

HONG KONG / JUDGMENT

H v. H

COURT

Family Court

DECIDED

12 September 2007

CASE / FILE NUMBER

FCMC1895/2007

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bjbj IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
MATRIMONIAL CAUSES SUIT NO. 1895 OF 2007

BETWEEN H Petitioner and H Respondent

Coram : H.H. Judge Bruno Chan in Chambers Date of Hearing : 4 September 2007 Date of
Judgment : 12 September 2007

J U D G M E N T

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1. This is the Respondent Husband's application to stay the Petitioner Wife's divorce petition and proceedings on the basis that Hong Kong is not the most appropriate forum to determine the suit and the matters arising therein, and that the appropriate forum is the jurisdiction of Germany in which proceedings were already commenced on 7th November 2005.

Background

2. The Husband is a German national while the Wife is a Taiwanese. They first met in Bali in 1993, and after a visit by the Husband in Taiwan in November 1993, the Wife decided to join the Husband in Germany in December 1993 on a business visa.
3. However in January 1994 the Husband was arrested and taken into custody as a result of investigation by the German Customs into discrepancies over import tax of his business, for which he was detained until February 1995 when he was finally released after a trial and certain payment by his company.

4. While the Husband was still in custody, the parties decided to marry and therefore registered their marriage on 2nd December 1994 at the Registry Office, City of Furth, Germany where the Husband was born and raised. He was then 31 years old while she was 35.
5. Upon the Husband's release from custody, the parties signed a marriage contract on 27th February 1995 which was in the German language and provided, inter alia, that their marriage would be governed by German law with certain financial settlement in the event of the dissolution of their marriage including the waiving of post-marital alimonies if payments would exceed DEM 3,000, the current equivalence, as I understand, of HK\$32,000, and that the duration of mutual post-marital claims to maintenance payments shall be limited to half the commenced number of years of the marriage, equivalent to about 6 1/2 years in this case.
6. After the marriage the parties continued to live in Furth where their elder child, a daughter, was born on 2nd November 1996. In 1998 the family moved to live in Hong Kong because of the Husband's business where their younger child, a son, was born on 19th July 2001. The Wife would remain as a full-time housewife and mother, with the Husband as the sole breadwinner of the family running and operating his textile business by means of some companies incorporated in Hong Kong. This position has remained up to today and both children also attend school in Hong Kong.
7. In February 2005 the Husband left the parties matrimonial home at Sai Kung which was purchased in the name of one of the companies known as GW Consultants Ltd of which he is a director and shareholder. He has however continued to maintain the Wife and the children by way of a monthly sum of HK\$59,000 as well as paying for the children's school fees at the Australian International School, while GW Consultants Ltd would pay for the mortgage and utilities of the matrimonial home. There were some negotiations between the parties in an attempt to reach a settlement with a view to a divorce, during which the Wife had consulted lawyers, but no agreement was reached.
8. On 7th November 2005 the Husband filed for divorce in the Municipal Court of Berlin-Schöneberg, Germany on the ground of one year separation since October 2004. The German proceedings together with the English translation were however not served on the Wife until almost a year later in September 2006. Part of the reasons for the delay, I am told, was the time taken for the translation and for the SAR Government to be enlisted to effect service on the Wife in Hong Kong.
9. On 11th December 2006 the Wife's appointed German lawyer wrote to the Court in Berlin-Schöneberg stating that it was not accurate that the parties have lived apart since October 2004 as alleged in the Husband's divorce petition.
10. On 12th January 2007 the Husband filed his document concerning pension equalization to the German court as part of the statutory procedure in the German proceedings.

