net of liabilities, to be HK\$27,775,000, Her Honour awarded 55% of the assets to W and 45% to H. This meant that W's share of the assets was HK\$15,276,250 and for H, HK\$12,498,750. It was agreed that the Hong Kong property would be sold to achieve this distribution, with H to keep the Boracay property. The Court ordered ongoing periodical payments of maintenance for W and N in these terms:

3. The Petitioner do pay to the Respondent maintenance pending suit for herself in the sum of HK\$12,500 per month the first payment to be made on the 1st day of April 2014 and subsequent payment to be made on the 1st day of each succeeding month until the completion of the sale of the CHK property. Thereafter, following the distribution of the net proceeds of sale of the CHK property the maintenance pending suit shall be increased to HK\$20,000 per month until the grant of the decree absolute and thereafter to be paid as periodical payments at the same rate and in the same manner during the joint lives of the parties or until the Respondent's remarriage, whichever is the shorter, or until further order.
4. The Petitioner do pay periodical payments for the child of the family N in the sum of HK\$15,000 per month first payment to be made on the 1st day of April 2014 and subsequent payments to be made on the 1st day of each succeeding month until the completion of the sale of the CHK property. Thereafter, following the distribution of the net proceeds of sale as set out in paragraph 1 above, the periodical payments shall be increased to HK\$25,000 per month until the child's 18th birthday or cessation of full-time education, whichever is the later or until further order. In deciding to make a joint lives order, the learned Judge had considered whether or not the parties' net assets were sufficient for a clean break order to be made. H's case was that there should either be a clean break, or, if periodical payments for the Wife were ordered, these should be limited in time, to cease after no more than 5 years. His open proposals for the trial before Melloy J included an offer of HKD20,000 per month to W for a period of 5 years until she can get set up in a new career. My preference would be for a clean break from [W] and I offer her 60% of assets in exchange for a clean break. In deciding the level of ongoing financial support, Her Honour took into account the respective income and earning capacity of the parties. At the time of trial, H had obtained work with Ch Co a hedge fund company. The Husband's present earnings and earning capacity

68. The husband is presently earning HK\$110,000 per month. There is also provision for a bonus as set out in paragraph 5 of his contract of employment. From that it would seem that the husband will receive a bonus if he generates new business for the company. I accept that on past performance it is likely the husband will receive a bonus although the exact extent of that is unknown at present.
69. The husband is 55 years of age. He anticipates retiring at the age of 60 or 65 and has explored the possibility of retraining as an executive coach in the future. He accepts that he will need to maintain N until he reaches the age of 18 years or ceases full time education.
70. For present purposes I accept that the husband currently has an income of HK\$110,000 that is likely to go up from January 2015. The husband initially said that he thought that he had an earning capacity of between HK\$130,000 HK\$140,000 per month. Longer term I accept that to be the case. There may also be some additional income from renting out the Boracay property at least in the short term pending any possible sale.
71. The husband also has some health issues which may affect his earning capacity longer term. He suffers from a heart condition called atrial fibrillation and is at risk of blood clots etc. The wife s present earnings and earning capacity
72. The wife says that she has not been able to find a job in Germany despite her assertions to the contrary during the relocation trial. She says that her earning capacity is limited due primarily to a medical condition known as thoracic outlet syndrome and chronic pain syndrome . In summary the wife experiences chronic pain in both her arms and upper body. It is not constant but it is a chronic condition and it cannot be cured. It has also meant that she was unable to pursue her dream of becoming a concert pianist. The wife says that given this that it is unrealistic to expect her to have a significant earning capacity going forward although again she painted a somewhat different picture of this during the relocation trial.
73. The husband challenges much of what the wife says in this respect. He says that she is talented and well educated and that she had a thriving business teaching piano at various stages in the past when the parties were living in Hong Kong. He also says that she has other talents as evidenced by the fact that she renovated two properties successfully. He also questions the extent of her disability and points to the fact that she can ski and undertake other vigorous activities such as go carting.
74. Notwithstanding the husband s arguments I accept that the wife s earning capacity is necessarily curtailed by her medical condition. She also says that things have been unsettled and that it has not been possible for her to teach piano from her parent s home; also the opportunities that she thought were available in Germany have proven not to be. She is also concerned that private teaching may mean that she is engaged precisely at the time when N will need her most i.e. after school. She would prefer to work in a school but there seems to be little opportunities for that in the area in which she is presently living. Whilst that may be the case it is clear that the wife should be able to supplement her income by most probably

teaching the piano privately part time. I don't accept, given what was said during the relocation trial, that there must be evidence of a demand for music lessons in her part of Germany before I can attribute an earning capacity to her. She is a bright and resourceful woman. She is also very talented. As far as her medical condition allows she should work although I accept that her earning capacity will always be somewhat limited. This may also mean that N stays at school until 4:30pm and that his other activities are structured to take this into account. The wife says that realistically she could cope to have 5 students per week. I would hope that in time that those numbers would increase significantly. Although the exact numbers were in dispute during the trial it seems that at one point the wife was able to teach approximately 27-30 school students per week. The wife says that the maximum she ever earned was HK\$243,930 per annum whereas the husband puts her salary at a much higher figure. In the end the learned Judge decided against placing a time limit on the wife's maintenance: Should the wife's maintenance be limited to a fixed term?

81. Given the fact that the wife has a chronic health condition and at best a somewhat limited earning capacity, it seems to me that it would not be reasonable to limit her maintenance to a fixed term.
82. The husband points out that he also has health issues and that he may not be able to generate such a significant income going forward. Although that may be true, I remain of the view that it would not be reasonable in the circumstances to impose a clean break in this case. It is however one of the reasons why I have departed from the yardstick of equality on the asset division. (Emphasis added) D. The Issues Should paragraph 3 of the 2014 Order be varied and if so to what extent? Should the obligation to make periodical payments of maintenance be reduced and/or discharged? Should there be an order that the variation be backdated? Similarly, should paragraph 4 of the 2014 Order be varied and if so to what extent, and should the amount outstanding be discharged fully or partially? The Court is required to look at the matter afresh, and to have regard to any change in circumstances since the relevant order was made, including to the parties' respective needs, their income and other financial resources. E. The Evidence In addition to the written evidence, both parties gave oral evidence, H in person, and W by VCF from Germany. I was impressed by the manner in which they conducted themselves during what must have been very stressful for both of them. I am satisfied that they each endeavoured to give truthful and complete evidence. F. The Grounds for the Application As noted, the Judgment resulted in W obtaining 55% of the net matrimonial assets and H, 45%. In assessing the needs, the Court made provision for each party to acquire housing: W had said she wanted to buy a house in Germany and H had expressed a desire to put a deposit on a flat in Hong Kong. In June 2014 the proceeds of sale of the Hong Kong property were divided in accordance with the Judgment. The periodical payments of HK\$20,000 per month for W and HK\$25,000 per month for N took effect from 1 July 2014 pursuant to paragraphs 3 and 4 of the Order. Subsequently, W purchased a house in Germany, in a town in the west of the country, for ,241 Sub-total 2,168,601 Less liabilities 2,013,341 Net value 155,260 In fact, H's position (as claimed) is considerably worse than this when the Accrued Sum for unpaid maintenance

is factored in. He will be able to collect his pension in July next year, but if none of his investments bear fruit, this will be wiped out by servicing some of his debts. So that it is clear, H's assertion that he is now essentially insolvent is not accepted by W.

