

HONG KONG / JUDGMENT

BSTLF v. DSF

COURT

Family Court

DECIDED

14 April 2011

CASE / FILE NUMBER

FCMC2026/2011

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FCMC 2026 / 2011 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 2026 OF 2011

BETWEEN BSTLF Petitioner (also known as BSTLS) and DSF Respondent (otherwise known as
DF)

Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not open to public) Date of Hearing : 7
April 2011 Date of Judgment : 14 April 2011

J U D G M E N T (Maintenance Pending Suit)

Introduction

AUTONUMOUT This is an application by a petitioner wife for maintenance pending suit for herself pursuant to s. 3 Matrimonial Proceedings and Property Ordinance Cap 192. She also seeks provision for her legal fees.

Background

AUTONUMOUT The parties married in September 1997. In or around September 2009 the husband was seconded to Hong Kong by his employer, a bank in Hong Kong, as a Senior Manager in the Credit Risk Department. The secondment is initially for a three year period. Prior to that the parties lived and worked in the United Kingdom. The husband was with the bank and the wife worked as a Personal Assistant. The wife is 35 years of age and is presently not working. The husband is 38 years old. There are no children of the family. AUTONUMOUT The divorce petition was issued on the 22 February 2011 based on the husband s unreasonable behaviour. The husband indicated in the Form 4 that unreasonable behaviour per se was accepted but that the

particulars were not agreed in some respects. He has not filed an Answer. The wife has not set the matter down in the special procedure list. During the hearing there was some discussion on the best way forward with respect to the divorce itself. I would urge both parties to be sensible in that regard and for the suit to be progressed expeditiously. AUTONUMOUT The wife's application for maintenance pending suit first came before the court on the 7 March 2011. On that occasion the Husband agreed to pay the wife interim interim maintenance pending suit of HK\$70,000 forthwith plus a further HK\$20,000 on the following day. Going forward the husband was to pay the wife HK\$20,000 per month pending a full hearing on the matter. I have checked the transcript of that hearing and have asked that a copy be made available to the parties. From that transcript it can be seen that I asked if the HK\$70,000 was for the payment of legal fees. The wife's solicitor told the court that it was for the wife to use to find alternative accommodation. I asked if it was to be used inter alia to pay the deposit and the wife's solicitor answered in the affirmative. I was told that the wife was staying at a friend's home and that it was extremely inconvenient for her to continue to do so. The wife's solicitor agreed that the wife would not be able to move out unless the extra HK\$20,000 was paid. The husband agreed then to pay the additional HK\$20,000 the following day. It was on this basis then that the order was made. The law AUTONUMOUT Applications of this nature are governed by s. 3 Matrimonial Proceedings and Property Ordinance, Cap 192, which state that the only governing principle is that the court will make such order, as it considers reasonable in all the circumstances of the case. Consequently maintenance pending suit applications are approached on a broad brush basis. A detailed examination of the parties means will be examined at a later date at a full ancillary relief hearing. Any over payment or under payment can be dealt with then. The court is mainly concerned with the husband's ability to pay and the wife's reasonable needs. The party's proposals AUTONUMOUT The difficulty with each party's proposals is that each has put his or her case at its highest. The wife has sought to include the husband's cash incentive compensation in its entirety and on that basis seeks approximately HK\$82,000 per month going forward plus other one off payments for a rental deposit, moving costs, new furniture and psychological therapy. AUTONUMOUT In contrast the husband says that the wife's application should be dismissed, that figures have been plucked out of the air without any proper documentary evidence in support. The husband alleges that the wife is living with a boyfriend and that her application is disingenuous. Further the husband claims that what is being sought is far in excess of what he can afford to pay. AUTONUMOUT The husband earns just under HK\$110,000 per month. In addition the party's property in the United Kingdom is presently let out for approximately HK\$10,800 per month. Thus in total the husband has an income stream of approximately HK\$120,800 per month. In addition the party's are provided with accommodation. Up until recently this has been a fairly luxurious apartment on Hong Kong Island. Thus there is no rental to pay, nor have the party's been obliged to pay for utilities. Going forward the husband will be provided with other accommodation, also provided by the bank, but probably not of the same standard. AUTONUMOUT In addition to this the husband has been paid a cash incentive amount. In March 2011 this amounted to HK\$1.1 million. AUTONUMOUT The husband says that he has outgoings of HK\$100,610 per month. He is prepared to continue to pay the wife HK\$20,000 per month. The Issues AUTONUMOUT In broad terms there is only one issue to be determined namely how much