11. On 25th January 2007 the Wife was ordered by the German Court to file her document concerning pension equalization within 2 weeks with a notice that there would be a penalty of Euro300 in case of non-compliance.
12. On 13th February 2007 the Wife instituted these proceedings by issuing a petition for divorce against the Husband on the ground of their separation since 12th February 2005. In the petition she also sought custody care and control of both children and all forms of ancillary relief for herself and the children. On the following day on 14th February 2007 the divorce papers were served on the Husband at his office in Hong Kong, and on 1st March 2007 the Wife applied for direction to set her petition down for hearing in the special procedure list.
13. On 12th March 2007 the German Court made the penalty order against the Wife for failing to file her pension document with a provision that she could avoid the execution of the said order by providing the document.
14. On 28th March 2007 the Husband returned the Form 4 to this Court through his then solicitors acknowledging receipt of the Wife s petition and indicating his intention to dispute jurisdiction.
15. On 17th April 2007 the Husband took out the application now before me, and at the hearing on 23rd April 2007 the parties agreed that the application be adjourned to 20th June 2007 for argument pending the filing of their respective affidavit evidence. At the hearing the Wife also undertook not to proceed with her divorce proceedings pending outcome of the Husband s application, while the Husband was ordered to do the same with his German proceedings.
16. Meanwhile on 13th April 2007 the German Court ordered the Wife to pay the penalty of Euro300 within 2 weeks. On 29th May 2007 the Wife at last filed her pension equalization document to the German Court.
17. The hearing of this application was further adjourned in June 2007 upon the Husband s request for further time to translate his German proceedings for his application. The parties have since filed their supportive affidavits, two by the Husband and one by the Wife.
18. It should also be noted that the Husband has since late 2006 formed a new relationship out of which a daughter was born on 13th March 2007. He now lives with his new partner and child in a flat in the Mid-levels in Hong Kong, while the Wife and the 2 children have remained in the former matrimonial home in Sai Kung. The Principles
19. The principles applicable to a stay of Hong Kong proceedings on the ground of forum non conveniens, or that some other forum is the appropriate forum have been set out, first in *The Abidin Daver* [1984] AC 398, and more particularly in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 in which Lord Goff in the House of Lord said as follows : -

- (a) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.
- (b) As Lord Kinnear's formulation of the principle indicates, in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay (see e.g. the *Soci du Gaz* case 1926 SC (HL) 13 at 21 per Lord Sumner and *Anton Private International Law* (1967) p 150). It is, however, of importance to remember that each party will seek to establish the existence of certain matters which will assist him in persuading the court to exercise its discretion in his favour, and that in respect of any such matter the evidential burden will rest on the party who asserts its existence. Furthermore, if the court is satisfied that there is another available forum which is *prima facie* the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country (see para (f) below).
- (c) The question being whether there is some other forum which is the appropriate forum for the trial of the action, it is pertinent to ask whether the fact that the plaintiff has, *ex hypothesi*, founded jurisdiction as of right in accordance with the law of this country, of itself gives the plaintiff an advantage in the sense that the English court will not lightly disturb jurisdiction so established .
- (d) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum. These are the factors which Lord Diplock described, in *MacShannon's case* [1978] 1 ALL ER 625 at 630, [1978] AC 795 at 812, as indicating that justice can be done in the other forum at substantially less inconvenience or expense . Having regard to the anxiety expressed in your Lordships House in the *Soci du Gaz* case 1926 SC (HL) 13 concerning the use of the word convenience in this context, I respectfully consider that it may be more desirable, now that the English and Scottish principles are regarded as being the same, to adopt the expression used by Lord Keith in *The Abidin Daver* [1984] 1 ALL ER 470 to 479, [1984] AC 398 at 415 when he referred to the natural forum as being that with which the action has the most real and substantial connection . So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction (as to which see *Cr dit Chimique v James Scott Engineering Group Ltd* 1982 SLT 131), and the places where the parties respectively reside or carry on business.