- (i) **Employment** The first matter H points to is his employment history since the Judgment. He no longer works for the same employer, and those positions he has been able to obtain since then have not been as well paid. Indeed, his salary has more than halved since the 2014 Order. He was never able to achieve the HK\$130,000 - \$140,000 per month that he forecast he might achieve. Ch Co H refers in paragraph 3 of his 3rd Affirmation to the loss of his employment with Ch Co: I worked for about 18 months with [Ch Co] but I wasn't raising enough money for the hedge funds to justify the salary and I was taking too much time off to see my son, approximately 2 months a year. [Ch Co] proposed a consulting role in their real estate business, based on commissions, which I accepted. (March 2015). This new role was working for their Japan real estate business. Soon after this, the real estate business was sold, so my job ended. No commissions were made. After [Ch Co] I had 3 months of no income. I looked for other work and managed to get work as a Responsible Officer with a new asset management company, [M Co]. This is a title (RO) given to the person responsible for ensuring the company adheres to the rules and regulations of the SFC. The pay was only 50,000 HKD but it gave me the flexibility to visit N and look for other business opportunities and at least it was enough to cover alimony and child support. M Co At the Trial, H clarified that there was a cross-over period where he was working with both Ch Co and M Co, i.e. there was no formal termination of his position as Responsible Officer with Ch Co after he began with M Co, for the reason that the latter company was applying for an SFC licence, a process which took some 6-8 months and that prior to the grant of the licence he could not be listed as RO. H began his employment with M Co in June 2015 and M Co obtained its licence in November/December 2015. It transpires that M Co simply held the licence without setting up any investment funds, then sold it. H was terminated with effect from November 2017. As his work with M Co did not occupy 100% of his time, at least not after the licence was obtained, H was able to continue to travel to see N and to be engaged on projects with Ch Co, and devote time to his various investments. The M Co contract confirms H's employment between June 2015 and November 2017 as Responsible Officer on a base salary (no commission or bonus entitlements) of HK\$50,000 per month, and that his duties were to assist the company in obtaining its SFC Type 4 and 9 licence, and thereafter to continue in the role of RO as required under SFC regulations. CM Co In January 2018, H obtained his present position with CM Co, again as a Responsible Officer, and again at a basic salary of HK\$50,000 per month. The contract provides for the potential for pay increases based on overall job performance and the success of the company, with an added indication that the company would take into account the market rate of pay for such a position in reviewing the salary. Although not explicitly part of his duties as stated in the employment contract, H says that he was and remains engaged in additional work for CM Co over and above his duties as an RO: I do my best to help the company I work for [CM Co] grow and I attach examples of the work I do for them BAM-4-11, aside from my RO role. If any of these projects works, I

hope to be paid a commission. None of them have worked so far as nothing looks promising right now, largely due to the political difficulties we have had in HK and then Covid. On the terms of the employment contract there seems to be no entitlement to any commission, but H might at least expect a favourable salary review if the projects are successful. One of these projects is for the establishment of a fibre optic cable line from Norway to the Asia region, involving acquisition of a physical property in Norway and of landing rights for the cable through to Japan. H has been involved in seeking to raise capital for this project and during his oral evidence he said he was still hopeful that it would ultimately go ahead: a major Hong Kong telecom company has recently expressed some interest in it. If this proceeds, H expects to be paid a commission, although he was not able to give an estimate how much that might be. In cross-examination, W questioned H's decision to apply to cease payments 5 years after they had started, referring to the applications made in Germany to reduce and/or cease payments of maintenance for her and N filed in August and September 2019. She pointed out that this was consistent with his open proposal at the Trial that payments to her should cease after 5 years. She also challenged his acceptance of his present work (and indeed with M. Co) as an underpaid job, suggesting that he was deliberately under-utilising his earning capacity. H responded this way: First, I paid for 5 years until I was out of savings. I borrowed as much as I could to continue paying from friends and family, and then I borrowed from banks, until I was \$2M in debt. I figured when we were in Court in 2014 that I could make money. I was doing good three months in, with Ch Co. I never expected a big salary, that's not how I made money. When I had my own company, I paid myself \$120K/m. I sold the company. I have a history of starting projects/businesses, not for the salary but for the upside of those projects. What I was doing after Ch Co was exactly what I have always done get businesses done. If any one of them had gone, I would still be paying HK\$45,000 and would look like a good businessman. And he added: I didn't look for a job with commission only [which was the situation with the Japanese real estate position in Ch Co]. I looked for a job paying HK\$50,000/month. If nothing else, that covers the maintenance payments. Now I have to make other money. My only real investments were in AUD. Others were trying to build businesses. For the German proceedings, and reproduced for these proceedings, H obtained an advice from a Hong Kong-based Executive Search firm on the prospects of obtaining a higher paying job within his current industry. The advice, dated 15 December 2020 is to this effect:

- (1) The uncertain political situation in Hong Kong coupled with Covid has resulted in companies scaling down operations and trimming headcount ;
- (2) It is not expected in the short term for there to be openings for Responsible Officers in competing hedge fund and asset management companies;
- (3) The lack of Chinese language ability will limit the number of opportunities available;
- (4) There are numerous ROs in Hong Kong, who would compete for available positions, many of these being trilingual; and that

- (5) There is no doubting that [H] was a highly successful Sales and Business Development Leader and is an accomplished Responsible Officer within the Hedge Fund and Asset Management space. Unfortunately however, the various external factors detailed above, none of which can be controlled by [H], will likely limit his ability to secure a more senior position that pays a significant premium over his current salary. Against this, W says that having regard to H's long experience in the financial sector and his business acumen, coupled with the improving markets since 2014, there is no reason why his earning capacity should decline by over 50% over this period and should, indeed, have improved to a possibility of earning HK\$200,000 per month. H accepted that he had not sent out any applications for other positions in Hong Kong which might pay him more than his present job, but there is in my view no basis to suggest that he has under-utilised his earning capacity. Indeed, it seems to me that he has worked very hard to pursue a number of opportunities including for his employer (the Norway project) which might have borne fruit and resulted in either an increase in salary or other compensation in the form of commission payments. Each of the past three jobs (including his current position) have been flexible enough to enabled him to continue to travel to see N. This was, and remains, a priority to him, even though at present N does not want to see him. If the only reason for this unhappy situation is H's cessation of payments of maintenance, that is very regrettable. Accounting for the need for H to continue to earn to support himself and his desire to resume financial support for N, it is most unlikely that he will retire next year when reaching 65. He is by all accounts fit and well (he underwent a successful operation for the heart condition), and has a number of skills (and the RO qualification) which will continue to be in demand in a financial hub like Hong Kong. (ii) Boracay Her Honour Judge Melloy took into account that H should be able to earn additional income from renting out the Boracay apartment at least in the short-term pending sale (Judgment, 70 and 89). In H's 3rd Affirmation he said that between September 2014 to early 2016 when the flat was sold, it generated US\$12,600 in rental income which was insufficient to cover the expenses on the flat, of US\$21,294 for the same period. I note the absence of a Questionnaire from W asking for particulars of these expenses. H sold the property in 2016 for US\$600,000 and received HK\$4,602,000 after costs of the sale. The sale price was US\$50,000 less than the value attributed to it at the time of the Judgment, of US\$650,000/HK\$5,070,000. Nonetheless, it may have been fortuitous that he sold the flat when he did, as in 2018 he found out that the Philippines Department of Environment and Natural Resources had given notice to the then owner that the property had been built on Forestland and was an illegal structure: requiring that it be removed. H said that if he had held on to the property e.g. for the purposes of supplementing his income stream at the very least this notice may have negatively impacted on the value of the property. (iii) Executive coaching Aside from his work as a Responsible Officer for the various companies, H has trained as an Executive Coach, completing his training in 2016. He worked on two projects including for the company with whom he trained, and another coaching company, Q. Disappointed with the results, he began approaching potential clients directly. In 2020 he started a business catering in particular to companies and businesses wishing to improve the performance of staff and employees,

