

HONG KONG / JUDGMENT

H v. H

COURT

Family Court

DECIDED

3 October 2007

CASE / FILE NUMBER

FCMC1969/2007

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bjbj 6Nu IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
MATRIMONIAL CAUSES NO. 1969 OF 2007

BETWEEN H Petitioner and H Respondent

Coram : H.H. Judge Bruno Chan in Chambers Date of Hearing : 7 September 2007 Date of
Judgment : 3 October 2007

J U D G M E N T

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1. There are essentially 2 matters before me : the Petitioner Wife s application for maintenance pending suit for herself and the 3 children of the family by way of a summons taken out on 12th March 2007 which included various other directions but all of which have since been resolved between the parties, except one minor issue over the Husband s defined access to the children which requires my consideration and which I propose to deal with towards the end of this judgment, as the parties major dispute is over the amount of the interim maintenance for the Wife in which she has also asked to include a monthly contribution by the Husband towards her legal fees. She is a housewife at the current age of 39 while he is a 47 years old company director, and there is no question that it is a family of wealth and high standard of living. The Background
 2. The parties were married in Switzerland on 11th April 1989 and shortly thereafter the Wife moved to live with the Husband in Hong Kong. They have since made their home in Clear Water Bay with their 3 children, a son and 2 daughters now aged 15, 9 and 8 years respectively.

3. The Husband is the President and CEO Asia of a well-established German family business known as HWL Ltd (the Company) allegedly owned by his 2 cousins in Germany, while he is responsible for the Asian side of the operation.
4. Throughout the marriage the Company paid for the mortgage of the parties matrimonial home, which is held in its name, as well as all their utilities, household expenses, car expenses and insurance premium, while the Husband would pay for the domestic help and the children s expenses including their school fees and medical expenses from his monthly income which he would regularly deposit into a HSBC joint account with the Wife, from which she could also draw funds from time to time to meet her personal expenses together with an Amex Centurion Card and a HSBC Platinum Visa card provided by the Husband.
5. With the Husband s substantial income and the various benefits provided by the Company as aforesaid, the family was able to enjoy a very comfortable life of high standard of which I will no doubt have more to say later, but unfortunately the marriage was severely impacted towards the end of 2002 and onwards by the development of a serious and debilitating illness by their son J when he was then only 10, and the eventual diagnosis of a rare and incurable metabolic disease called mitochondrial myopathy encephalopathy lactic acidosis and stroke (MELAS), a condition that can cause mental retardation, blindness, deafness, dementia and premature death, and which sadly did cause J to suffer numerous epileptic seizures and strokes in the intervening years that eventually led to his present blindness, and put him under constant medical care and treatment.
6. In February 2006 the Husband suffered a emotional breakdown which he claims was the result of stress of the family situation and his business, but which the Wife believes to do with his drinking and drug problems, to which he denies, but the upshot is that he checked into a clinic in England for treatment.
7. In about mid-March 2006 the Husband returned to Hong Kong, but instead to the matrimonial home in Clear Water Bay, he first stayed in the Grand Hyatt Hotel and eventually moved to his present accommodation, an apartment in Mid Levels, Hong Kong. The parties have since not lived together again, and it is not in dispute that the Husband has formed a relationship with a Ms S who is said to be working in his business, while the Husband also believes that the Wife has been involved with another man.
8. In April 2006 the Husband stopped depositing his monthly income into the parties joint account, and in the following month in May he cancelled both of the Wife s supplemental credit cards after she spent a substantial sum with them on jewellery, and replaced them with a Visa Gold card with a limit of \$40,000, plus a cash payment of \$20,000 per month for her personal expenses.

