

HONG KONG / JUDGMENT

**FBK v. YSY**

## COURT

Court of First Instance

## DECIDED

23 May 2007

## CASE / FILE NUMBER

HCMP1325/2006

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HCMP 1325/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO. 1325 OF 2006 (ON AN INTENDED APPEAL FROM FCMC NO. 4228 OF 2003)

BETWEEN FBK Petitioner Respondent

Before: Hon Tang VP in Chambers Date of Hearing: 23 May 2007 Date of Decision: 23 May 2007

## DECISION

This matter arose out of a divorce petition by the husband made on 10 April 2003 on the ground of two years separation. On 28 April 2006, a decree nisi was made by Deputy Judge Kot, after a hearing at which the respondent was absent. However, at an earlier hearing on 15 July 2005, the respondent appeared and was given leave to file an answer within 14 days. On 28 July 2005, the respondent filed an answer opposing the petition. So the divorce proceedings became defended and as I have said, a decree nisi was made on 28 April 2006. On 7 July 2006, the petitioner applied for the decree nisi to be made absolute. That order has not yet been made because on 27 June 2006, the respondent acting in person, applied ex parte for leave to appeal out of time against the decree nisi. That is HCMP 1325 of 2006, the present proceedings. However, although the respondent had paid the court fee, the respondent had failed to file the original application. The registry has tried to contact the respondent by post as well as by telephone. But up-to-date they have been unable to actually contact the respondent, and repeated attempts to reach the respondent have failed. Now the petitioner applies to set aside the ex parte application for leave to appeal out of time, which has not been served on the petitioner. The petitioner also asked that not only should the application for leave to appeal out of time be set aside but also that the proceedings be dismissed. This application has been served on the respondent by registered

post, and I have an affirmation of Chan Wing-kit, filed on 22 May 2007 to the effect that the application has been served on the respondent by registered post. The letter had not been returned by the post office. Mr Chan had further checked with the post office and was told that the letter was received by the respondent. I believe I should make the order. Although the application has not yet been served on the petitioner, its existence has resulted in the petitioner's decree nisi not yet been made absolute. That is intolerable. The court has jurisdiction to prevent its process being abused, and it is an abuse of process to leave proceedings in limbo especially when that has resulted in prejudice to the party in the intended appeal. So I will make an order in terms of the summons dated 10 May 2007, setting aside the ex parte application for leave to appeal out of time, dated 27 June 2006, in the present proceedings. It also follows that the proceedings is dismissed. Perhaps I should mention that throughout the proceedings, in the court below or throughout most of it, the petitioner himself was legally aided and I understand that at one time that the respondent herself was also legally aided in relation to the application for ancillary relief. So the proceedings is dismissed with costs. I also make the order that the petitioner's own costs be taxed in accordance with the Legal Aid Regulations. (Robert Tang) Vice-President Mr Hui Wun-lap of Messrs Vivien Chan & Co., assigned by Director of Legal Aid, for the Petitioner. The Respondent, in person, absent. PAGE - 1udk 1udk ~Xx, Y<2^ k`8h H; < ZxYb Pl?^R Pl?^ & 6" Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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