maintenance should the husband be paying to the wife on an interim basis and whether within that there should be any provision for legal costs. Discussion AUTONUMOUT I must now turn to consider the issues, the law and the parties evidence. AUTONUMOUT The difficulty with the wife's case is that she has simply not come up to proof on many of the claims made by her in her affidavits and Form E. I was particularly concerned about the way in which she now says she has spent the HK\$90,000 paid to her on or about the 7 and 8 March 2011. When asked she provided the following list: (1) Repayment of loans

- (a) A Anna 7,000
- (b) D Dennis 1,987
- (c) K 3,000
- (d) Family Family 8,000
- (e) R 10,000 Rent Rent 28,000 Trip to Macau with friends Trip t 9,000 Clothing, hair, personal grooming groo 10,000 Other food, transportation, entertainment Other food, transportation, entert 10,000 86,987 CASH IN BANK Approximately \$5,000 AUTONUMOUT There was no documentary evidence in support of this alleged expenditure. Perhaps more importantly it is not what she had told the court that she intended to use the funds for. It would seem that she has not used the money to pay for a deposit on a flat or to arrange to move out from her so called friends place. Further she has not paid her outstanding legal fees. Instead she saw fit, she says to spend HK\$9,000 on a trip to Macau, HK\$10,000 on clothing, hair and personal grooming and another HK\$10,000 on other food, transportation and entertainment. This belies belief. I also question the payment of HK\$28,000 in so called rent to a friend. All in all I did not find the wife at all credible in this respect. Put simply I do not believe her. AUTONUMOUT Given that how much should the husband now be obliged to pay? He offers HK\$20,000 per month. The difficulty with that is that on the face of it, it seems unlikely that the wife will be able to pay any form of rental plus cover her own expenses on HK\$20,000 per month. The husband has concerns about paying rental given his belief that the wife may be living with a new partner. I asked the wife if she would undertake to live in separate accommodation and to provide documentary evidence in relation to it. Any third parties living in the accommodation would also need to be revealed. The wife agreed to give such an undertaking. This should be incorporated in the court order. AUTONUMOUT On that basis I need to look next to the husband's outgoings. I accept that he has certain essential expenses in relation to the house and car in the United Kingdom of approximately HK\$30,000 per month, accepting for a minute a minimum contribution towards his United Kingdom credit cards of HK\$2,288 per month. He puts his other expenses as follows: General housekeeping HK 10,000 Now TV 1,000 Meals out of the home * 5,000 Transport 3,000 Clothing/shoes * 5,000 Personal grooming 1,000 Entertainment/presents * 10,000 Holiday * 5,000 Tax 16,500 Laundry 1,200 Insurance 181.16 Contribution to parents 3,000 TOTAL 60,881.00 AUTONUMOUT Of these it seems to me that economies can be made to the provision for meals out of the home, clothing and shoes, entertainment and presents and holidays. I have

marked those expenses with an *. I will allow HK\$15,000 for those items in total instead of HK\$25,000. I will not allow the contribution of HK\$3,000 for his parents as this should not take precedence over maintenance to his wife. Thus in total the husband needs an additional c. HK\$48,000 inclusive of tax or c. HK\$31,500 net of tax. AUTONUMOUT Thus the husband has approximately HK\$42,800 available from his income to provide reasonable provision for the wife. Rental AUTONUMOUT The wife has not provided any documentary evidence in support of her estimate of HK\$25,000 per month for rental. Taking a very broad brush approach I will allow HK\$15,000 per month on the basis of the undertaking given by the wife above. Other expenses AUTONUMOUT Given that I have found that I have not been able to rely on the wife's estimates for expenses or indeed her assertions made through her lawyer on the last occasion I will further order that the husband pay an additional HK\$30,000 per month for the wife's other expenses. This is in keeping with the husband's own estimates for household and personal expenditure. In this way both parties will have a similar amount of money on which to live in the interim and a roof over their head. Thus in total the husband shall pay the wife maintenance pending suit of HK\$45,000 per month. AUTONUMOUT I will not make provision for any other expenses. Provision for rental deposit should have been made from the interim amount of HK\$70,000 provided on the last occasion. For the avoidance of doubt I do not accept the estimate of HK\$20,000 for moving costs or HK\$150,000 for furniture. These amounts seem to me to be excessive and without proper foundation. If the wife wishes to have psychological therapy then she should budget for this from her maintenance. Again I note that she did not allegedly use any of the HK\$70,000 for this purpose. Legal costs AUTONUMOUT The wife also asks for HK\$10,000 per month as a contribution towards her litigation costs. AUTONUMOUT The Family Court in Hong Kong has consistently of late relied on the guidance provided by the English Court of Appeal case, *Currey v Currey*. I will therefore adopt the two-stage approach identified by Wilson LJ.