- (e) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay : see, e.g. the decision of the Court of Appeal in *European Asian Bank AG v Punjab and Sind Bank* [1982] 2 Lloyd s Rep 356. It is difficult to imagine circumstance when, in such a case, a stay may be granted.
 - (f) If, however, the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions .
- 20. These principles have since been adopted by our Court of Appeal in *The Adhiguna Meranti* [1987] HKLR 904 and *Louvet v Louvet and Another* [1990] 1 HKLR 670, where the facts of the latter case have a remarkable similarity with this case.
 - 21. It was an appeal against a judge s refusal to order a stay of matrimonial proceedings pending the determination of parallel proceedings in France where the marriage took place in 1973 and the husband was a French national, while the wife was born and brought up in Japan. They first met in Tokyo and, following marriage in France in 1973 and preceded by the making of a contract known as a *Separation de Biens*, cohabited in France until about November 1975 when the husband resumed employment in Hong Kong. The parties then cohabited in Hong Kong until September 1979 when they parted.
 - 22. Between 1982 and 1985 negotiations took place in France between lawyers in an attempt to reach an agreement with a view to divorce, but no agreement was reached.
 - 23. On 12th September 1988 the wife filed her petition in Hong Kong and on 10th October 1988 the husband started corresponding proceedings in France. The husband applied for a stay of the Hong Kong proceedings and on 12th December 1988 the judge dismissed the application. On 8th February 1989 the French Court accepted jurisdiction in the husband s French proceedings rejecting a stay application by the wife. The hearing of the wife s appeal in France had taken place in October 1989, and at the time of the judgment of the husband s appeal, a decision in the wife s appeal was still pending.
 - 24. In dismissing the husband s appeal, Hunter, JA for the Court of Appeal (with Fuad VP and Penlington JA) restated the principles formulated in *The Adhiguna Meranti* when he said at p. 674 : - The court has now to answer a single question, namely : Is there some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of an action, i.e. in which the action may be tried more suitably for the interests of all the parties and the ends of justice .
 - 25. His Lordship went on to suggest that for the purposes of the analysis it was convenient to view the problem at three separate stages : -

- (1) Is it shown that Hong Kong is not only not the natural or appropriate forum for the trial, but that there is another available forum which is clearly or distinctly more appropriate than Hong Kong. The evidential burden is here upon the applicant. The emphasis is upon appropriate rather than convenient because this is not simply a matter of practical convenience. The purpose is to identify the forum with which the action has the most real and substantial connection per Lord Keith in *The Abidin Daver* [1984] AC 398. The principal factors are enumerated at p. 987D. Failure by the applicant at this stage is normally fatal.
- (2) If the answer to (1) is yes, will a trial at this other forum deprive the plaintiff of any legitimate personal or juridical advantages ? The evidential burden here lies upon the plaintiff.
- (3) If the answer to (2) is yes, a court has to balance the advantages of (1) against the disadvantages of (2), *Abidin Daver* per Lord Brandon at p. 419. Deprivation of one or more personal or juridical advantages will not necessary be fatal to the applicant provided that the court is satisfied that notwithstanding such loss substantial injustice will be done in the available appropriate forum . The court must try to be objective. Proof of this, which can fairly be called the ultimate burden of persuasion, rests upon the applicant for the stay. By these means he establishes that on balance the other forum is more suitable for the interests of all the parties and the ends of justice . This may be another way of saying that the plaintiff s choice of forum has been shown to be so inappropriate as to deserve the pejorative description of forum-shopping and to be restrained accordingly .
26. His Lordship then applied the principles in the contest of a matrimonial case when he said :
- The final question, this being a matrimonial case, can perhaps be reformulated in the language of *de Dampierre* with the necessary adaptations in this way. In the language of Lord Templeman at p. 101 : is it just that the wife should be allowed to exploit her Hong Kong advantage and would it be unjust to confine her to her remedies in France ? Or in the language of Lord Goff at p. 110; objectively speaking , would justice be done if this petitioner was compelled to pursue her remedies in France ? Those, it is common ground, are the applicable principles?
27. In the more recent case of *DGC and SLC nee C* [2005] CACV 37 / 2005, the parties were Australian citizens and met in Australia in 1984. The husband came to Hong Kong on a job in 1988, and in 1989 the wife came to live with him. After cohabiting for 3 years, they married in 1991 in Hawaii, USA.
28. After marriage the parties continued to live in Hong Kong in a purchased property until February 2002 when the wife left Hong Kong and returned to Australia to live in a property also purchased by the parties. There was another property purchased by the parties for investment in Australia. They had no children.