9. In October 2006 and onwards the parties started to attend mediation with a view to resolve their marital problem, but on 15th February 2007 the Wife went ahead to institute these proceedings for divorce on the basis of their separation for 1 year since 13th February 2006 with the Husband's consent, in which she also sought custody of the children and general ancillary relief for herself and the children.
10. On 12th March 2007 the Wife took out the summons for the matters now before me in which she claims that the Husband's current provision for her in the total sum of \$60,000 per month is much less than what she used to enjoy in the past and insufficient to meet her reasonable needs, of which she says she requires about \$73,000 per month for her personal expenses, plus a further monthly sum of \$25,000 to meet her food and household expenses as well as the children's entertainment and pet expenses, while the Husband argues that the Wife has been a big spender and that many of her purchases were either unnecessary, extravagant or on behalf of her friends for which she would be reimbursed, and insists that his current provisions for the household and the children as well as his monthly provision of \$60,000 for her should be sufficient.
11. The application was inevitably adjourned for argument, pending which the Husband agreed that the Wife be granted interim care and control of the children with reasonable access including staying access to him, and undertook to continue to pay \$20,000 cash allowance per month to the Wife and to continue to provide credit card facility up to \$40,000 per month to her and to pay for all those expenses which he has regularly paid for the past 2 years for her and the children, and also to arrange for the Company to continue with the various payments for the family as before, which were subsequently recorded in a consent order dated 26th March 2007. The decree nisi of divorce was then granted on 30th April 2007.
12. Meanwhile in May 2007 the parties reached an agreement through mediation on certain access arrangements for the children, including sharing their major school holidays between them.
13. The parties have also since filed their respective Financial Statement (Form E), as well as a lengthy narrative affidavit in respect of the matters before me. Not surprisingly, given the background of the family, there have also been fairly substantive discoveries made on their respective financial positions, in particular of the Husband. The Law
14. The Wife's application for maintenance pending suit is of course brought under s. 3 of Matrimonial Proceedings and Property Ordinance, Cap. 192, and the only guidance provided is for the court to make such order as it thinks reasonable, which is therefore an unfettered discretion : see *Waller v Waller* [1956] 300, [1956] 2 ALL ER 234, 236 CA. and *Griffith v Griffith* [1957] 1 ALL ER 494, 495.
15. Furthermore, as it is intended that the award will operate for a relatively short period pending the final determination of the ancillary relief application, it would not be appropriate, and in fact not possible, for the court to make a detailed investigation of the financial position of the parties in the absence of oral evidence, when considering the

amount of the award, but instead to use a broad brush approach, as was held by Power J, as he then was, in the case of *Miller v Miller* [1985] 1 HKC 595 when he said that the sole criteria in making an award were reasonableness and the needs of the parties, and that the court should not take a long term view or consider the potential earning capacity or future capital prospect of the parties.

16. This application was approved in the later case of *Wong Wai Chi Susanna v Kim Miu Sup Mark* [LACV 203 / 98] when Liu JA said : - It is trite law that in an application for interim maintenance, the Family Judge is not called upon to make any thorough investigation of the income and financial capabilities of the parties. At that stage, there would simply be no time to be perfect. The Family Judge would have to guide himself by s. 3, having regard to the reasonable requirements of the wife and the ability of the husband to pay .
17. While the sole statutory guideline is that the award shall be reasonable , the court will nevertheless bear in mind all the facts and factors drawn to its attention relating to the marriage and the parties, and the two most outstanding matters in this case are the Wife s reasonable needs and the standard of living of the family prior to the breakdown of the marriage, as there is certainly no question of the Husband s ability to pay. Nevertheless, it will still be necessary for me to go into a bit more details of his financial situation, which I shall do next. The Husband s Financial Situation
18. According to his Form E, apart from the Company, the Husband also holds directorship in 6 other companies, as well as shareholding in several other companies. He holds some real properties and lands mainly in overseas, except for an industrial unit in Hong Kong at Kwai Chung presumably in connection with his business, the values of which are either unclear or comparatively insignificant.
19. He does have some fairly sizable liquid assets, more than \$10 million in bank savings and over \$6 million in stocks and shares investment. He also claims to have about \$6 million owed to him mainly from his brothers, and has accumulated more than \$5 million in MPF / pension. In total, the Husband put the total net value of his assets at slightly over \$31 million, a figure which may not be acceptable to the Wife as accurate, and no doubt in due course much more details of them will emerge, but for the purpose of the present application, it is not necessary for me to dwell on them at this stage but to move on to the more relevant issue over his income.
20. In his Form E the Husband put his total average income at only \$147,785 per month including bonus and commission, but from further documents produced by him including his tax returns and his salary tax assessments by the Inland Revenue Department, his income is in fact a lot more substantial, at more than \$6.3 million for the year of 2005, and slightly below \$5 million for 2006, averaging about \$5.56 million per annum over the past 2 years, which is the equivalence of more than \$470,000 per month, and that is exclusive of the money value of the various benefits such as housing, utilities payments, etc. provided to him by the Company, for which he was assessed by the Inland Revenue Department to have a

taxable income of \$7.96 million for 2004 / 2005 and \$6.52 million for 2005 / 2006. This also explains why apart from his basic salary of \$109,214, the bank statements of his HSBC account also show deposits of substantial sums of money from time to time, such as \$1 million in September 2005, \$2.5 million in November of the same year, \$500,000 in April 2006 and \$2.5 million also in September 2006, being his shares of business profits of the Company.