including in respect of soft skills such as personal interaction and teamwork. In his 3rd affirmation he elaborated on the business and his hopes for its success: The reason I trained as an Executive Coach is that it is hopefully a job I can do as I age. I obviously don't have the money to retire. Over the past 2 years I researched and designed 3 coaching programs, which can be viewed on my website [URL]. Designing these programs took every spare moment I had. I delivered my first program in March 2020 and all the testimonials on the website were from people who attended that program. I made HKD 25,000 in the March program and used the money to launch my company and website. Because of Covid I couldn't run another program until November, 2020. For this program I made HKD 11,500, before expenses, as can be seen from my HSBC bank statement Nov. 2020, accompanying my Form E. This was the same month that [W] had the HK courts hand down bank garnishee orders and all money was removed from my account, so the 11,500 helped me make it through a very tough time. Hopefully after Covid I can do more coaching work. I also had potential work with [a Hong Kong bank] for sales training in March 2020 but all training got cancelled before of Covid. The HK bank has continued to express interest and has introduced H to an international training company which coaches their executives. This company has taken him on, and he has obtained his first contract with the HK bank, a 6 months contract worth \$17,000. He hopes to be able to build on this. Under cross-examination, H said that although it was not impossible for the training to be done online that was up to the client he said that he found it difficult, and that the particular program he had developed was much better if it could be conducted in person. This venture has considerable promise: the response from those who have participated in the program has been encouraging, and having worked with a major HK Bank and being on the books of the international training company, this is a solid foundation from which to build. So far the income this has produced is modest. It is difficult to estimate how much it might generate if it takes off, whether this is intermittent or becomes more regular. Much may depend on when the present Covid-related restrictions are relaxed and H is able to resume in-person seminars/training sessions. (iv) Other work H spoke of other work he has been doing for companies, seeking to raise money for projects, using his skills in due diligence. Most of these have not been fruitful, with the exception of one Australian real estate venture for which he was paid HK\$75,000.

- (v) Investments Since 2014, H has invested time and money into three main projects: a real estate project in Western Australia, a company marketing a children's electronic colouring stylus and a coconut oil manufacturing business based in Ghana, Africa. In his 3rd Affirmation he explained his decision to go into these investments as 7 Without a big salary I needed to make money from my investments and any other deals I could do. I made 3 investments. I have some difficulty in accepting this, as the first and second of these investments were made or commenced in 2014, well before his salary reduction. I can accept that once committed to the projects he decided to continue with them despite the drop in salary, but the first two investments seem both to have been made without any anticipation that he was facing an imminent reduction in salary or indeed would not be able to achieve an increase in his salary as anticipated in the Judgment. WA property investment

H says that he began looking for investment opportunities in around September 2014. The first investment was into a property development in Western Australia. H describes it in these terms: Australia was doing well because of commodity prices and house sales were strong. The developer was a close friend, had been developing these projects for years and is very trustworthy. Shortly after making this investment, commodity prices collapsed, the Australian dollar devalued and home sales dried up in Perth, where he was building. There were enough pre-sales to do the development but no further sales. Right now, the valuation is about the same as the loans, leaving no equity, meaning no return on my investment. The unsold units are leased out and this is covering the loans. The hope now is for a recovery in property prices in Perth. At best, I will get a portion of my money back if property prices improve and the units can be sold. H went into the investment after an encouraging email exchange in September 2014 with a Mr. GH (), and another friend and property investor, Mr. HD. GH described the prospects of a gain on H's initial investment in glowing terms: that the project anticipated a 1.6 return on investment i.e. a AU\$400,000 investment would reap a profit of AU\$240,000. In his evidence, H said that he was looking at this as a two year investment, as the development would be completed and then sold with the profit returning to the investors, including H. H considered the alternative of parking the money in bonds as unattractive. Nor did he consider the Hong Kong property market to be a worthwhile investment. The development comprises a number of one, two, and three bedroom townhouses in a Perth suburb. It is owned by a private limited company UP Pty Ltd. The director and sole shareholder of UP Pty Ltd is GH. UP Pty Ltd is the trustee of a trust, (the UP Trust) set up in 2011. Under a Shareholders and Unitholders Agreement dated October 2014 one of the unit holders in the UP Trust is an Australian proprietary limited company WA Pty Ltd incorporated on 11 September 2014. The units are the only significant assets of WA Pty Ltd, which is essentially a special purpose vehicle or SPV. Instead of holding the units directly, GH recommended to H that the best way to structure the investment would be in the form of a loan to WA Pty Ltd which would then purchase units to the equivalent value: Australian Government tax on the income from interest earned on the loan would be significantly less than profits tax. H accepted this suggestion and a formal Loan Agreement between WA Pty Ltd and H was prepared and signed on 20 October 2014. The principal of the loan was AU\$404,000 and this was paid by H into WA Pty Ltd's bank account on 27 October 2014. The terms of the Loan Agreement provide for the full amount to be repaid within 4 years i.e. by 20 October 2018, at the annual interest rate of 24%. Financial Statements of the Trust for 2020/2021 were produced (at the Trial). These show the costs of the project, including the acquisition/initial costs at approximately AU\$3M and construction costs at approximately AU\$5.2M. They also confirm that (a) the Trust is not making a profit, although for the last financial year it is, more or less, breaking even and (b) the liabilities include the two loans of AU\$3,200,000 and AU\$2,954,332. A valuation report by Burgess Rawson dated 26 May 2020 was produced for the remaining unsold 26 apartments. At the time of the valuation, the apartments were fully leased, producing a net income of AU\$262,502 for the year preceding the report. The Report noted the strengths of the project: the quality of the apartments, their proximity to transport and easy access to the CBD, but

also its weaknesses the poor economic outlook and the softness of the residential market. The report valued the apartments at between AU\$265,000 and AU\$350,000, and if sold in one line their collective value would be approximately \$6M (excluding GST), although the gross value of the apartments is higher, some AU\$7,140,909 (excluding GST). The development was approved and construction was begun towards the end of a boom in the residential market in Australia. H gave evidence that multiple similar developments had been approved in Perth, but when the commodities market crashed in 2015, many of the construction companies/builders went into liquidation and the resulting fire sale of these apartments/townhouses contributed to the significant downturn in property prices. One of the knock-on effects was that this rendered it difficult for the development to attract pre-sales, necessitating a second loan to complete the construction. The Shareholders and Unitholders Agreement provides for distribution of surplus funds or net profit in this way (clause 11.2): Unless the Director/s and Unitholders agree otherwise, the surplus funds or Net Profit of the Business shall be dealt with as follows:

- (a) Firstly, if there is a financier of the Business, in payment of any amount then payable in accordance with the terms of the relevant loan agreement;
- (b) Secondly, retention of such reasonable amount as may be determined by the Directors as being reasonably required for the purposes of the Business;
- (c) Thirdly in repayment of loans made by Unitholders;
- (d) Fourthly, in payment to the Unitholders in proportion to their A Class Unitholdings until all original investment amounts have been repaid.
- (e) Fifthly, funds distributed as per B Class Unitholdings. According to a letter from GH dated 27 January 2021, WA Pty Ltd is the holder of 40 A Class Units in the Trust. The Financial Statements of WA Pty Ltd for the (Australian) financial year ended 30 June 2021 confirm that this is the main asset of the company, and the value placed on it is AU\$400,000. According to the same Financial Statements the loan from H is the company's principal liability of the company is the debt to H. In fact, and according to the Shareholders and Unitholders Agreement, WA Pty Ltd is also the holder of 40 B Class Units in the Trust. GH's email of 27 January 2021 (and indeed the Balance Sheet in the Financial Statements) is materially inaccurate in this respect, something which was pointed out by W in her 10th Affidavit. In response to W's criticism, H clarified the matter with GH, and produced an email from GH dated 25 May 2021. This confirmed that WA Pty Ltd was the holder of 40/280 A Class Units (14.3%) and 40/350 B Class Units (11.4%). According to the same email GH says this: At the point [the Trust] has repaid its debt, additional funds received by [the Trust] will be repaid as per A Class Unit Holding until all original investment has been returned. Once the original costs of A Class Units have been repaid to all Unitholders, any further payments to Unitholders will be distributed as per B Class unit Holding. This accords with the terms of the Shareholding and Unitholding Agreement. During his evidence, H was granted permission to contact GH to confirm the current position as to repayment of the loan to WA

Pty Ltd. In response to a short email from H asking for confirmation that under the Loan Agreement he was entitled to 24% per annum, GH responded by email on 27 January 2022 confirming that this was correct and that it had been structured this way to reduce H's tax liability on the profit from the development. It added that this was moot as no profit was expected. The same email confirmed that any payments from the Trust would flow back to H. There is at least some prospect that H may recover some of his initial investment of 8 years ago. According to H, the commodities market is doing better, and the Court notes that Western Australia has reopened its border after a lengthy period of isolation from the rest of Australia to prevent the spread of Covid. The Trust's Financial Statements also suggest that the rental yield on the properties has increased in the past year or so and this might conceivably attract a purchaser/investment company wishing to acquire the remaining apartments/townhouses as a long-term investment. W was critical of the evidence presented as to this project, in a number of respects. First, she said that the only first source of information was GH, H's best friend, the implication being that GH was assisting H in putting the worst spin on the investment. I accept that one of GH's emails was less than accurate in ignoring the Class B Units held by WA Pty Ltd, but his description of the current value of the investment is consistent with Burgess Rawson's report and the other documents. Secondly, W says that H had not provided full evidence about the investment, and that in particular no independent evidence was provided to back up H's assertion that there had been fire sales of similar properties forcing the prices of the townhouses down. This may be so, but the proper course if she wished to challenge the valuation report was to make this clear by applying for an independent valuer to be appointed. She was legally-represented until December 2021. Burgess Rawson's report was provided with H's Form E filed in March 2021. Her 10th Affidavit in response to the Application was filed 26 May 2021, and at 18 she refers to the report, but there was no suggestion that it is inaccurate or had adopted a flawed methodology. Thirdly, she says that the developer would never sell the apartments in one line. The profit is always made, when you sell it in pieces, meaning apartment by apartment. In the report from May 2020 the value of a sale by single apartment (total 26 apartments) is already summing up to 7,815,000 AUD, resulting in a profit of minimum 1,615,000 AUD. The substantial value in May 2020 [is] not considering the improvement of the market since then, which can be assumed to be around 20%. He has given evidence, that his share of [the Trust] via [WA Pty Ltd] is 14.29%. [The Trust] owns 26 units (flats) with a total footage of 2,488 sqm and a value of 7,815,000 AUD in May 2020. This means, that the Petitioner owns with his 14.29% a share 355 sqm flat size, being equal to about 3-4 units (depending on the size) and a value [of] [AUD]1,116,764. There are several flaws in this analysis. The figure of AUD7,815,000 is not net but is inclusive of 10% Australian GST. Secondly, the 14.29% interest is in respect of the Class A units in the Trust, which will only entitle the unit-holder (which is WA Pty Ltd, not H) to a refund of the investment after the principal and other loans have been paid off. H would have no entitlement under the Shareholders and Unitholders Agreement to force the Trust to transfer 3-4 of the units/apartments to him, even if he had direct control of WA Pty Ltd. W is also critical in her Closing Submissions of the fact that it was only during the Trial that it came to light that two

of the units/apartments had been sold in 2020. The Trust's Financial Statements confirm that two units were sold in 2020 for AU\$301,818 and AU\$250,000. It is not possible to identify whether these were 1, 2 or 3 bedroom apartments, but the Financial Statements confirm that no profit was made from their disposal. Clause 7.1 of the Shareholders and Unitholders Agreement restricts the power of the Directors of the Trust to make decisions on certain matters without a Special Resolution of Unitholders passed at a duly convened meeting. This list includes