29. On 15th June 2004 the husband petitioned for divorce in Hong Kong based on 2 years separation and applied for ancillary relief. On 8th September 2004 the wife applied for a stay of the divorce proceedings which was one day before the Hong Kong court was due to pronounce the decree nisi of divorce. Both matters were then adjourned.
30. On 14th October 2004 the wife commenced proceedings in Sydney, Australia for property settlement. The husband lodged an application in Australia to stay the Australian proceedings but it was refused by the Family court of Australia in Sydney on 17th December 2004. The husband's appeal against that decision had been heard and decision was pending when the wife's stay application was subsequently refused by the Hong Kong Family court, she then appealed.
31. In dismissing her appeal, Cheung JA for the Court of Appeal conveniently set out the principles in slightly more simplified terms as follows : -
 1. The single question to be decided is whether there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of an action i.e. in which the action may be tried more suitably for the interests of all the parties and the ends of justice?
 2. In order to answer this question, the applicant for the stay has to establish that first, Hong Kong is not the natural or appropriate forum (appropriate in this context means the forum has the most real and substantial connection with the action) and second, there is another available forum which is clearly or distinctly more appropriate than Hong Kong. Failure by the applicant to establish these two matters at this stage is fatal.
 3. If the applicant is able to establish both of these two matter, then the plaintiff in Hong Kong proceed has to show that he will be deprived of a legitimate personal or juridical advantage if the action is tried in a forum other than Hong Kong.
 4. If the plaintiff is able to establish this, the court will have to balance the advantages of the alternative forum with the disadvantages that the plaintiff may suffer. Deprivation of one or more personal advantages will not necessarily be fatal to the applicant for the stay if he is able to establish to the court's satisfaction that substantial justice will be done in the available appropriate forum . The Application
32. In applying these principles, the first question to be decided is whether Hong Kong is the forum having the most real and substantial connection with this case.
33. The parties have been married for almost 13 years, of which the first 3 1/2 years were in Germany, with the following 9 years in Hong Kong. Their son was born here while their daughter moved here before she turned 2, and both children go to school here. It is also not in dispute that both parties hold permanent residency in Hong Kong.

34. The Wife's evidence is that she wishes to remain in Hong Kong, as she has no intention to return to Taiwan or Germany, and she sees Hong Kong as her home and her children's as they are well settled here. She believes that the Husband also envisages a future where she and the children will remain in Hong Kong as he has suggested in one of his e-mails to her that he would help her to find a job or start a business here after their divorce.
35. As for the Husband, there is no evidence to suggest that he intends to leave Hong Kong to move back to Germany, and in view of the fact that his business is here and sources his textiles in Asia, and that he has started a new family here, I believe that it is also his intention to remain in Hong Kong.
36. There is therefore no question of the jurisdiction of the Hong Kong courts to deal with the Wife's petition for divorce and custody and ancillary relief which was invoked under section 3 (c) of the Matrimonial Causes Ordinance, Cap. 179 by reason of the parties substantial connection with Hong Kong. Hence the Wife is entitled to sue in Hong Kong as of right, a factor which should be given proper recognition : see *Nan Tung Bank Ltd Zhu Hai v Wangfoong Transportation Ltd* [1999] 2 HKC 606 and *Yap Lup Man v Good First Investment Ltd* [1998] 1 HKC 726.
37. At the centre of the dispute between the parties which the Hong Kong court will have to deal with, if there is no stay of the proceedings, is no doubt over the ancillary relief where all the assets appear to be in Hong Kong, as there is no mention of any other assets outside the jurisdiction. The main asset is the matrimonial home as far as the Wife is concerned, which is as aforesaid held by GW Consultant Limited, a company registered in Hong Kong and used to be jointly held by the parties until 2004 when the Wife's name was taken off the company registry.
38. The company search records of GW Consultants Ltd produced by the Wife (Paginated Bundle : P 552 - 563) show that the Husband is a director and one of the 2 shareholders, albeit a minority one, while the other shareholder is a B.V.I. company the particulars of which are unknown as the Husband has not yet provided any information thereof at this stage.
39. In addition to GW Consultants Ltd, the Wife also believes that the Husband is involved in several other companies in Hong Kong, of which she has named two : RS Limited in which the Husband operates his business as a director with the said GW Consultants Ltd as one of the 2 shareholders, again a minority one, with another B.V.I. Company as the other major shareholder (PB : 567 - 580). The other named company is TG International Enterprise Ltd of which no particulars have yet been disclosed.

