

HONG KONG / JUDGMENT

C v. T

COURT

Court of Appeal

DECIDED

21 January 2009

CASE / FILE NUMBER

CACV216/2007

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

bjbj cacv 216/2007 in the high court of the hong kong special administrative region court of appeal civil appeal no. 216 of 2007 (on appeal from FCMC NO. 15584 of 2003) BETWEEN C Petitioner Respondent Before: Hon Rogers VP, Sakhrani and Wright JJ in Court Date of Hearing: 13 January 2009 Date of Judgment: 13 January 2009 Date of Handing Down Reasons for Judgment: 21 January 2009 REASONS FOR JUDGMENT Hon Rogers VP: This was an appeal from a judgment of Deputy District Judge Kot given on 25 September 2006 in an application for ancillary relief in divorce proceedings. The hearing of the application had extended over some 11 days. At the conclusion the judge made the order on the basis that both the petitioner, the wife, and the respondent, the husband, undertook to contribute HK\$15,000 per month to the daughter of the family until she completed her training in 2008. It is unnecessary to set out the full terms of the order. The judge assessed the total value of the parties combined assets to be something in the order of HK\$67 million. The effect of the judgment was that the judge held that the wife was entitled to a 45% share in the family assets. It was said, in paragraph 50 of the judgment, that that should be a fair distribution in recognition of the wife's contribution. At the conclusion of the hearing of this appeal this court allowed the wife's appeal and ordered that the wife was entitled to 50% of the family's assets. In order to effect that, paragraphs 1, 3, 4, 5 and 6 were left as per the judgment in the court below and the lump sum ordered in paragraph 2 of that judgment was increased from HK\$6,200,000 to HK\$9,546,946. This court also ordered that the wife should have 50% of her costs in the court below and the costs of the appeal. This court was invited to make an order for costs in relation to committal proceedings which had been taken out by the husband but not proceeded with. This court declined to accept jurisdiction in the matter since there had been no resolution in the court below and there was no notice of any appeal from any judgment or order of the court below.

Background

The parties were married in October

1969. They had three children. By the time the matter came before the court below, two sons were self supporting. There was a daughter, who at the time of the hearing of the court below was 28 years old. She had been seriously injured in a car accident in Canada in

August 2000 and in view of her difficulties she was still studying. The husband had been in the police force but he had to retire in 1978 under what might be termed a cloud . Whilst he was still in the police force the husband and wife set up a finance company putting the business in her mother s name as the licensee. In the following year they established an estate agency. Initially that was a side business to the main business of running a finance company but by 1980 the finance company was closed and the couple were running a travel agency. As time went by the estate agency flourished and the travel agency, apparently, became of less interest and was, eventually, transferred to the wife s younger brother. In 1994 the family emigrated to Canada. Although both the husband and wife as well as the children landed in Canada, the husband returned to Hong Kong. The wife stayed in Canada with the children although one of the children returned to Hong Kong to complete his studies before returning to Canada. Eventually the wife and children obtained Canadian citizenship and, after that, the husband who had remained in Hong Kong decided not to apply for Canadian citizenship. During the time that the wife remained in Canada it appears that the husband visited his family in Canada about twice a year and the wife returned with the children to Hong Kong on two occasions every year. The wife returned to live in Hong Kong in January 2001 but the relationship between the husband and wife was clearly strained and in December 2001 the couple separated. The wife s petition was presented in December 2003 and the decree nisi was granted in December of the following year. The marriage had lasted some 35 years and by the time the ancillary relief proceedings came to be heard the wife was then 54 whilst the husband was 64 years old. The judgment below As the judge pointed out in paragraph 11 of the judgment, the major issue between the parties was that the wife contended that she was entitled to 50% of the total family assets whilst the husband contended that the wife should only be awarded 40 to 45% of the total family assets. In paragraphs 12 to 36 of the judgment the judge dealt with a number of different matters including details of the family assets and the contentions of the parties as to which of them had been responsible for their acquisition or accretion. In some instances the judge had to decide whether the husband had an interest in particular properties and the extent of that interest. The judge also had to reach a conclusion in respect of the value of some of the assets. There was also a question as to why the husband s valuation of assets had steadily increased from \$18 million to \$39 million by the time of the trial. The judge held that there was nothing untoward in that increase and accepted the husband s explanation. The judge then considered the matters which are specifically referred to in section 7 of the Matrimonial Proceedings and Property Ordinance Cap.