- (d) The sale or disposal of the whole or a substantial part of the assets or undertakings of the Trust other than in the ordinary course of business; As a creditor of WA Ltd, rather than a direct Unit holder, H has no entitlement under the Trust to be kept apprised of any disposal of the apartments by the Trust, and there is some concern that he did not know of the sale of these two apartments until he obtained the Trust's Financial Statements during the trial. As will be seen, one of the directions the Court intends to make is that W will be supplied with updated information on the investments. Obviously H must be in a position to obtain information and should confirm with GH that he will be fully informed of developments including potential change in the asset holding of the Trust. Children's e-stylus In his 3rd affirmation, H described his second investment into the company responsible for a children's electronic colouring stylus, CC Ltd B) My second investment, [CC Ltd], is a kid's coloring stylus and coloring apps. I made this investment believing that it is a great product and I still believe this. Before making the investment, I showed it to friends in the toy business and got very favorable reactions from them. What I didn't expect was the time it would take to get it to market and that I would have to continue to put money into it to keep it from going under. I worked hard on the product, finding distributors, investors, manufacturers etc. It was not a passive investment and required much of my time. In December 2019 we were invited to show the product on the Buy It Now tv show in the UK which got us orders from Amazon and JML. Sales were not large but it showed that the product can sell. JML expressed interest in marketing the product to their clients and we are discussing this further with them. When Covid happened JML dropped all new products, including [the product]. So far, we have only sold about 7,000 units and will need to sell about 500,000 to recover the investment. The company is insolvent. H is a co-founder of CC Ltd, incorporated in Hong Kong on 18 November 2014. He is one of its directors and a 25% shareholder. According to a letter dated 5 December 2019, provided for the German proceedings and produced as an exhibit by W to her ninth affidavit, his initial and subsequent investments total US\$261,640: Date Amount Equity purchased November 2014 USD70,000 4,500 Ordinary Shares May 2016 USD50,000 1,000 Preferred A Shares March 2017 USD41,610 1,111 Ordinary Shares and 389 Preferred A Shares May 2017 USD99,970 1,293 Ordinary Shares The financial statements of CC Ltd as at 31 January 2021 value the shares at cost, namely Preference Share A = HK\$541,710 and Ordinary Shares = HK\$828,912. This level of investment demonstrated H's belief in the product. The problem appears to have been marketing it despite the injection of cash, H said that they didn't have sufficient funds to be able to ensure proper exposure to generate sales. The December 2019 letter signed by the other director and the holder of the remaining 75%

of the company shares also states that as of the date of this letter, [CC Ltd] is insolvent and has no prospects of making any profits in the near future and has loans owing to other shareholders exceeding USD150,000.00 that have first priority to Ordinary and Preferred A shares and all moneys owing to H. A subsequent letter from the Company, again signed by BW, dated 30 November 2020 (in the lead-up to the hearing in Germany) To Whom it May Concern states This is to confirm that [CC Ltd] has sold a total of 3,377 CCC stylus from January 1, 2020 to the date of this letter, resulting in a net profit of approximately USD15,299.31 and has no prospects for selling additional stylus in 2020 and no pending or prospective sales for 2021. [CC Ltd] is insolvent and has no prospects of making any profits in the near future and has loans owing to other shareholders exceeding USD150,000.00 that have first priority to Ordinary and Preferred A shares. In the witness box, H said that he still believed in the product (into which he has invested more than HK\$2M). He said that in 2020 there was some prospect for a potential deal with JML for 100,000 units of the stylus at a US\$4.5 royalty plus US\$1, but this fell through. According to H, there have been no further deals or potential deals since then. In cross-examination, W asked about the competitors for the project and in doing so pointed out that children change all the time i.e. as to how they play and there are always new things coming in . H agreed, and said that we are looking at what is the next stage. First, was the pen and the artwork. We had one of the top street artists here , to do the art. We met with Disney numerous times, to get licences. It could be a Harry Potter wand. We talked to Romeo (Angry Birds) This is by all accounts an attractive product, for which CC Ltd holds the intellectual property. But as W noted, it is not the only one on the market there are multiple competitors. Some of the bigger players in the electronic industry are involved with these alternative e-pens and apps. The prospects for the product and CC Ltd are uncertain at best, and the only reasonable conclusion is that it is unlikely to provide H with an income in the future or enable him to recoup his investment. The coconut oil investment H summarized his third investment as follows: C) My 3rd investment, [TC Oil Ltd], is a company producing virgin coconut oil in Ghana, Africa. Like [CC Ltd], it was a small investment that became a big investment due to slow growth, requiring further investment. After starting the business, coconut oil prices dropped from a high of USD 3.90 per liter to between 2.10-3.00 per liter. In 2020 coconut oil prices recovered but coconut prices in Ghana doubled in price, again wiping out all profit from sales. I am a Director for [TC Oil Ltd] and spend quite a bit of time helping them grow, including finding buyers, attending trade shows, etc. The company continues to operate. TC Oil Ltd is another Hong Kong company. A letter from the managing director, FL, dated 25 November 2019 stated To whom it may concern, Between 1st of June 2017 and 10th of October 2017 [H] invested as way of a long term loan USD 140,000 in [TC Oil Ltd]. The loan was in exchange for equity in [TC Oil Ltd] and the repayment terms were to be when the company could make the provision to do so. To date the company has not had the means to repay any of this loan nor to issue any dividend to the shareholders, which [H] is one. It is not apparent that in the short term future this position will change due to the company's financial performance. A series of emails (exhibit BAM-10) confirm the dates of the injection of capital by H: Date Amount 1 June 2017 USD17,000 5 July 2017 USD23,000 12 Sep 2017 USD40,000 26 Sep 2017

USD20,000 10 Oct 2017 USD40,000 In November 2019 there was a need for a further capital injection/equity raise for the company (from H s 4th Affirmation):

31. In November 2019 there was a need for an equity raise for [TC Oil Ltd]. My share was USD 9.079, which I did not have. I faced losing my equity and chose to make the payment on my DBS credit card via PayPal. The credit card statement shows a number of payments for January/February 2020 via paypal to FL, totaling approximately HK\$121,608. All in all, H says he has invested HK\$1,162,816 into the business. H said at the trial that there had been another equity raise in 2021 and he gave up 20% of his shares for that, and that his current interest in the business is approximately 17%. He values the business as a whole at US\$250,000. To date, there has been no return on his investment. This is not for lack of effort. As with CC Ltd, H invested much of his time in supporting the business towards making it profitable. In the case of TC Oil Ltd these efforts included attending trade shows and seeking out potential customers in Holland and Germany. These efforts are ongoing, made more difficult however by the travel restrictions associated with Covid. The prospects for the company are uncertain. H said there will likely always be a demand for coconut oil products, but whether or not a profit can be achieved is dependent on a number of factors, including the cost of production and delivery and the price point and added it is the supplier who gets squeezed. we don t have control over the price of coconuts . W s criticism on 2nd and 3rd ventures One of W s central complaints is that H s application has been driven in part by risky investment decisions on his part, whereas she has been conservative with her own investments. There is some force in this. In respect of the children s stylus business she describes his decision to enter the market as . She was less critical as to the coconut business which has the potential to produce an income in the future. During his evidence H said, with the benefit of hindsight, he would have done things differently, including to have set aside or parked some of money, but that none of the ventures had been entered into without considerable research and considerable thought. He said he thought he was winning and was right on the mark . Each of these projects into which H has invested a total of approximately HK\$6M over the past 7-8 years carried a significant degree of risk, even with the best due diligence being conducted. It may well be that H, having succeeded before in the mid-2000s in setting up and then selling a business and making a considerable profit upon the sale , believed that he could repeat that success and thereby achieve a reasonable level of financial security for his later years. Unfortunately, none of them has succeeded, and realistically H is unlikely to recoup his initial investment on them in the short term. H s current financial position In his 4th Affirmation H provided a summary of how his savings had drained from the period of 7 years June 2014 to June 2021:
32. In paragraph 21 the Respondent questions where the money from the sale of our [HK home] and Boracay property went.
- a. I received HKD 7,153,750 from the sale of our HK home.
 - b. I received about HKD 4,602,000 from the sale of Boracay home after sales commission.