40. It is apparent that as far as the official records of these companies are concerned, very little is known at this stage about their beneficial ownerships, and while the Wife believes that all these companies are owned by the Husband, he denies the same and admits of only 1% beneficial interest in GW Consultants. It is therefore abundantly clear to me that any discovery and investigation about these companies and the Husband's business will obviously and naturally have to be carried out in Hong Kong and by the Hong Kong courts.
41. While I do not believe there is any major issue over the parties' divorce, whether in Hong Kong or Germany, other than the dispute over the actual date of separation in the German proceedings, and that the same can probably be said about the care and control of the children as it appears that the Husband may only be seeking joint custody, there is however always the possibility that the question of access may have to be looked into in more details, in which case the fact that the children are in Hong Kong and go to school here will be highly relevant, and hence the Hong Kong courts will clearly be in the natural position to determine those matters concerning them, with the assistance of our Social Welfare Department, as well as any local experts such as clinical psychologists where necessary.
42. I therefore have no difficulty in finding that Hong Kong has real and substantial connection with this case and is an appropriate forum. The next question to be decided is whether Germany is another available forum which is clearly or distinctly more appropriate than Hong Kong, and the burden is on the Husband to establish that is the case.
43. Mr Egerton for the Husband submits that in the context of the timing of the proceedings in both jurisdictions, the Wife's participation in the German proceedings, and the fact that the parties signed an agreement accepting the German law would apply to their marriage should however tilt the balance in favour of the Husband's case that Germany is indeed a more appropriate forum.
44. It is true that the Husband has initiated proceedings in Germany first in time as early as in November 2005, that fact is however not a decisive factor, as Penlington JA pointed out in the *Louvet* case when he said : - It is also a fundamental principle that simultaneous actions in different forums should be avoided, if at all possible, as was said by Lord Diplock in *The Abidin Daver*. At first sight, it seemed to me that it was inevitable that the French proceedings would go on, and that may result in different decisions from both the French and the Hong Kong courts. This would, it seems to me, be a strong reason to stay proceedings here, if satisfied that the French petition would give both parties a just decision. It is true that the Hong Kong proceedings were first in time, although closely followed by those in France brought by the respondent. I do not consider, however, that a matter of great consequence .
45. In particular, as Ms Rattigan has submitted for the Wife, they have not advanced past the initial stage, and while I agree with Mr Egerton that it was not due to the Husband's failure to prosecute them diligently as argued by the Wife, partly because a great deal of time had been spent in attempting to effect service upon the Wife through the Hong Kong

Government, and although the Husband's lawyer has recently confirmed that proceedings in Germany are continuing and that he expects a decree of divorce will be pronounced by the Municipal Court of Berlin-Schöneberg in the near future, it is not entirely clear when and how it is to be the case in view of the fact that the Wife is challenging the accuracy of the date of separation in the Husband's petition, for which there will be a hearing when oral evidence will be taken, as I understood it, but which the Wife is unlikely to travel to Germany to attend, unlike the case of her petition in Hong Kong which is at the stage of being set down in the special procedure list at any time now when the court will pronounce the decree of divorce without requiring the attendance of the parties. In fact, had it not been for this stay application, the court would have already done so, I believe.

