

HONG KONG / JUDGMENT

# CTW nee CW v. SGW

**[2024] HKFC 195****COURT**

Family Court

**DECIDED**

18 October 2024

**CASE / FILE NUMBER**

FCMC4115/2015

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bjbj FCMC 4115/2015

**[2024] HKFC 195 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE  
REGION MATRIMONIAL CAUSES NO. 4115 OF 2015**

BETWEEN CTW nee CW Petitioner and SGW Respondent

Coram: Her Honour Judge Thelma Kwan in Chambers (not open to public) Dates of Hearing: 27 and 28 September 2023 Opening Submission of the Petitioner: 9 September 2023 Opening Submission of the Respondent: 11 September 2023 Closing Submission of the Petitioner: 4 November 2023 Closing Submission of the Respondent: 20 October 2023 Date of Judgment: 18 October 2024

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

## Introduction

This is the hearing of two Variation of Maintenance Summons. The Respondent husband ) Summons dated 1 December 2020 ( s Summons ), which seeks to reduce his monthly maintenance owed to the Petitioner Wife ( ) under a Consent Order made by HHJ Melloy dated 4 February 2016 following an FDR, and amended in May 2016 ( Amended Consent Order 2016 ). His Summons asks:

- (i) To reduce his \$50,000 spousal maintenance per month to \$0 effective November 2020; and
- (ii) For all his previous arrears of \$125,000 be remitted. On 6 July 2021, W filed her Summons ( s Summons ) to: Reduce H s spousal maintenance to \$25,000 per month to take effect on H

turning 65 on 18 May 2022, and Leave to enforce arrears for more than 12 months. These variation proceedings were derailed when H took out stay proceedings on 14 July 2021 on grounds of forum non conveniens for the issue of spousal maintenance to be heard in Australia; this was about a week after W's Summons. This application was heard in June 2022 resulting in this Court finding against H and awarding costs to W on 21 September 2022 (Stay Decision). More detailed background can be found in the Stay Decision. For the purpose of this decision, only relevant background will be repeated. The saga continues after the Stay Decision which also gave directions for the variation proceedings to be restored.

**Background Facts** At the time of this hearing, W was approaching 63, and H was 66. They were married in 1990 in Australia. W is a British and Australian citizen, while H has Australian citizenship. W works as an air stewardess with Q Air. H was a pilot and had a long career with C ( ), he resigned from C in November 2020 and moved to Australia in around April 2021. There are four children born in wedlock, all are adults. One of the daughters is still residing with the W in Australia. W petitioned for divorce on 10 April 2015; the parties came to a consensus at a FDR before HHJ Melloy which ended with the Amended Consent Order 2016. The Decree Absolute was pronounced on 23 August 2016. The Amended Consent Order 2016 It bears repeating the relevant part of the Amended Consent Order 2016 which provided as follows: ... H to pay W a monthly sum of HK\$50,000 from date of Order until either the W remarries or the H turns 65 whichever first to occur [ Monthly Maintenance ]; and H to pay W 57.5% of the CP Provident Fund ( CPP Fund ) as at the date of Decree Absolute (23 August 2016) upon realization of the fund and receipt by H [ Lump Sum H's Case

The events leading to H's application came when in around November 2020, H decided to resign earlier than the usual retirement age at CP. H says he resigned early because: (i) due to Covid his salary package was revised in a grossly unfair fashion; (ii) he would be entitled to \$529,585 compensation upon resignation, but not if he was dismissed; and (iii) his benefits might be affected if he was dismissed. At the beginning of this hearing, H's counsel Mr Clough acknowledges that H agrees to the following: \$125,000 of arrears of maintenance due to partial payment from March to July 2020. He says he did not pay in full because of his liabilities and reduction in flying leading to reduced income during Covid; and \$950,000 outstanding; but despite questions I raised, there was no clarity from Mr Clough as to whether it was all of maintenance which H did not pay from November 2020 to May 2022 (when H turned 65) or was this balance of outstanding CP Provident Fund of \$250,250 and 14 months of maintenance from April 2021 to May 2022. Mr Clough says H stopped paying when he stopped working, as he could not afford to pay anymore. H also says with regard to his obligation to W of the CP Provident Fund ( MPF payout ), the parties have agreed that the amount of CP Provident Fund as at the date of Decree Absolute was \$7,889,665.68, 57.5% of that sum was agreed at \$4,540,157. It is not in dispute that W had been given \$4,289,907 by March 2021, leaving \$250,250 outstanding. H says he paid W \$50,000 for 5 months from November 2020 to March 2021, he therefore says the lump sum due to W had been paid up, and he says W should have acquired a property of her own when she received the funds. Mr Clough spent a big part of his cross examination and closing submission on one issue, that W did not disclose and mislabelled an account with Binance. He says that W has failed to