- c. Court ordered me to pay the Respondent HKD 200,000 Sep 2014 for her dispute of judgement.
- d. monies left HKD 11,555,750
- e. Approximate amount for investments and loan:
- f. [WA Pty Ltd] HKD 2,700,000
- g. [CC Ltd] HKD 2,035,000
- h. [CC Ltd] shares gifted to founder [name] HKD 123,585
- i. [TC Oil Ltd] 1,162,816
- j. Loan to brother 200,000
- k. Total 6,222,201
- l. Approximate living costs:
- m. 4 years in HK, approximately HKD 90,000 per month 4,320,000
- n. 2.5 years HK and Thailand HKD 50,000 per month 1,500,000
- o. Cost of visiting N HKD 10,000 per month 600,000 This is only for Hotels, airfare and rental cards, excludes food and entertainment. I visited him approximately 2 months a year and always had to live out of hotels and we would eat in restaurants.
- p. Total 6,420,000
- q. Total costs + investments = 12,642,201
- r. Total moneys after divorce = HKD 11,555,750
- s. This is just a rough approximate. There were many other costs, like the USD 21,294 expenses for Boracay and only USD 12,600 income.
- t. All income went towards paying maintenance but I still needed to pay taxes on that money. These rough calculations show that I am short over HKD1,100,000. It is obvious from my debt that I am short more than that. It must also be remembered that there was about 5 months that I had no work. W does not accept this. With her Closing Submissions, W presented a chart of what she said H cash situation was from the August 2016 sale of Boracay to January 2018, in support of her claim that H s financial situation is not as he has presented:

Date	Subject	Cash in original currency	Cash in HKD
Feb 16	Down payment Boracay	\$30,000	234,375
Aug 16	Final payment Boracay	\$562,479	4,394,367
Sep 16	Maintenance payment 13 months	-585,000	-585,000
Sep 16	Expenses 13 months	43,900	(88,900)
May 17	CC Ltd	-99,970	-781,016
Jun 17	TC Oil Ltd	-140,000	-1,093,750
Sep 17	Total cash in September 2017 (why did he take 2 loans?)	-1,923,198	-1,923,198
Oct 17	Loan J.R 1	50,000	50,000
Jan 18	Loan J.R 2	1,000,000	1,000,000
Oct 17 - Jan 18	Maintenance payment 4 months	-180,000	-180,000

Jan 18 Salary M Co 3 months 200,000 200,000 Oct 17 - Jan 18 Expenses 4 months at 43,900 (88,900 45,000 maintenance) -175,600 -175,600 Jan 18 Total cash in January 2018 3,158,223 On the basis of this, W submits that

29. The Petitioner claims to have lost or used all his money and his earning possibilities assumed by the Court since 2014. I have not complete details of all bank transfers of the Petitioner since 2014 in hands, but during cross-examination I understood, that something is wrong. I have analyzed his cash situation from August 2016 (sale of Boracay) to January 2018 (attachment 2). He has a positive cash flow of 3,158,223 HKD. Even before he has received two loans from his good friend JR in September 2017, he has had a positive cash flow of 1,923,198 HKD at that date. His cash situation was comfortable even after his cash investments in TC Oil Ltd and additional investments in CC Ltd in 2017. There was no cash reason to ask for loans from JR in September 2017 or if so, where the final cash flow of 3,158,223 HKD disappear after January 2018? I conclude that there was reasonable doubts about the full truth about the Petitioner s financial situation.
30. The Petitioner has transferred all investments outside of HK, which is in principle his choice and fine, but it makes it nearly impossible for me, who has very limited financial knowledge, to check and verify any of his assets or future profits.
31. It is still in question, where all his assets disappeared, as that was not proven fully in the trial. It is not possible to detect that for me, as these assets may be parked in cash or accounts with family and friends in foreign countries such as Thailand, Philippines, Ghana, Australia, Canada or others. Neither this chart, nor any of these points were put to H during the Trial. Nor, as I have noted already, did W adduce a Questionnaire which might have asked for more details of the investments and the alleged indebtedness. It is only now, in W s Closing Submissions, that she is saying there must be hidden money or assets. It is also noted that there is a least one glaring error in the chart: the first loan from JR to H in October 2017 was not for HK\$50,000 but was for US\$50,000. During the hearing the Court drew W s attention to the Summary set out in paragraph 32 of H s 4th Affirmation, specifically so that she could question him about it. She did not. It is only now that she says it is incorrect. This is procedurally unfair. It is also relevant to note that this is not the first time W has raised an allegation of dissipation or hiding of assets without substantiating it by solid evidential support: she did so in the 2014 Trial, and this was dismissed by the learned Judge as a bare assertion on her part. G. W s case In her evidence and submissions to the Court, both written and oral, W emphasized these points:
 - (1) H s obligations under the Order
 - (2) That he deliberately had under-utilised his earning capacity so as to seek to avoid these obligations

- (3) That her own earning capacity and earnings were limited by her health problems, one of the reasons the learned Judge awarded her a joint lives maintenance rather than one limited in time. By her Open Proposal, she asked the Court to
- (1) Confirm H's obligation to pay all of the Accrued Sum, within an interest rate of 3%,
- (2) Increase the spousal and child maintenance to take into account inflation, to HK\$25,013 and HK\$31,266 respectively
- (3) Fix a security for the payments, e.g. the Australia property
- (4) Fix the spousal maintenance payments as a lump sum of HK\$ 4,181,244 which is calculated as 18 years and 3% interest rate .
- (5) Award her the costs of the Application. W did not file any Summons seeking orders in terms of items (2), (3) or (4), each of which would amount to a substantial variation of the 2014 Order. These requests will not be considered further. In opening her case at the Trial, W stressed that after 2014 her primary aim was to secure her future and N's future and so she acquired the house, left some of the money from the award in the bank and invested in various funds with Liquid. Her future goal was to secure herself and N financially, and that she had reduced her lifestyle and limited her spending accordingly.
- (i) W's earnings and earning capacity W's health problems are chronic and long-lasting. Despite this, when she applied to relocate she expressed optimism about the prospects of obtaining work in R, her home town in Germany. A rather different picture was painted by her at the Ancillary Relief trial before Melloy J, and the learned Judge accepted that H had reason to feel aggrieved by this: Judgment, 18. To her 10th Affidavit, W exhibited two medical certificates (dated February 2020) which set out a detailed list of her complaints. In addition to her thoracic outlet syndrome and chronic pain syndrome , she has since 2014 had treatment for basal cell carcinoma of the left cheek and melanoma on the right calf the most recent 2 operations in May 2019. She suffers from chronic migraines, exhaustion/ depression and tinnitus. The first certificate notes that The patient's complaints have clearly worsened. The second goes into more details: Due to the diagnoses mentioned above, [W] is considerably restricted in her daily resilience due to chronic therapy-refractory pain in the left upper extremity and severe migraine attacks and tinnitus. The illnesses mentioned above do not allow regular professional activity. A re-establishment of the regular professional activity as a pianist/music pedagogue is not to be expected based on the course of the illness. Heavy household chores cannot be carried out because the patient's symptoms are clearly progressive. Permanent drug and physical treatment will remain necessary. W also produced her German disability card: The holder of this card is severely disabled: 50% . In her Form E, W detailed income from teachi she said she did not take this out but reinvested it. H's Questionnaire asked about W's efforts to obtain work as a piano teacher. Her reply: When the Respondent moved to Germany, she had already contacted the public and private Music schools in the area and introduced herself, but they were and still are not hiring piano teachers because they do not have enough interested students. The