46. The Husband also relies on the Wife's said letter of 11th December 2006 to the German court and her subsequent filing of her pensions document in the German proceedings as indications of her submission to the German jurisdiction from which she should not now be allowed to retract, as is the opinion of his German lawyer (PB : 76).
47. Ms Rattigan for the Wife however disputes this by arguing that the letter simply sets out that the Husband's petition is not accurate as the parties had not been separated from the date alleged by him, and that the pension document was sent not to submit to the jurisdiction but in order to avoid incurring a further financial penalty.
48. While the letter does not contain words to the effect that the Wife is challenging the German jurisdiction, and Mr Egerton argues that it should have if it was indeed her intention, neither does it, in my judgment expressly or impliedly, indicate her submission to German jurisdiction either, and while the last sentence of the letter whether any further matters pending besides statutory pension equalization can not be foreseen at this moment didn't help to clarify her position as far as jurisdiction is concerned, it did indicate quite unambiguously that there would be no further action by the Wife other than her statutory pension equalization at that stage.
49. What followed after that letter, however, in my view, go to support the Wife's case : that she filed for divorce in Hong Kong the next day right after the parties had lived apart for exactly 2 years, and resisted filing her pension document, just a simple form with a few boxes to tick in the words of Mr Egerton for the Husband, for as long as she could until late May 2007. Given her financial dependence on the Husband, I accept her explanation that she simply did not wish to incur further penalty and that it was not an act of submission to the German proceedings. In fact I find such actions by the Wife do speak volume against the Husband's argument, and I reject the opinion of his German lawyer who appears obviously biased against the Wife.

50. I agree with Ms Rattigan for the Wife that the only factors the Husband can point to connect these proceedings with Germany are the fact that he is a German national, that the parties were married there and lived there for a short period at the start of their marriage, and that they had signed the marriage contract there, although it was signed after the marriage had taken place, in a language which the Wife was not familiar with, and without separate legal representation for her.
51. I also agree that one of the main reasons the Husband has brought proceedings in Germany must be his wish to rely on this marriage contract, as he made it clear in his email to the Wife (PB : 538) in their settlement discussions in October 2005, and again later through his German lawyer (PB : 595).
52. While it is true that the marriage contract has provided that German law shall apply to the parties marriage and their legal relationship, and that the Husband's German lawyer has also stated in his opinion (PB : 102) that German court is the better forum to deal with the divorce because according to International Private law the German law should be applied as the marriage took place in Germany and as the Husband is a German national, they do not in my view necessarily make Germany a more appropriate forum than Hong Kong as the marriage contract and any aspect of foreign law that governs it can be competently dealt with by the courts here, as pointed out by Cheung JA in the case of DGC and SLC nee C at paragraph 15 : - The family courts in Hong Kong have vast experiences in dealing with cases of an international dimension. Many involved the large expatriate community in Hong Kong whose assets are located both in Hong Kong and overseas. The Hong Kong courts regularly deal with the valuation of overseas properties and make orders thereto. In terms of convenience and expense of hearing, Hong Kong has a purpose-built technology court room with video linkage to overseas countries
53. And in the case of Rambas Marketing Co LLC v Chow Kam Fai, David [2001] HKC 250, Recorder Ma SC (as he then was) also made similar observation when he said : - The courts in Hong Kong (particularly the Commercial court and the Admiralty court) given the international identity and nature of the type of commercial litigation and litigants here, are often accustomed to dealing with aspect of foreign law. It does not therefore follow at all once it is shown that issues of foreign law arise, that this will necessarily be a powerful, much less a decisive, factor in favour of a stay .
54. Furthermore, the fact that German lawyers may be charging at a lower rate than their Hong Kong counterparts or at a certain tariff regulated by the German government, as alleged by the Husband, does not necessarily follow either that the legal costs in Germany will be cheaper than in Hong Kong taking into account of the costs for translating all the documents from German into English, and that the Wife may well have to retain lawyers in Hong Kong to conduct any investigations into the Husband's companies, all of which were incorporated here, and are operated and managed here and governed by the law of Hong Kong. It will certainly be difficult for the Wife to do so outside Hong Kong, as Hunter JA observed in Louvet at p 682:- The husband's assets in France are reasonably clear. The same cannot be

said of the Hong Kong assets. Investigation of these assets, it seems to me, can be conducted much more efficiently and effectively here. It is the right place, and the expert evidence seems to me to show that Hong Kong's methods of investigation are the most effective .