disclose this in her first Form E, and when this was reported in her subsequent Form E, there was nondisclosure on her part; he asks for the W's Summons to be dismissed. W's case At the time of the hearing, W works as a flight attendant with Q Airline. She says she works 24 hours a week. She has reported in her two Form Es that her monthly income is \$16,670 and \$15,050 respectively, and her monthly expenses are \$58,603 and \$57,883. She says she has been relying on her income and H's spousal maintenance to assist with the shortfall of around \$40,000 per month; and his non-payment has put her in a dire situation. W has stated in the hearing for the Stay application that she was concerned about her job security, as Covid has affected the airline industry. W says that the intention of the settlement in 2016 was to enable both parties to afford their own home. W says that she had planned on using money she would receive from H to buy a real property but she is now unable to do so due to the increase in price. She says that the partial payment of the MPF payout, the maintenance arrears, the cessation of the spousal maintenance and various legal costs have put her in a precarious position to proceed with this plan due to the uncertainties arising from H's Summons; she therefore needs ongoing assistance to pay for her rent. W says that with regard to H's Summons, while acknowledging that early retirement is a change of circumstances, it is not one which justifies H to stop paying. She challenges H's argument that his salary has dropped post-Covid by referring to his bank statements and cross examined him on the income he received prior to his resignation. She also says H has the ability to pay as he had received various amounts at the relevant time. W also says that H has the ability to work. W has also relied on an expert report called for the purpose of the Stay proceedings. This report was produced by Shana Quinn on 11 April 2022, who also attended court to give evidence then. This report largely focused on providing information to assist this Court with the decision making for the Stay application, but also made the observations that based on the W's financial disclosure, her expenses are reasonable and that she would be struggling with her finances. The report also states that due to the H's lack of financial disclosure, she was not able to assess the H's financial position. Legal Principles regarding Variation of Maintenance The empowering legislation is in Section 11(1) and (7) of the Matrimonial Proceedings and Property Ordinance (Cap 192):

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended. .
- (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 and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death. (emphasis added) The modern approach in dealing with an application for variation of maintenance is summarised by Cheung JA in *AEM v VFM*

- [2008] 3 HKLRD 36 at 14, in particularly the following sub-paragraphs: 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 earlier periodical payment order will be brought on the basis that there has been some changes in the circumstances since the original order 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 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. The principles are trite. The Court has wide discretion which includes backdating arrangement and I am entitled to look at the case de novo. H s Summons Discussion H has admitted to arrears of payment of \$125,000 he owes between March to October 2020. He says there was reduction in his salary due to Covid, and he had liabilities to pay. In his Summons, he asks for this amount to be remitted. W refers to a correspondence from him in 24 April 2020 wherein he told her that he had outstanding loans to service, and once that was completed in June and October 2020, he would catch up with the maintenance arrears; but he never did. W took the court to his income during the relevant period referencing his bank statements, and also produced the following table in her closing submission:
- |             |           |                 |                    |                                                                                                                                                                                                                                                       |             |           |
|-------------|-----------|-----------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------|
| Date        | pre Covid | Salary          | Date               | during Covid                                                                                                                                                                                                                                          | Salary      |           |
| 26 Aug 2019 | \$187,771 | 26 Mar 2020     | \$183,082          | 26 Sept 2019                                                                                                                                                                                                                                          | \$217,044   |           |
| 24 Apr 2020 | \$184,667 | 26 October 2019 | \$181,215          | 26 May 2020                                                                                                                                                                                                                                           | \$179,066   |           |
| 26 Nov 2019 | \$183,234 | 26 Jul 2020     | \$182,115          | 23 Dec 2019                                                                                                                                                                                                                                           | \$182,801   |           |
| 26 Aug 2020 | \$179,665 | 23 Jan 2020     | Include Xmas bonus | \$215,542                                                                                                                                                                                                                                             | 25 Sep 2020 | \$178,081 |
| 26 Feb 2020 | \$188,229 | 22 Oct 2020     | \$178,827          | W submits that there was only very marginal difference in the salary during the two periods: \$181,215 - \$217,044 versus \$178,081 - \$184,667. I agree with W on this. H in his cross examination says that he was paying off his tax bills. In his |             |           |