21. As to his monthly expenditure, the Husband has put it at just over \$570,000 including his current provision for the Wife, but excluding those household expenses of the former matrimonial home which are being met by the Company. While this seems to place his monthly expenditure well over his average monthly income, it does not appear to form part of his argument against the Wife's application, as he clearly has other resources to meet her claims, such as his substantial savings which have historically been utilized to meet the family's expenses. His case is that she has already been well provided for, that she has exaggerated her needs and that her spending has been excessive and extravagant, which is what I propose to consider next. The Wife's Needs
22. The Wife did not set out her monthly expenses in her Financial Statement because she said she was unable to do so without the figures and supporting documents from the Husband or his company, which she subsequently did in her Answer to the Husband's Questionnaire in July 2007 (Paginated Bundle : P 116) and which she said were based on the standard of living she enjoyed prior to the breakdown of the marriage as evidenced in the HSBC joint account and her credit cards statements, and not the current expenses which she says have been artificially reduced by the Husband. She also further qualified by saying that some of the expenses remain in doubt until her accounting expert could examine the expenses drawn through the company account. It is on this basis that she puts her monthly personal expenses at \$72,677, which can conveniently be categorized into the following groups : -
Meals out of home \$6,000 Transport \$7,615 Clothing / Shoes \$30,000 Personal grooming \$10,940 Exercise classes \$3,580 Therapist / counselling \$2,480 Gifts / Entertainment \$7,000 Medical \$5,062

Total \$72,677 =====

23. Of these expenses, it is however conceded by Mr Pilbrow on her behalf that her transport including autotoll and petrol is usually paid for by the Husband's company and hence should be discounted from the present application, while her medical expenses and the charges of her exercise classes at the Clear Water Bay Club are included in the club bill which is paid by the Husband and should also be excluded, which would therefore bring her total personal expenses down to \$56,424 per month, which is well within the Husband's present monthly provision of \$60,000 by way of the Visa Gold credit card and cash payment.

24. Things are however not as simple as they appear, as it is the Wife's case that she requires a further monthly sum of \$25,000 to meet the food and household expenses as well as the children's entertainment and pet expenses which she used to pay with funds from the joint account or with her 2 credit cards in the past in addition to her personal expenses, but which is no longer possible now that the Husband has stopped paying his salary into the joint account and has set her credit card limit to \$40,000 per month.
25. It is therefore necessary to look more closely into the Wife's spending pattern through the joint accounts and her 2 credit cards prior to the breakdown of the marriage, preferably from the 2 years before 2006, which Mr Pilbrow very kindly took me through their monthly statements, of which the Wife gave the following preliminary analysis of the monthly expenditure on the family as well as herself (PB : 1269
- 1276) : - Year Joint Account 2004 \$426,445 per month 2005 \$322,095 per month 2006 \$254,240 per month Amex Centurion Platinum Visa 2004 \$42,297 per month \$23,624 per month 2005 \$75,905 per month \$31,144 per month
26. The Wife explains that until May 2005, the parties total Amex bill was met directly from their joint account, but thereafter she believes it was met out of the Husband's sole HSBC Premier account, hence the appropriate reduction of \$100,000 per month in the monthly expenses seen in their joint account, while in June 2006 her use of the joint account was as aforesaid terminated by the Husband.
27. She further says that even excluding those expenses met directly by the company, her analysis shows that the family's spending amounted to an average of \$426,445 per month in 2004 and \$322,095 per month in 2005 excluding the Amex expenditure, and that even looking at the food bills alone, she argues, the expenditure from the bank account and her part of the two credit cards amounted to approximately \$17,000 for the family each month, while together with many other items of consumption such as pet food, vet, medical and medicine fees, dry cleaning, clothing, toiletries, entertainment, dining out and tutors fees for herself and the children, the total amount of which clearly exceeded \$60,000 per month, but with access to only \$20,000 per month in cash now and less than \$40,000 per month on her present credit card, she says she has been unable to meet the normal expenses of herself and the family, and hence her present application.
28. Ms Irving for the Husband however argues that the Wife's figures are misleading, as while the monthly averages on her 2 credit cards for medical expenses in 2005 were \$35,277 and \$7,683, almost \$43,000 per month, this is not an expenses that she now pays, as the Husband now covers the medical expenses for the entire family. Furthermore, the credit cards statements show that her monthly average for clothing in 2005 was \$10,903 (Amex) and \$8,100 (Visa), while for beauty was \$1,948 (Amex) and \$2,202 (Visa), yet she now seeks \$30,000 for clothing and \$10,940 for beauty, which is both misleading and unreasonable.