- (1) That the applicant spouse has no assets, or none that can reasonably be deployed (at para [19], [20]).
- (2) That she can provide no security for borrowing, or none which can reasonably be offered (at paras [19], [20]).
- (3) That she cannot reasonably obtain legal services by offering a charge on the outcome of the litigation (at para [20] and see *Sears Tooth*, per Wilson J).
- (4) That she cannot secure publicly funded legal help at a level of expertise apt to the proceedings (at para [20]) AUTONUMOUT On the wife's evidence it seems to me that she may initially have been eligible for partial assistance from the Legal Aid Department. I accept that this order will effectively mean that this door is closed to her. I accept that she has no assets or none that can be reasonably deployed for litigation costs. In so far as 2) is concerned, I was not addressed on whether it would be possible for the wife to borrow against the party's property in Kent. I accept though that this is unlikely, as is her ability to obtain legal services on the basis suggested by 3) above. Overarching enquiry and costs

AUTONUMOUT Although I have had problems with the wife s evidence and her credibility generally, at the end of the day although she has not been completely successful she has had her maintenance pending suit increased from HK\$20,000 per month to HK\$45,000 per month. Given this I will make an order nisi, to be made absolute in 14 days time, that there be no order as to the costs of the maintenance pending suit application. There shall be certificate for counsel. With respect to the provision for legal costs in the future, subject to the wife s undertaking to forward HK\$5,000 per month to her solicitor s I will order that the husband pay an additional HK\$5,000 per month as a contribution towards the wife s legal costs. Thus in total he will pay to the wife HK\$50,000 per month first payment to be made on the 1 May 2011 and thereafter on the 1st day of each succeeding month until further order.

AUTONUMOUT I should add that I accept that HK\$50,000 is slightly more than the husband can afford to pay from his basic income and that he will need to dip into his other financial resources and in particular the incentive cash payment in order to meet these costs. This is not something that can be sustained longer term. It certainly can not be maintained in the event that the husband returns to the United Kingdom. AUTONUMOUT Further I am conscious of the fact that the wife has an earning capacity and one that she should seek to maximize going forward. She has indicated that she might wish to return to college. It is hard to see on what basis that might be justified in the present circumstances. All in all, given the parties limited capital assets I would strongly suggest that they seek to resolve the outstanding issues between them either by negotiation or mediation. (Sharon D MELLOY)

District Judge Ms. Lam of Messrs. Hampton Winter & Glynn for the Petitioner Mr Parker instructed by Messrs. Massie & Clement for the Respondent PAGE - PAGE - A B C D E F G H 1udk h=06 h=06 hX`i h=06 hW68 hxWi hxWi hxWi h=06 h=06 hxWi h=06 h=06 h=06 h=06 hxWi h=06 h=06 gdxWi gdxWi gdxWi gdxWi gdxWi gdxWi hW68 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 gd.(hW68 gd.(gd.(hoX' hoX' gd)zN gd)zN hoX' hoX' hoX' hoX' gdw\U hw\U gdgg gdw\U gdCW gdgg yoioiyi h=06 h=06 h=06 h=06 hTcR hTcR h=06 h=06 h=06 &`#\$ gd=06 h=06 h=06 h=06 h=06 hTcR h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 h=06 1udk h=06 h=06 h=06 h=06 [Content\_Types].xml Iw}, \$yi} \_rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v )I`n 3Vq%`#q x}r :TZA G I u3 L+M2 e\O\* \$\*c? )6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/ themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/ theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes">> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> & 6" English.dot Tai Yin Sheung Lilian Microsoft Office Word Judiciary CACV Title Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=76712

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/bstlf-v-dsf-2011>

Prepared on 26 October 2026 · Esheria