Affirmation in support of his Summons he cited the loans he had taken out, but no supporting documentation was provided. He also says CP has reduced the annual bonus to only \$30,000 in 2019 hence he had to take out tax loans, again no supporting documentation was provided. In his answers to W's questionnaire, he did not produce any documentation in support of his loans, except for his mortgage with Bank of China for his property at DB. Returning to the substantial part of his Summons where he seeks to in effect cease his maintenance from November 2020, his basis is that he does not have the ability to pay as he has stopped working from November 2020. W argues that H has a lot of capital at the relevant time, these are set out as follows. Payout of \$574,654 at the end of employment in November 2020. The information on this amount did not come out until his answers to W's questionnaire in November 2021. H says in his Affirmation that he spent all of this because he had to stay in Hong Kong to attend a hearing before HHJ Melloy in April 2021. This means he spent more than \$100,000 per month while also receiving his CP Provident Fund in January 2021. No supporting information was provided for this statement that he spent all of this amount at that time. CP Provident Fund of \$11,308,179 payout on 8 January 2021. Again, this amount was not revealed until he responded to W's questionnaire in November 2021. With this amount, H paid \$4,289,907 to W over a number of instalments ending in March 2021. In a correspondence from him to W, he told her that an amount would be withheld from this MPF payout due to her, this is the abovementioned \$250,250. This leaves H with his share of \$7,018,272 in early 2021. Sale of Property in DB in April 2021. H purchased a property at DB in August 2016 after the divorce, subject to a mortgage with Bank of China. H put this property for sale in November 2020 but did not disclose this until he was cross examined at the Stay proceedings in June 2022. H only revealed that he signed a sale and purchase agreement in February 2021 in his answers to questionnaire in November 2021. He says in his first Form E that he received \$4M from the sale of his property in DB; then it was only at this hearing that he admits to also receiving the deposit for this sale of \$450,000; he received the rest of his proceeds in around 30 April 2021. In his first Form E he declared the outstanding amount on the mortgage to be \$292,239; this means he had a net amount of \$4.2M from this transactions. H purchased his own property in Australia. He moved to Australia in April 2021, and purchased a property for AUD900,000 in July 2021, (equivalent to \$5,220,000 at the then conversion rate of AUD1 to \$5.8). At trial, he says he has spent another AUD100,000 more to renovate this property. W argues that this is an upmarket property with 4 bedrooms, master suite, billiard room, theatre, granny flat and parking space for 7 cars, H denies this and says this property has a lot of structural problem and he decides to work on it himself. None of this is very relevant to the Summons before me except that under cross examination H admits that the property is worth around AUD1 1.1M currently (but declared to be \$4,987,675 in his Form E of February 2023 which is equivalent to AUD923,643 at the exchange rate of AUD1 to \$5.4). Inheritance from H's mother AUD153,707 received in December 2021. H also admits to receipt of an inheritance from his deceased mother's estate on 8 December 2021. This came to around \$858,698 at the then prevailing rate of AUD1 to \$5.586. In his March 2023 affirmation, he says he

divided it 5 ways, to his 4 daughters (AUD30,000 each) and kept AUD33,707 for himself. No bank statements for the transfers were attached to his affirmation, and none of these transactions was brought to my attention during trial. But on his own evidence, it appears that he has chosen to gift away money he received instead of complying with a Court Order. Increasing mortgage payment W says in her March 2023 Affidavit that despite H telling her that he would pay outstanding maintenance, he had increased his mortgage payment for his DB property from \$29,000 to \$72,500 so that he could increase the equity in the property. W says this was during his non-payment of his spousal maintenance in 2020. I do not have the timeline nor evidence to support W's allegation. It is clear that H came into funds since his resignation from CP. A rough calculation shows that this comes up to \$12.711M from at least November 2020 to December 2021. Nature of Payment Amount Final Payout from employment \$574,654 Share of Provident Fund \$7,078,272 DB property Sale (net proceeds) \$4,200,000 Inheritance \$858,698 TOTAL 12,711,624 It is therefore not accepted that H does not have the means to pay W, and I conclude that his reason for applying for his variation has not been substantiated. What is at all times unacceptable is that party chooses not to comply with court orders on their own accord (or was advised to do so), it is incorrect to stop payment when a variation of maintenance application is taken out, this constitutes a breach of court order. A court order continues to bind the paying party until a decision is made on the application and if required, necessary adjustments can be made after. H in this case says under cross examination that he is not defaulting, but just waiting for the court to tell me whether I should or should not pay. This is an extremely unwise position to take. Taking this course of action will have consequences including accumulating interest on the outstanding sums (S.28AA of the Matrimonial Proceedings and Property Ordinance refers), it may lead to committal proceedings; but more importantly may affect the life of the recipient, as is what has happened in this case. There is nothing to prevent H from setting money aside for W for 14 more months; or negotiate with W to pay up sooner. Instead, he chose to stop paying despite his on-going obligation, repeatedly failed to give proper disclosure prejudicing W's conduct of her case. W also says H has failed to participate in mediation on her repeated request, all such conduct will be taken into consideration below. Conclusion on H's Summons As this Summons has no merits, it shall be dismissed. The nature of the \$250,000 payment The parties are in agreement that H has paid \$4,289,907 out of \$4,540,157, the last payment he made to her was in March 2021, at which time there was \$250,250 outstanding. On 5 February 2021, H sent an email to W to say the following: I will continue to send \$500,000 per day until the final \$539,907. I have conferred with Massie and Clement. They advised me that I well in my rights to hold onto an amount until the Magistrates decision on final Alimony. This being a decision for monies that I have underpaid or have been paying during Covid and since my retirement from C. Read in context and noting the amounts, he was saying that he intended to withhold certain amount from the MPF payout. At the hearing of the Stay application, it was argued for H that the 5 months of payments of \$50,000 each that W received from November 2020 to March 2021 was in fact the outstanding MPF payout he owes. H's affirmation dated 27 Feb

