

HONG KONG / JUDGMENT

C v. J

COURT

Court of Appeal

DECIDED

4 September 2007

CASE / FILE NUMBER

CACV92/2007

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bjbj cacv 92/2007 in the high court of the hong kong special administrative region court of appeal civil appeal no. 92 of 2007 (on appeal from FCMC NO. 1976 of 1998) BETWEEN C Petitioner Respondent Before: Hon Rogers VP in Chambers Date of Hearing: 4 September 2007 Date of Decision: 4 September 2007 D E C I S I O N This is an application for security for costs in respect of an appeal. I have heard a great deal of discussion this morning about the background to this marriage, as a result of which I have a slightly different impression than I had from reading the papers. It is clear to me that the marriage had broken down in about 1999 or, certainly, by 2000 when the husband, being the respondent, left Hong Kong. At that stage, it seems that there was not much in the way of free equity left in a valuable house, by any standards, even in the depressed market of 1999. The reason there was not is because there had been an investment in a rather foolhardy indoor golf range in Ap Lei Chau which apparently had taken up a great deal of money. That, as any business, was a venture and one never makes money in business unless one ventures and sometimes businesses fail and sometimes they do not. But that was just one of the matters and it seems to me that that is the time that should really have been looked at and much of the judgment seems to me to be differently focused. The respondent has a great deal of grievance which he wishes to air and, to a certain extent, he has aired quite a lot of it this morning. But it seems to me, at the end of the day, that I should grant some security because, at the end of the day, I do not consider that the respondent has a good chance of success. He is clearly resident overseas, which is one reason for granting security, and it has been shown that he really has not got very much money, or certainly not very much which he is prepared to disclose to anybody. I am slightly concerned about the case because whenever anybody has a grievance about a decision which they need to air, an important function of the court is to allow them to air it. What I propose to do is to order security of the amount of counsel s fees which I consider is a lower amount than I normally would but that seems to me to be what would be right in this case. In other words, the petitioner will be secured, to a certain extent, if this appeal goes ahead but will not be fully secured. So the order that I propose to make is that the respondent, who I shall name as Jurgen Rohmig so that there will be no mistake about it, do on or before 2 October give security to answer costs in case any shall be awarded, to be paid by the respondent to the petitioner by making lodgement in court of the sum of \$75,000 by cash or banker s draft or by the provision of a bank guarantee of the like amount which guarantee shall have been

approved by the Registrar and until such lodgement be made and notice thereof given to the Registrar and to the solicitors for the petitioner, such notice to be given on the same day as the lodgement is made, all proceedings in the said appeal are to be stayed. In default of the respondent making such lodgement as aforesaid within the time specified above or within such further time as the court may for special reasons allow, the said appeal do, upon the solicitors for the petitioner certifying such default to the Registrar, stand dismissed out of this court without further order. In the event that the appeal is dismissed in the circumstances provided for above, the respondent do pay the petitioner its costs occasioned by the said appeal, such costs to be taxed and the costs of this application be costs in the appeal. The amount that I have fixed is an amount which I consider that the respondent should be able to raise on the basis that he can come to Hong Kong and conduct these proceedings himself. It will cause him some difficulty and I have tried to fix it at an appropriate amount which I think will cause him to think whether he really wants to proceed. I think that is the right order. (Anthony Rogers) Vice-President Ms Frances Irving, instructed by Messrs Lee Chan Cheng, for the Petitioner/Respondent The Respondent/Appellant, in person PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk a\$ 2QX[2QX[H; < jFen & 6" ABC-Final (fair)1.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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