29. Taking the Wife's tables as exhibited to her affidavit (PB : 1273 1276), and removing from them items listed as medical, car, holidays, pets all of which paid by the Husband, Ms Irving has produced a table for the Husband (annexed to her Skeleton Submission) to show what she says the Wife's actual personal expenditure as follows : - Year Amex Platinum Visa Total per month 2004 \$18,501 \$19,171 \$37,672 2005 \$22,196 \$18,896 \$41,092 2006 Jan-June \$12,644 \$11,205 \$23,849 Aug-Dec \$20,915 \$20,915
30. Ms Irving argues that from the above, with the Husband's present provision of \$60,000 per month in total by way of cash and credit card, it is clearly more than sufficient even on the Wife's historical personal spending, and that only in 2005 was her spending on the credit cards just slightly over \$40,000, and this would still leave her \$20,000 for food and gifts, as all other deleted items are paid directly by the Husband as well as the club bills. She therefore submits that the Wife's application is unnecessary, as even on her own evidence she has not been reduced in her spending, while by comparison the Husband's personal spending are considerably lower (PB : 242).
31. While the parties may have arrived at 2 different sets of figures for the Wife's monthly expenditure, I agree with Mr Pilbrow for the Wife that her spending should not just include her personal expenses such as clothing and personal grooming as well as meals out of home and entertainment/gifts, but also those household expenses which are not covered by the Husband, mainly food for herself and the children and since such expenses were used to be paid not just with her credit cards but also from the joint account, which in the absence of oral evidence would seem the only means to provide a good indication of what such expenditure were during the marriage, and I agree that an average figure taken from the period of 2004 to 2006 should appropriately and properly reflect on the standard of living of the parties and the family prior to the breakdown of the marriage, perhaps with proper adjustment to be made for the food and household expenses for the family to exclude the Husband's share now that he no longer lives there.
32. It is clear from the joint account statements exhibited to the Wife's affidavit (PB : 1312 1391), there were regular expenses on food, sometime on the Wife's clothing and occasionally on restaurant meals, which give the following figures : - Year Food Clothing Restaurant 2004 \$156,344 \$344,220 \$2,882 2005 \$142,330 \$20,995 \$800 2006 \$135,160 \$37,180 \$1,600 Average \$144,611 \$134,131 \$1,760 per year Average per \$12,051 \$11,177 \$146 month
33. This gives an average sum of \$23,374 per month for the Wife's personal spending on clothing and restaurant meals as well as food for the family from the joint account which should be counted towards her total expenditure. Making a downward adjustment to the food expenses to exclude the Husband's share by adopting the 2006 figure in view of the fact that he left the family in February 2006, I have arrived at a slightly lower figure of \$22,586 per month.

34. While the Wife's 2 credit cards, Amex Centurion and Platinum Visa, naturally show more spending at personal level, such as clothing, restaurant meals, entertainment, beauty, gifts, etc, it is clear that there were also spending on the family such as food and household expenses which are not met by the Husband or his company and which should therefore be included as part of the Wife's normal and necessary spending for herself and the family. Accordingly, the average monthly figures for her 2 credit cards expenses should be adjusted as follows : - Year Amex Platinum Total Centurion card Visa 2004 \$27,811 \$15,597 \$43,408 2005 \$29,163 \$22,616 \$51,779 2006 \$88,723 \$10,960 \$99,683 Jan-June
35. The above would give an average sum of \$58,011 per month instead of the lower figure calculated by the Husband, and adding the sum of \$22,586 from the joint account will bring the Wife's total expenditure to just about \$80,000 per month, exceeding the Husband's present provision by \$20,000.
36. The Husband has however accused the Wife as a big spender who has failed to curb her excessive spending which he argues is unreasonable and unsustainable now that the finances of the family are being stretched to 2 households. This is what he said in paragraph 19 of his affidavit : - One of the major problems of our marriage was that the Petitioner is extravagant in the extreme. She put a huge burden on me to provide an extravagant life style for her and to maintain her entertaining and social standing. She regularly entertain at home, at the Clearwater Bay Club, Aberdeen Boat Club and China Club and I am expected to pick up the bill for everyone, including her friends, and I understood that some of them would pay her back in cash. This was a regular source of argument and I would often ask her to curb her spending but she did not, although occasionally she said she would try. It is simply not feasible for me to pay the Petitioner any more interim maintenance and such sums are not required by her
37. While it is true that some of the spending as appeared from the Wife's credit cards statements might have been made on behalf of her friends, which is based entirely on her own writings on the statements upon which, as aforesaid, there was no opportunity for clarification by oral evidence, and for which it seems that she would be reimbursed, they do not appear to be routinely regular or greatly significant in terms of the monthly amount, but I agree do have enough impact on the Wife's average spending to justify some downward adjustment.
38. Furthermore, there were a few items of spending of the Wife that stand out in both their nature and in particularly their amount, and are statistically significant in the calculation of her average monthly expenditure : \$105,800 in gifts in March 2006 and \$316,531 in jewellery in June 2006, both of which are substantially much higher than the total amount of the previous 2 years in their respective category (PB : 1273) which begs the obvious question : Are they the prime examples of what the Husband has said to be the Wife's extreme case of extravagance, or do they accurately reflect on the high standard of living of the parties prior to the breakdown of their marriage?