2023 filed subsequent to the Stay Decision maintains this stance. W says he has changed his position on the advice of his legal representative. She also says it could not be MPF payment as H only received his CP Provident Fund in January 2021. When I asked Mr Clough in court on the first day of trial how this amount should be treated, the answer came over vague. Mr Clough then made an open proposal to pay this amount representing the outstanding, and yet continued not to commit to the nature of this payment. However, under cross examination by W, H accepts that there is unpaid MPF; and that payment he made was in fact 5 months of maintenance, and he owes maintenance from April 2021 to May 2022, a total of 14 months. In my view, H position that the payment was for the balance of the MPF payout is not accepted. It does not appear reasonable that he would write to W and said he was withholding, and then when he decided to pay up, he did not inform W what the amounts were for. I also agree with W that as he only received his Provident Fund in January 2021, the amount paid beforehand could not have been the MPF payout; or at least he would have explained why he was paying in advance of himself receiving the CP Provident Fund. He may well be labelling these payment as MPF payout balance so as to justify he has no money to pay for maintenance. No matter the reasons and as shown above, the financials do not support his contention at all. I therefore find H's admission in his cross examination that it was unpaid MPF is in fact the truth. He therefore has \$250,250 outstanding payment due on the MPF payout, and he owes W spousal maintenance from April 2021 to May 2022, a total of 14 months. In summary, these are the amounts H owes to W from the Amended Consent Order 2016: Arrears of maintenance \$125,000 MPF payout balance \$250,250 Spousal maintenance for 14 months \$700,000 A total of \$1,075,250 plus any applicable interest thereon. W's Summons Discussion I will start with looking at the situation from W's perspective at the time she took out her Summons in June 2021 and thereafter. At that time, she had only received partial payments for her maintenance in the previous year putting her income expectation in a rather unable situation. She then found herself contending with H's variation down application in November 2020; since then she received a big part of the MPF payment, and 5 rounds of \$50,000 monthly maintenance the last of which was March 2021, whereafter H ceased spousal maintenance completely. Around a week after her Summons, H applied for stay of proceedings which subsequently took a year and a half to resolve. W ends up depleting her funds, incurred substantial legal costs, her application was stayed and the two variation of maintenance proceedings were delayed until now. This is the backdrop to W's Summons. W's case is that at the FDR, the intention of the Amended Consent Order 2016 was that both parties have somewhere to live. But she says due to H not paying her share of the MPF in full, ceasing maintenance payment, and cost of accommodation increasing by 90% in her area by the time of this hearing; she has missed the chance of buying a property. She therefore asks for ongoing maintenance to pay for rental as she cannot afford to buy a property anymore. H argues that the intention of the Amended Consent Order 2016 is for a clean break between the parties on payment when he turned 65. While it was mentioned that it was intended for both to have somewhere to live, it does not necessarily mean for both to each own their property. He further says W received her

share of the MPF payout 15 months ahead of time, this was in January / February 2021 instead of at H turning 65 in May 2022; and that W should have bought her property when she received the MPF payout. W's argument is that she was not sure what was coming, and she felt the need to hold onto the funds and therefore did not buy a property immediately; she also had to factor in rental payment and legal costs. She went on at length to describe the property she wanted to purchase in her Affirmation of June 2021, she also repeatedly compared her expectation to what H has purchased for himself. She says she wanted to buy a property worth AUD750,000 and would need a loan of AUD350,000 for a term of 10 years from a bank mortgage or private lending. She says the missing maintenance of then AUD90,000 from the previous months (inclusive of arrears, balance of the MPF payout, and outstanding maintenance up to June 2021) if received, would have meant she can borrow less money, and hence less required for mortgage payment. W's financial resources and expenses H has tracked W's income from her bank account from February 2021 to June 2023. The following is extracted from the table in H's opening submission:

| Period                      | Average income over this period |
|-----------------------------|---------------------------------|
| From 3.2.2021 to 23.6.2021  | \$23,320.17                     |
| From 7.7.2021 to 22.12.2021 | \$12,115.08                     |
| From 5.1.2022 to 22.6.2022  | \$20,288.11                     |
| From 6.7.2022 to 21.12.2022 | \$18,434.17                     |
| From 4.1.2023 to 21.6.2023  | \$25,520.40                     |
| TOTAL                       | \$99,677.93                     |