Respondent also spoke with the teachers in N's primary school and gymnasium about recommending the Respondent as a private piano teacher to their students, but most children are not interested in learning piano. When the Respondent moved to R, a few children tried some piano lessons, but after a month or two they had no interest anymore and quit learning piano. This was consistent with W's evidence at the Trial. H questioned her as to the inconsistency between her enthusiastic and optimistic evidence she gave at the relocation trial, and her later presentation. He asked which one was correct: A. This one. I was hoping opportunities would come. I thought I would have some possible work organizing concerts. I said in the 2014 trial it was not possible anymore. I was struggling with a lot of things. the 2012 medical reports, the 2014 medical evaluation, the nerve pain is continuing and getting worse. H put to her that she had made no effort in finding work in piano performance or education: A. When I moved [to Germany] I went to music schools in H, 7 km away. I spoke with the Director there were no students and no jobs for a piano teacher, he said better be a taxi driver. I went to M and they have public and private music schools. The public school, where I attended as a student, said the same: not enough students are interested. The private school said the same thing. In R, I tried to teach a few children. Some came, but quit after a few weeks. H then asked how she was able to go skiing with N given her health issues: A. My legs are OK. But I don't ski very much. Just slowly. Very cautious. I accept, as did Her Honour Judge Melloy, that W's earning capacity is limited. Her health has worsened since 2014 and the combined effects of the multiple and chronic problems will significantly curtail her ability to obtain and sustain employment. I find that she will rely on her investment income, to the extent that it is, and absent ongoing payments from H, she will gradually eat into her savings and be forced to liquidate some of her investments in order to support herself and N.

H. Needs

W ra Curricular Activities Entertainment/presents Holidays Clothing/shoes Insurance premia Lunches and pocket money Other Transport Others (specify) Computer, iPhone, iPad, Hobby equipment, Gym

Total monthly expenses for children o correlate her expenses to individual statement entries or to supply a summary with cross-references to receipts. Nor did she supply any quotes or estimates for the intended house renovations. The expenses listed in the Form E seem to me to be high. I am not satisfied that W's expenses are as much as she has claimed. I note that during the AR hearing, W presented what the Judge found to be an inflated list of expenses with little regard for accuracy. I am prepared to accept that they are in the vicinity of his partner's lives. He has no reasonable prospect of purchasing property, at least not in Hong Kong, and while he is working here there is a continued need for him to rent a flat in Hong Kong. He has very modest accommodation in Hong Kong, at a rental of HK\$6,500 per month. He listed his expenses as these in his Form E filed March 2021: General Item Amount (HKD) Rent HK\$6,500, Thailand HK\$4,000/2 8,500 Mortgage Instalments Utilities (electricity, gas, rates, telephone & water) Management fees Food 4,000 Household expenses Car expenses Insurance premia. Had 2 insurance policies for N but had to give up in Oct 2020. Domestic helper(s) Others (specify). Furniture storage 2,000 Total HKD15,400 Personal Item Amount (HKD) Meals out of home 5,000 Transport (motorbike rental and MTR) 1,500 Clothing/Shoes 1,500 Personal grooming (including haircut and cosmetics) 1,000

Entertainment/presents 1,000 Holiday (Flight to Thailand) 3,000 Medical/Dental 1,000 2,500 Insurance ar Activities Entertainment/presents Holidays. Cost to visit every 2 months average 10,000 15,000 per month 10,000 Clothing/shoes Insurance premia Lunches and pocket money Other Transport Others (specify) Total monthly expenses for children HKD10,000 Total Monthly Expenses HK88,900 Again, many of these expenses were not particularized by reference to receipts or bank statement entries. Taking into account the non-payment of the maintenance and that since 2020 H has not been flying to see N (because of an unhappy estrangement between father and son), H s estimated spending is \$33,500 per month. I note, however, that the Form E list does not include in his list any allowance for repayment of his debts. H has three loans from friends or family, including HK\$1,387,667 due to JR, a friend. He continues to service three bank loans, as well as credit card debts, although the latter are for relatively modest amounts. He still owes money to his German lawyer. This was updated in his Closing Summary where he is making payments of some HK\$11,750 per month on his credit cards and approximately HK\$14,800 on bank loans. Some of these will be paid off later this year or early next year. It is to be noted that H s overall expenditure has been considerable reduced since the 2014 trial, as has W

- s. Both parties have been forced to economise. Taking into account inflation, I am satisfied that W s needs are no less than as assessed in 2014, and I am also satisfied that N s needs will likely have increased, including because he is now 7-8 years older. I. Conclusion and Order I am satisfied that H s ability to pay in accordance with the Order has reduced significantly since the Judgment. The 2014 Order was made on the basis that he would continue to earn HK\$110,000 per month and in the anticipation that he could be earning HK\$130,000 to HK\$140,000 with supplementary income from the Boracay property. Instead, by at the latest mid-2015 when he started with M Co, his salary was \$50,000 per month, and it has not changed since. He did not have any real opportunity at M Co to increase his salary (as M Co was not using its SFC licence to sell products). Since joining CM Co in 2018 he has made efforts to increase his salary or earn commissions, but without success to date. I am also satisfied that H has done all he can to abide by the 2014 Order by pursuing alternative avenues open to him, including the three main investments. It is important to record that part of his motivation must have been to provide not only for himself, but for his son, N. It seemed to me that he has been very disappointed in not being able to do so for the last 18 months, and he is determined to recommence payments as soon as he is able. In conclusion it seems to me that to require H to continue to make payments of maintenance to W is unrealistic. I am further satisfied that I should exercise my discretion to backdate the variation, but only with effect from the filing of the Application. It seems to me that it would be unfair to backdate the variation to the time of the cessation of payments in July 2020. Therefore, the periodical payments to W pursuant to paragraph 3 of the 2014 Order will be suspended with effect from 1 February 2021 to date. To be clear, that means H will still be liable to pay the accrued maintenance prior to that date, i.e. 7 months x HK\$20,000 per month. I have considered whether at this point the Court should make an order that payments to the W should cease altogether. I have decided that this would not be fair. W s