39. There is no question in my mind that this family had enjoyed a very high standard of living during the marriage. The Wife in her affidavit described their house in Clear Water Bay of having a size of 2,100 sq. ft. with additional bedroom space, as well as an adjacent guest house of a similar size, and swimming pool and gardens with separate accommodation for their 5 domestic staff and the private tutor for their son, all with direct access to the beach and located on a peninsula in Clear Water Bay, and which she has been advised to be worth no less than \$100 million just for the main house in the open market, or would rent out for no less than \$200,000 per month.
40. In addition to such luxurious and spacious accommodation, the Wife also mentioned about substantial holiday overseas, weekend spent boating on the Family junk and lately on the Husband's speed boat, fine dining and shopping, and membership in Clear Water Bay Golf and Country Club, the Aberdeen Boat Club, and The China Club, all of which she says point to a luxurious and extremely high standard of living, and which is clearly evidenced in the photographs of their home exhibited to her said affidavit and the overview of their bank statements and credit card statements.
41. So it is in this context that I return to the question over these items of the Wife's spending in 2006 which would undoubtedly bring her monthly average a lot closer to the level which she is now seeking in her application. Without the benefit of oral evidence, and in the absence of further information about them, I am unable to conclude one way or the other, but I am prepared to give the Wife the benefit of the doubt by including them in the calculation as part of her average spending for the present purpose, knowing that any over payment can be re-adjusted or rectified at the final ancillary relief hearing, but otherwise may cause unnecessary hardship or difficulties to her and possibly the children if the amount turns out to be too low to cause an unnecessary reduction to the standard of living to which she used to enjoy, in particular given the available resources of this family.
42. Accordingly and on an interim basis, I would allow the Wife a monthly sum of \$75,000 after the slight adjustment as aforesaid, by way of credit card and cash payment, for her interim maintenance, dating back to about the time of her application to commence on 1st April 2007. Legal Costs Contribution
43. I shall next consider the Wife's claim for a further monthly sum of \$50,000 to assist with her ongoing legal costs in these proceedings.
44. There is no question over the court's jurisdiction to award a costs allowance in an order for maintenance pending suit subject to certain fairly stringent conditions, as recently refined by the English Court of Appeal in *Currey v Currey* [2006] EWCA Civ 1338, [2007] FLR as follows :-
- (1) That the applicant has no assets, or none that can reasonably be deployed.
 - (2) That she can provide no security for borrowing, or none which can reasonably be offered.