192. As Ms Leong SC, who appeared on behalf of the wife on this appeal, pointed out, the provisions of section 7(1) have remained effectively the same over a long period although the manner in which they have been interpreted has gradually evolved. Three main considerations can be categorised as the parties needs when interpreted generously, what compensation should be paid to either of the parties who will lose the chance of acquiring further benefits and what is right and fair to each of the parties taking into consideration in particular the age of the parties, the duration of the marriage and the conduct of each party

in relation to the contributions which they have made to the welfare of the family including looking after the home and caring for the family members. The judge came to the conclusion that the family assets were sufficient for the parties to live comfortably for the remainder of their lives. For the purposes of this appeal, the key finding by the judge was in paragraph 46 of the judgment that read: F. Contributions in the family

46. I found as a fact that both parties had contributed as a parent and a spouse. The Wife has taken up the financial burden of the family in Canada from 1998 to 2000 but at the same time, she was also receiving the rent for the 1/F property at Galway Court. The Husband is in a way still supporting her indirectly. It is not in dispute that the Husband had all along been shouldering the financial responsibility of the family (in particular the children) even after part of the family assets had been transferred to the Wife. And even though the Wife was receiving the rental income of the 2 properties at Galway Court after February 2002, the Husband still paid for the management fees of the 2 properties even till now. The Wife is taking all the benefits from these family assets but left the liabilities attached to them to the Husband. The Wife's contribution to the family business before 1994 cannot be ignored but I found her contribution in this regard is not as great as the Husband. All in all, I find that the Husband had a greater contribution to the family in all respects. It was thus that in paragraph 50 the judge said: Both parties held more assets under his or her name than his or her respective reasonable requirements. To confine the Wife's award by her reasonable requirements will result in an unfair division. Given the length of the marriage and their respective contribution in the family, both financially and otherwise, I found that a 45% share in the family assets should be a fair distribution in recognition of the Wife's contribution. In my view, the judge had placed too great an emphasis on the issue of what was referred to as the contribution, in other words the work in relation to the generation of income, specifically estate agency business. In doing so the judge had not had sufficient regard to the fact that the parties had, in effect, started from scratch when they married in 1969. They had together built up the assets by both performing their respective responsibilities. It is true that when the wife remained in Canada she could not conduct any business in Hong Kong, whilst the husband remained in Hong Kong and conducted the business. However, given the circumstances of the time, it was clearly the joint intention of the parties that Canadian citizenship should be obtained with a view, should circumstances so require no doubt, that the whole family should be able to live in Canada. As such, the wife clearly played her role in the family affairs. In my view, the judge's finding that the husband had a greater contribution to the family in all respects cannot be sustained. Our attention was drawn to a number of authorities in particular *White v White* [2002] 2 FLR 981, *Lambert v Lambert* [2003] 4 All ER 342, *Miller v Miller* [2006] 2 AC 618, *Charman v Charman* [2007] 1 FLR 1246 and a decision of another division of this court *DD v LKW* [2008] 2 HKLRD 523. It is unnecessary to examine those authorities in detail but it is clear that there has been a progression towards the realisation that fairness often dictates that, on dissolution of the marriage, the family assets should, in principle, be shared between the parties unless there was good reason to depart from such a distribution. In so saying I would caution that each

case must be decided on its own facts and its own merits. Particularly in cases of divorce, where the facts and circumstances relating to the parties and the marriage can vary significantly, I consider that it would be dangerous to attempt to decree a principle that is applicable in all cases. In this case it may be said that it would appear that the judge placed greater emphasis on the generation of assets to the detriment of considering the importance of the respective roles in the marriage. I consider that the contributions made by the parties to the welfare of the family over what was a lengthy marriage lead to the conclusion that the assets should be shared unless there were good reason otherwise. The contributions made by the wife in looking after the home and caring for the family, particularly in what seems to have been part of a concerted family plan for at least the wife and children to acquire Canadian citizenship, have to be looked at in the context of a sustained family involvement. Given the length and the current ages of the parties and their likely life expectancy, the fairness of the matter is that the parties should share the family assets equally. In relation to the question of costs this court considered that clearly as regards the issues between the parties as the percentage distribution of the assets, the wife should have been successful in the court below. This court reduced the amount the wife could recover in the court below on the basis that there were a number of issues that the judge had to determine that were decided against the wife. Hon Sakhrani J: I agree. Hon Wright J: I too agree. (Anthony Rogers) Vice-President (Arjan H Sakhrani) Judge of the Court of First Instance (A R Wright) Judge of the Court of First Instance Ms Jacqueline Leong SC & Mr Robin Egerton, instructed by Messrs Stevenson, Wong & Co., for the Petitioner/Appellant Mr David Pilbrow 1udk 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 1udk 2QX[2QX[2QX[H; < jFen & 6" ABC-Final (fair)1.dot setup Microsoft Word 9.0 Title Source Erica Microsoft Word 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=64038

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/c-v-t-2009>

Prepared on 29 October 2026 · Esheria