On my calculation, W's the average income over this period based on the H's tabulation was  $\$99,677.93/5 = \$19,935.58$ . W says that she had enjoyed more flight hours post Covid but this may be temporary. Looking at her declared expenses in her two Form Es (paragraph 16 above), I consider an average income of \$18,000 per month to be a reasonable estimation, although I do accept in her line of work, her income will fluctuate. As for her capital, her first Form E dated 23 June 2021 declared money in bank accounts of \$2,571,540, this represents a shortfall from the MPF payout she received earlier of \$1,718,367. When asked where the money from the MPF payout has been used, she says in her answers to questionnaire that she spent part of the funds on payment to Q Superannuation fund, purchased Q shares, paid up credit card debts, purchased a car to replace a previous old one, and paid for a surgery on dental and jaw treatment, these totalled approximately AUD140,000. The balance of the shortfall went to living expenses as H has ceased payment and legal fees. In her subsequent Form E of 20 December 2022, the amount in her bank accounts was \$200,021. She also declares assets with Binance (see below) worth AUD20,559.76 equivalent to \$109,782.43; inclusive of her Q Superannuation fund of \$413,294, her total assets in this Form E is \$723,098.42. In her Affidavit following the restoration of the variation proceedings, in addition to the above expenses, she says there were three years rental payment of AUD115,440 and legal costs of \$1M, and she also assists in supporting the two younger daughters who were living with her. Under cross examination by Mr Clough, referring to the liquidity between the time she received the MPF payout from H to her latest Form E, she was asked how she has spent \$4+M down to approximately \$310,000 (\$200,021 + \$109,782). She reiterates that she spent \$1M on lawyers, \$58,000 of her declared monthly expenses over 3 years, loss from investment, and cost of living etc. H says he has been unable to trace exactly where the MPF payout went. After payment was made, H says that there is no bank statement to indicate where the

money has gone. Binance The monies that W invested into this trading platform became a main feature of H's case and cross examination. It turns out that W has omitted declaring this in her first Form E dated 23 June 2021, but this item turns up in her second Form E of December 2022. This matter was discussed at trial, W wanted to produce information from Binance. It was concluded that parties were to review statements that W brought in, and to agree on a schedule on the investments to be attached to their closing submissions. There was no agreement on the schedule. W did a detailed analysis of her investments in and withdrawals from the Binance account, which was helpful. Her analysis shows that she started investing in May 2021, shortly after she received the MPF payout from H, and was rather active until October 2021. Her numbers show that the maximum amount on the balance in the Binance account was AUD378,015.26. She started pulling back money from the Binance account from 2 September 2021, but eventually withdrew most of the amount in that account by 13 November 2022. Her tally shows that she invested AUD729,045.26 and withdrew AUD683,106.12, she therefore says she suffers a loss of AUD45,939.14, but she is not seeking to recover this from H. W admits that the account was missing in her first Form E, she acknowledges that she should have checked when she signed the first Form E, she is it was negligence, not intentional. Mr Clough, on W's non-disclosure, makes submission on the court's duty to draw adverse inference, and then invites the court to dismiss W's Summons on this basis. Mr Clough goes on to say that it is incumbent on a party seeking a variation to make full and frank disclosure, and that H should be awarded costs of the W's application on an indemnity basis. No doubt this duty applies to both parties in this case, but I shall return to the H's disclosure below. From the H's opening submission, his compilation shows that W has invested AUD 290,236.96 (equivalent to \$1,464,827.9), which is less than what W shows in her tabulation. In his closing, he does his own tallying of the transactions in Binance, which largely match that of the W's, but his tally stops at August 2021. The point that I find most relevant to this decision is that H notes that as of 23 June 2021 (date of W's first Form E), W had a balance of AUD171,118.84 with Binance. On the W's tabulation, the balance in Binance account is actually more, at AUD197,967.66. I will adopt W's number, and at the then exchange rate of AUD1 to \$5.589, this represents \$1,106,441. I accept that this amount should be added back to the balance of W's assets in her first Form E which should make her liquidity at the time of the first Form E to be \$3,677,981 (\$2,571,540 + \$1,106,441). On the point of non-disclosure of the existence of this bank account, I accept W's explanation. I am not of the view that she has intentionally hide the Binance account. At the trial, she was quick to offer up relevant information and tabulation of the ins and outs of the Binance Account; on every turn, she did not accept H's calculation of a smaller number but adopted her own calculation, her numbers are consistently larger than what H has calculated. Her Australian bank accounts statements clearly show transactions with Binance from May 2021, but there was no question from the H's legal team on these transactions until this hearing. This is an issue of credibility, and from my observation of her conduct and demeanour at proceedings over the course of my seizure of this case, I do not find her to be intentionally unco-operative or evasive. H also says he was not able to trace what happened to the money she