capacity to earn is quite limited due to her health condition which is unlikely to improve according to the medical assessment quoted above. Consequently, W will therefore retain the ability to apply for resumption of maintenance to her in the future, including if H's various investments take off. Further, there will be a continuing obligation on H to keep W informed by supplying audited financial statements in relation to these various businesses so as to update her as to his financial position. H's Closing Summary proposed that instead he should update N. I will not make this an order but of course he can do so. H's focus for the present must be to ensure his ongoing financial support for N through to the completion of N's full-time education. This was the commitment he made at t t ed that he may be in a position to pay HK\$6,000 per month with effect from 1 September 2022. In his Closing Summary he suggested that N could have 25% of the income on his investments. That cannot form the basis of an appropriate Order not least because of the uncertainties surrounding them. In my assessment, HK\$6,000 per month is too low, even with H's present challenging circumstances. HK\$15,000 per month is more reasonable and that will be the extent of the variation. The order I will make is that the periodical payments for N pursuant to paragraph 4 of the 2014 Order will be suspended from 1 February 2021 to 30 June 2022. Again, I do not consider that it would be appropriate for me to backdate the variation to prior to the date when the Application was filed. Thereafter, H is to make periodical payments to W for N in the sum of HK\$15,000 per month the first payment to be made on 1 July 2022. The accrued arrears from 1 July 2020 to 31 January 2021 will remain. W will be h[hPEPh[ib[bPiE hN6Q h .E hFR? hjfz hFR? hFR? gdL= gdL= ph"" gdL= gdL= gd%g gdL= gd%g gdL= gd%g hN_Y hN_Y gd5f) gd5f) gd5f) gd5f) gd5f) gd5f) kd' h5f) kd: gd(7 gd5f) gd(7 kd~ kd[" kd8\$ kdV% kdS' kd0) kdn* kd + kdK, kd(. kdf/ kdC1 kd 3 kd^4 kd;6 kdy7 kdV9 kd3; kdq< kdN> kd+@ kdiA kdFC kd#E gdu= entitled to apply to vary that order upwards including if H's financial position improves and N is still studying. Costs H has not been entirely successful in the Application, by which he sought to absolve himself of all obligations to make periodical payments under the 2014 Order. I am satisfied that W acted reasonably in resisting the Application. She had the assistance of lawyers, which admittedly were primarily involved in pursuing the Garnishee Order. In the circumstances I will make an order that there be No order as to costs. Order I will therefore make the following Order:

- (1) Paragraph 3 of the Order dated 19 March 2014 shall be suspended from 1 February 2021 until 1 April 2022. With effect from 1 April 2022 the Petitioner shall pay to the Respondent periodical payments in the sum of HK\$1 per annum.
- (2) Paragraph 4 of the Order dated 19 March 2014 shall be suspended from 1 February 2021 until 30 June 2022. With effect from 1 July 2022 the Petitioner shall pay to the Respondent for the child of the family N in the sum of HK\$15,000 per month until N's 18th birthday or cessation of full-time education, whichever is the later.

- (3) It is further directed that the Petitioner is to provide the Respondent with regular updates on his financial position, namely by supplying her with copies of his Hong Kong IRD tax assessments for 2022 and beyond upon them being issued to him, and financial statements on at least an annual basis from 2022 and beyond upon them becoming available to him with respect to
- (a) The Western Australian property investment
 - (b) The children s e-stylus investment
 - (c) The coconut oil investment
 - (d) The Executive Coaching business
- (4) Liberty to apply with respect to implementation of this Order.
- (5) There be an order nisi, to be made absolute in 28 days time, that there be no order as to costs. (Peter Barnes) Deputy District Court Judge The Petitioner acts in person The Respondent acts in person PAGE - PAGE - The Court has treated the Notice as primarily an application to vary: Order dated 26 March 2021 These paragraphs correspond to paragraph 3 and 4 of the 2014 Order. s 3rd Affirmation, BAM-2, B1/4 Judgment, Judgment, 27. Judgment, 54-58 Of which she said HK\$172,000 is being saved for N: W s Form E, page 8. Trial Exhibit P4, contract dated 18 January 2018 s 3rd Affirmation, Exhibit BAM-14, 15 s 10th Affidavit, 13-15 s 4th Affirmation, 32 & Trial Exhibit P5 Judgment, Extracts from his website were provided by W. s 3rd Affirmation, Including a failed project in Texas: Trial Exhibit P7 s Opening Submissions, s 3rd Affirmation, s 3rd Affirmation, Trial Exhibit P8 s 4th Affirmation, Part of Trial Exhibit P8 Trial Exhibit P12 Trial Exhibit P10 s Closing Submission, Trial Exhibit P11 s 3rd Affirmation, Trial Exhibit P9 Judgment, Judgment, s Opening Submissions Judgment, Exhibit DJM-10-3 Judgment, 79 A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V v g W g & ` # \$ h U ^ C : p < i m H < s H < t H m H < s H < t H p h ` ^ \ [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, s Q} # theme/theme/theme1.xml \$ O}) X p 9 0 + P H I | P P y u 9 x u 5 f s + W V F 7 H q = . 8 } d - q y I @ j ! Q _ j y V ` | P Z + T "" p < 4 V O & x \$ A 8 > v ; E U C n 8 r * ~ P (5 . } x E / , E E \ } theme/theme/_rels/themeManager.xml.rels 5 6 ? \$ Q K (M & \$ R (. 1 [Content_Types].xml PK _rels/.rels PK theme/theme/themeManager.xml PK theme/theme/theme1.xml PK theme/theme/_rels/themeManager.xml.rels PK < ? xml version = " 1 . 0 " encoding = " UTF - 8 " standalone = " yes " ? > < a : c l r M a p x m l n s : a = " http : / / s c h e m a s . o p e n x m l f o r m a t s . o r g / d r a w i n g m l / 2 0 0 6 / m a i n " b g 1 = " l t 1 " t x 1 = " d k 1 " b g 2 = " l t 2 " t x 2 = " d k 2 " a c c e n t 1 = " a c c e n t 1 " a c c e n t 2 = " a c c e n t 2 " a c c e n t 3 = " a c c e n t 3 " a c c e n t 4 = " a c c e n t 4 " a c c e n t 5 = " a c c e n t 5 " a c c e n t 6 = " a c c e n t 6 " h l i n k = " h l i n k " f o l H l i n k = " f o l H l i n k " / > : " T e * & 1 (n B Y @ ; B Y @ ; & 6 " C A C V J u d i c i a r y E n g l i s h . d o t W i n d o w s U s e r M i c r o s o f t O f f i c e W o r d J u d i c i a r y C A C V C A C V T i t l e < ? x m l v e r s i o n = " 1 . 0 " e n c o d i n g = " U T F - 8 " s t a n d a l o n e = " n o " ? > < b : S o u r c e s x m l n s : b = " http : / / s c h e m a s . o p e n x m l f o r m a t s . o r g / o f f i c e D o c u m e n t / 2 0 0 6 / b i b l i o g r a p h y " x m l n s = " http : / / s c h e m a s . o p e n x m l f o r m a t s . o r g / o f f i c e D o c u m e n t / 2 0 0 6 / b i b l i o g r a p h y " S e l e c t e d S t y l e = " \ A P A S i x t h E d i t i o n O f f i c e O n l i n e . x s l " S t y l e N a m e = " A P A "

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Prepared on 29 October 2026 · Esheria