55. For the same reason I am also unable to see how the investigations of the Husband's companies in this case can be more efficiently and effectively conducted other than in Hong Kong.
56. Mr Egerton for the Husband has also argued that since the Wife has not applied to stay the German proceedings there, and that even if she were to do so, it is unlikely that the German court would allow the stay, there would therefore be multiplicity of proceedings with undesirable consequences if the Wife's proceedings in Hong Kong is allowed to continue, a situation which Cheung JA in DGC accepted that generally speaking, multiplicity of actions of the same subject matter in different jurisdictions should be avoided, but His Lordship also went on to say that that problem will not by itself cause the Hong Kong proceedings to be stayed because ultimately the real issue is still whether Hong Kong is not the appropriate forum to try the case, following the judgment of Lord Diplock in *The Abidin Daver* [1984] 1 AC 398 when he stated : - but as a general rule the fact that to permit the England action to be pursued would result in concurrent actions on the same subject matter proceeding in two different jurisdictions could not be sufficient to justify depriving the plaintiff of the advantage to which he was entitled, if an English court of competent jurisdiction could be found, to choose it as the forum in which he preferred to litigate the matter .
57. In all the circumstances of this case and for all the reasons aforesaid, I agree with Ms Rattigan for the Wife that the Husband cannot even show that Germany is an equally appropriate forum, let alone that it is clearly and distinctly more so.
58. Having failed to establish his case by the Husband, which is as aforesaid fatal to his application, I need not take the matter to further stages to undertake the balancing consideration, when the burden will shift to the Wife to show that she may be deprived of some personal or juridical advantage if the stay is granted and the proceedings moved to Germany, except to say that even on that basis, I would still find in favour of the Wife as I agree that she would most certainly suffer the juridical disadvantage of having her financial claims severely restricted by the terms under the marriage contract which appears to be strictly upheld under the German law, but which will otherwise be considered and looked at properly in the context of all the factors that come into play in deciding the issues before the courts here.
59. In addition, the Wife would also likely to suffer from other obvious and serious disadvantages by having to leave her young children in Hong Kong for any contested hearings on finance and/or custody/ access matters in Germany for the duration of such proceedings, a place with which she has no further connection or accommodation and with obvious language problem that I have serious reservation in my mind that substantial justice can be done to her case in those circumstances.

60. In conclusion, the Husband s application is therefore refused and his summons dismissed with costs followed the event to the Wife. (Bruno Chan) District Judge Ms Mair ad Rattigan instructed by Messrs Hampton Winter & Glynn for the Petitioner. Mr Robin Egerton instructed by Messrs Haldanes for the Respondent. PAGE - PAGE - &`#\$ ~!P] ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$\$:L- E{k' XW(\$ -3*\$ 43*\$:p . (\$p2\$ 4g3\$ 4QQ4 0b50p M|;\$ wzO?p= H#@\$ 3i@\$ nSDH lEFE kxL\$ /eNH S\$O\$ N=Q" c;R\$ G%9UT C:~W x% X\$ x8Y\$ L}YH (Yq[*n\T #b2^\$ Q^f Y6xc\$ e>tD ?Dep= ZJg\$ hx;r N)/h vCip= gsTu\$ 4xv\$ xDs\ *'y\$ __z4w C? } R\$ ~\$ f!\$- C:~W N)/h E{k' 4QQ4 lEFE C? } wzO? gsTu x% X (\$p2 0kJ\$ #b2^ Y6xc R\$ ~ he~" G%9U (Yq[:p . @\\Hc-oa- ws-656\\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \\Hc-oa- ws-656\\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \\Hc-oa- ws-656\\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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