brought back in from the Binance account; while the topic was broached during the cross examination, I am not of the view that H has made much in-road on this issue. On the W's financials. In looking at variation of maintenance application, I need to review the original Order and consider what was the intended effect of the Order made in 2016. It must have been contemplated that at the point of time H turns 65, W would receive a capital sum, and the spousal maintenance would then cease. While H says W did not say she would return to the workforce, she did; which is good for her as she has some income and was not entirely dependent on the spousal maintenance. It is her case that her income is insufficient to cover by her expenses, and she has to rely on the spousal maintenance to supplement. It must also be apparent to W that from 2016 to May 2022, she needed to plan ahead on what would happen when all these payments due to her had been paid. It is not evident to me whether she has planned around the eventuality of her financial position when H turns 65. From her own evidence, she has received \$4,289,907 by March 2021, which was 94.5% of the amount due to her, she says the lack of full payment prevented her from buying a property. But she was only short of \$250,025, and I do not accept this contention. Furthermore, she must be aware that this was the only one big lump sum that was coming to her to achieve her property purchase if that was what she wanted to do. But she says in her Affirmation that she was expecting to use the lump sum as a down payment and hope to service a mortgage for 10 years. The question is how she could expect to service a mortgage for 10 years at her level of her income and when she knew full well that the spousal maintenance would come to an end in May 2022. W says she has needed the H's monthly maintenance to supplement her expenses. According to the numbers above and based on her expenses, she is constantly short of around \$40,000 which is supplemented by the spousal maintenance. So her contention that the outstanding amount if paid to her would constitute more money for the down payment is ill-conceived. Therefore, I agree with H that she should have used the lump sum she received back in early 2021 to find a property of reasonable size and affordable price if she had wanted to. Alternatively in my view, she could have planned how to make use of the lump sum to ensure some return to supplement her income on a long-term basis. As for the depletion of the sums she received, her contentions briefly are as follows: On receipt of MPF Payout, she has then opted to use it on various items mentioned in paragraph 60 above which came to AUD140,000. She has invested through Binance, incurring a loss of approximately AUD46,000. She says she has spent almost \$1M on legal costs. Cross-checking this with her Form H submitted for the hearing of the Stay application, the legal expenses she incurred up to June 2022 was \$966,685. She started acting in person shortly after the submission of her second Form E in January 2023. She says with \$58,000 per month over 3 years, the fact that she has only \$310,000 left sounds about right. On my broadbrush calculation, these come to AUD186,000 equivalent to \$1,041,600 (using average exchange rate for 2021 to 2022 when these amounts were spent at AUD1 to \$5.6) + \$1M + \$1,440,000 (using W's declared expenses net of her own income: \$40,000 x 36) = \$3,481,600. This is about \$800,000 shy of the MPF payout she received from H. At the time of her second Form E, she has \$413,294 in her superannuation fund and liquidity of \$310,000. It

looks like very little is left unaccounted for. H says that he was unable to trace where the money has gone from the MPF payout or from return of money from Binance, but W has produced financial statements from 2019 to 2023. A very high level review of the accounts on my part shows that after she was paid the substantial part of the MPF payout, from February 2021, she started remitting the funds in form of amounts of AUD9,800 9,995 a number of times to her bank account 5038 with CW Bank in Australia, which amounts were then transferred to her 5011 account with the same bank, and from there trading was made to the Binance platform; money received back from Binance were at least in part credited back to the 5038 account. Money was withdrawn from both of these accounts for various purposes over time, as could be seen from the financial statements in evidence, by the time of her second Form E, she has a total of \$187,653 left in these two Australian bank accounts. There was hardly any challenge to her spending in cross examination, nor was I directed to look at where the funds went; this is despite W's provision of financial statement over the years consisting of two lever arch files. H's case against W does not appear to be that she has overspent; all he says is that she should have saved more overtime. The Court is therefore left with the evidence as it stands. However, my observation is that I do not see how her continuous spending of \$57,000 to \$58,000 a month could be sustainable. Does H have the ability to pay ongoing maintenance? W argues that H can pay from the capital he has, the most significant of which is his Australian property. Looking at his financial position. The numbers from his April 2021 Form E shows that he has \$10,638,908, mostly liquid as this should be his share of the CP Provident Fund and proceeds from his DB Property, this was just before he left Hong Kong to relocate to Australia. This number is less than my calculation above in paragraph 39 (which is \$11,852,926 netting the inheritance which was only received in December 2021). His declared monthly expenses from that Form E, net of \$50,000 spousal maintenance and tax of \$13,201, is \$18,390 for his outgoings in Hong Kong. Looking at his recent Form E year dated 1 February 2023, he declared his liquidity to be \$2,162,724 and his Australian property to be \$4,897,675, his total asset including personal valuable items is \$7,342,230; his expense in this Form E, clearly for Australia, is \$22,990. From these numbers alone, inclusive of renovation costs on his Australian property, H seems to have spent more than 3 million over 22 months. Even taking into account his declared living expenses from May 2021 to February 2023 of total \$503,800 (\$22,900 x 22 months), and legal expenses of around \$851,000 at time of trial; his numbers do not add up, nor does this accord with his Affirmation where he says he lives frugally. Admittedly, W did not ask questions on this during her cross examination, she has no legal representation whereas H has. It appears to me, on his own evidence, there are discrepancies on the numbers he presented. H says in his last Affirmation that he is hoping to improve on his property to increase its value, then sell it and downsize in 10-15 years. From W's cross examination, she says it could be more as he must have benefited from the general uptrend of the market, he further acknowledges that his property is after refurbishment can be worth \$1.3M. It also defies understanding why when he lives alone, he needs a 4-bedroom house with all the additions W describes. With regard to this capital asset, he has the option of moving

forward his plan of sell and down-sizing to facilitate payment to W. In the alternative, if he does not sell his property earlier, W in her cross examination has proposed that he could rent out the independent granny flat that comes with H s property, to which he agreed. W also says that he can find a job at a local hardware shop, supplement income from driving Uber, or continue to fly domestically. H s response is that the income is low at the local retail store but he did not deny that he might look for employment when he finishes his renovation work and have used up his savings. H therefore does not deny that he still has working capacity. Considering all the factors above and drawing the necessary adverse inference against the H on his financial resources, I am of the view that that he does have the funds to pay for the Orders to be made in this decision. Conclusion on W s Summons I am of the view that W has experienced a material change of circumstances that justifies her application. It is not for this Court to remedy W s approach to financial planning. It is however obvious that H has brought about the events which have led in a big part to where W is today. He has breached Court order and deliberately withheld spousal maintenance, he has made two applications which are found to be unmeritorious, substantial amount of money has been incurred in legal cost by W, which could hardly be recovered in full. Even in her submission, W also says that she has tried to pursue the Costs awarded to her from the Stay Decision but one years hence, it has still not been resolved. Her funds were depleting at the time of her Summons, and has gone down further with the delay in these proceedings due to the H s actions. Stepping back to look at this situation, and in fairness to W, I am of the view that H needs to pay some additional maintenance over a period of time while W recovers what is due to her under the Stay decision and from this decision. I perceive it will take time before she can recover the Costs order made in the Stay decision (if not yet received), the outstanding MPF payout, the outstanding maintenance due to W as a result of my dismissal of H s Summons, and any Costs order consequential to these decision. I shall therefore make an Order that H is to pay further maintenance to W of \$25,000 per month for a period of 18 months dated back to the time he turned 65. This tallies to an additional \$450,000 in total which is now in arrears. I have limited the time for this additional spousal maintenance taking into account what I have elaborated above as to the intended effect of the Amended Consent Order 2016; the H s financial resources, and the fact that he is at present not working. Litigation Conduct At this juncture, litigation conduct of the parties must be taken into account, which is a factor that goes to Costs. H has failed to comply with a Court Order by intentionally withholding spousal maintenance. I also refer back to the Stay Decision, and reiterate below paragraph 31 therein:

31. W has argued that H had failed to disclose certain information at the material time: At time of H s Maintenance Summons in December 2020, he did not disclose that he had resigned from CP in November 2020, nor did he respond to W s email dated 10 February 2021 requesting information about his resignation. He did not disclose he received a final payment of \$574,654 on 30 November 2020; nor the amount of his CPP Fund of \$11,308,179 received on 8 January 2021 until he responded to W s Questionnaire in November 2021. He

did not disclose that he listed his property in Discovery Bay for sale in November 2020 until he was cross examined in Court, nor that he signed a Sale & Purchase Agreement in February 2021 until his Answers in November 2021. He also failed to disclose that he received the sale proceeds of HK\$4M at the end of April until he was cross examined. He did not disclose that he had relocated to Australia, and it was only in cross examination that he stated that this happened in April 2021. He acknowledged that he did not disclose the receipt of AUD150,000 from his mother's estate. He did not disclose that he purchased a property in Australia in June 2021, and this information did not appear in his Form E filed in July 2021. His purchase contract was only provided in his Answers in November 2021. Furthermore, when W asks in her questionnaire in August 2021 for H to produce bank statements, his answer was: The Respondent has already provided the bank statements for the past 12 months pursuant to the requirements as set out in the checklist in Respondent Form E. In the letter dated 11 August 2021 Massie & Clement, solicitors for the Respondent have already provided explanation in respect of the bank statements for the past 12 months which is sufficient. Clearly, an attitude that is hardly helpful although H did eventually produce more financial statements for this hearing. W has repeatedly stated that she has reached out to H by herself or via her then legal representatives to deal with their disputes by mediation on various occasions between January 2021 to July 2023, when cross examined on this, H's reply was that he did not think it was worth it. I also find H's response to W incurring legal fees to be particularly harsh. In his March 2023 Affirmation, he says the following: In response to the Petitioner's complaint that she was forced to spend her share of MPF on legal fees, it would have been more appropriate if she just accepted the fact that I was no longer employed and therefore could no longer pay her maintenance. Instead, it was her choice to spend the money on legal fees and she had chosen to spend as much as it takes to get every last penny from me. The Petitioner should not be putting the blame of her expenditure of legal fees on me as the Petitioner have made me do the same. (My emphasis) For the record, W has no legal representation since December 2022. As stated above, I do not find the W's omission of the account with Binance to be a deliberate act on her part. Costs For the H's Summons, I see no reason why costs should not follow the event. And in part adopting Mr Clough's submission that full and frank disclosure is important for a variation application, failing which there is to be indemnity costs consequence; I shall award the Costs of H's Summons be to W including all costs reserved, on an indemnity basis. For the W's Summons, I find that W was left with no option but to take out her Summons; I take into regard my award to W although she does not achieve the long-term spousal maintenance she seeks, and H's abovementioned litigation conduct, and shall order W to bear 40% of the H's cost arising from her Summons including all costs reserved, to be taxed if not agreed, with certificate for counsel. Both of these to be Costs order nisi to be made absolute 28 days hereof. The Orders The Respondent H's Summons The Respondent's Summons is dismissed. Costs including all costs reserved, be to the Petitioner on an indemnity basis. This to be a Costs Order nisi to be made absolute 28 days hereof. The Petitioner's Summons:

- a. The Respondent to pay spousal maintenance to the Petitioner for 18 months at \$25,000 per month, this order to be dated back to May 2022. This total monthly maintenance of \$450,000 being in arrears now, shall be payable on or before 4 months from the date of this decision.
- b. Leave to the Petitioner to enforce arrears more than 12 months.
- c. The Petitioner to pay 40% of the Respondent's Costs including all costs reserved arising from the Petitioner's Summons to be taxed if not agreed with certificate for counsel. This to be a Costs Order Nisi to be made absolute 28 days hereof. (Thelma Kwan) District Judge Petitioner acting in person For Respondent: Mr Neal Clough instructed by Messrs. Massie & Clement PAGE - PAGE - 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 vicViI gd77 gd\*~ ukaWPIP hjfz hFR? gd~[ pvgp h>%n hjfz hFR? gd6A gd6A gdb)I h>%n gdb)I gdb)I |u|q|m|i|mu|u|m hGmY hGmY gdb)I gdb)I gdGmY hGmY gdb)I gdb)I h-Lf h'qV hW{! gdb)I hW{! hW{! gdb)I hee) gd1z gd6A gdJN gdb)I gd1z gd6A gdb)I h&Jy ha hzE, h&Jy h:S h:S hzE, hzE, hWR] h:S yt6A gdb)I yt6A yt6A yt6A gd d gd d kd2 yt6A gd d gd d gd d gd d h]d5 h]d5 gdsK gd d gd4U gd d gd d h>\$s hR(b h|VS hR(b hR(b hR(b h19e h|VS h|VS gd d gd d gd d gd6A yt6A gd6A kdz yt6A gd6A yt6A gd6A yt6A gd6A yt6A kd yt6A gd6A gd d gd d yt6A hX\ - gd d gd d gd d gd6A hz e hOsX htB} hOsX hOsX gd d gd d gd d gd d h{ \_b h{ \_b h{ \_b h{ \_b h{ \_b h7KO hz e h{ \_b gd d gd d gd d gd6A gd d h7KO hz e hN{i hl"p ho8\_ hl"p hz e gd d gd d gd d gd d ho8\_ ho8\_ h6R3 hOw! h~] gd d gd d gd d gd d gd d gd d gd d gd d hX R h~] h~] h~] h~] h~] gd6A gd d gd d gdvb gd d gd d gd d gd d gd d gd d hGmY hT(T hT(T hGmY hGmY gd`` gd`` gd d yppj^V h)o> h)o> hT(T &`#\$ gd)o> qh\_qh\_q\_ :pd= yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A yt6A mH <nH sH <tH mH <nH sH <tH mH <nH sH <tH [Content\_Types].xml \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r \*~P(5 .}x E /,EE} 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"/> pRh Pwf{ \*&F!^ #J5^ Y&8\$ /@%B h&g%|?z6 0k4: 8\$J< HB2. 6;bb Z\_4h& \*&F! h&g% Z\_4h Y&8\$ 8\$J< \*&F! j.R8 \$?( ) & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title <?xml version="1.0" encoding="UTF-8" standalone="no"?> ><b:Sources xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/ bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/ bibliography" SelectedStyle="\APASixthEditionOfficeOnline.xsl" StyleName="APA" Version="6"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{A6EB487A-3093-4295-A9D1-62A7C4A8EA63}" xmlns:ds="http:// schemas.openxmlformats.org/officeDocument/2006/ customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/

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