- (3) That she cannot reasonably obtain legal services by offering a charge on the outcome of the litigation.
- (4) That she cannot secure publicly funded legal help at a level of expertise apt to the proceedings.
- 45. There is no question between the parties, as I understand it, over conditions (2) to (4) in the Wife's case, as the main issue is whether she has no assets, or none that can reasonably be deployed.
- 46. It is not disputed that she has over half a million dollars in her bank account, and possibly more according to Ms Irving for the Husband, as at 30th March 2007, the date of her Form E, she had \$1 million in her account, and on 9th May 2007 she transferred a further sum of \$160,000 from the joint account to her own account.
- 47. At the hearing her legal costs were confirmed at \$426,000 which have just been settled by her, which explains the latest balance of her bank account at approximately \$570,000 as her only capital that may be deployed to meet her ongoing legal costs. Mr Pilbrow however argues that it would not be reasonable under the circumstances of this case for her to do so.
- 48. While the decree of divorce has already been granted for almost 6 months now, and there does not appear to be any major issue over the children save for perhaps the possibility of the Husband sharing custody with the Wife, or the extent of his access to them, it is clear that ancillary relief will be a very substantial issue that will likely take months to resolve if the FDR hearing now fixed towards the end of January 2008 turns out to be unsuccessful, during which no doubt substantial legal costs will continue to be incurred by both sides, with the Wife having retained a major accounting firm to carry out forensic examination of the family's spending during the marriage and most certainly also of the Husband's means in particular his interests in various companies, it is expected that if the Wife were to continue to use her savings to meet her legal costs, they would likely be exhausted within the next few months, in which case she will no doubt have to turn to the Husband again for contribution, but I believe it is not just the question of timing, and that it is in fact much more important as it concerns the welfare of their son J.
- 49. While J has shown good response to his latest treatments and has since September progressed from taking private tuition at home to attending day school in a special school for the blind, there is no question that his medical condition is still most serious and requires special care. His medical records show that he had suffered no less than 9 stroke-like episodes during the past 4 years, during which he required emergency aid including hospitalisation, for which the Wife used to pay with her credit cards.

50. According to her analysis of her credit cards expenditure (PB : 1273 1274), the total medical expenses under her 2 credit cards were indeed very substantial : \$114,835 in 2004, \$515,528 in 2005, and \$167,119 in the first half of 2006, totalling almost \$800,000 over a period of some 30 months, and averaging \$26,000 per month, of which there were no less than 8 months when the total amount for the month was well above the limit of the Wife s current credit card.
51. There is of course no evidence at this stage that all such medical expenses were in fact incurred for J, but neither is there any evidence to suggest that the Wife or the 2 daughters require any regular medical attendance other than for the usual bouts of cold and flu, it would therefore be fair, in my view, to conclude that the bulk of these medical expenses must have been for J.
52. While it is accepted that J s medical expenses, as well as those of the Wife and the daughters for that matter, are now fully covered by the Husband, there is no question that he is and will continue to be under the full physical care of the Wife in particularly his medical care in view of her extensive involvement over the past 4 years. Given the severe nature of J s illness and condition, and the Husband s frequent business trips which on average take him away from Hong Kong about half of the time each month, usually consecutively for days if not weeks, and his plan going forward is in fact for increased business travel, I can understand why the Wife insists to maintain some cash with her to meet any medical emergency for J, even though he may well be medically covered by the Husband, the details and extents of which are unfortunately again not clear at this stage. Until then I agree it is not only preferable and reasonable for the Wife to maintain her present cash situation to meet any emergency expenses of J, it is indeed in my view essential in his best interests. Accordingly I am satisfied that the Wife has no asset that she can reasonably deploy to meet her ongoing legal costs, and in the exercise of my discretion I allow her a further monthly sum of \$50,000 from the Husband as contribution towards her legal costs. Interim Access
53. The arrangements presently in place are that the 2 daughters spend weekends with their father when he is in Hong Kong, while J may or may not join them, or may join for some of the time, and that on Wednesday the Husband also picks up the girls from school and spends the evening with them, returning them to school the following morning. He suggests that these arrangements should for the time being continue, as they have been in place for over a year through mediation and with the Wife s agreement. In fact the parties were able to agree at the hearing to a schedule of the Husband s weekend access to the children for the next several months up to and including Christmas. What the parties however cannot agree, or what the Wife now takes issue with is over the Husband s staying access to the girls on Wednesday which she argues as disruptive to their normal routine.

54. It is the Wife's case that she has never agreed to the Husband's Wednesday access, which is something he has taken upon himself unilaterally, and which she has tried to tolerate in the past, but with the girls getting older come more school work, and since such mid-week access is not applicable to J in view of his condition, she is concerned that it may be divisive between him and his sisters.
55. While I accept that the mediation agreement reached between the parties was in fact about the children's major holidays arrangement only and no mention at all about the Wednesday access, and in the absence of oral evidence, I am unable to conclude whether it was agreed between the parties, but it is a fact that it has been in place, and without any problem in the past as I understand it, for more than a year during which the girls seem to enjoy very much the company of their father. In reality it will probably not be a weekly arrangement as the Husband as aforesaid is usually away on business half of the time, so the disruption that the Wife is so concerned may not be as serious as she thought.
56. I do not dispute that generally it would be in their best interest for children, in particularly smaller ones, to have a structured life and routine, and a regular mid-week over night stay with a non-custodial parent may be disruptive, but without the benefit of hearing the parties or the assistance of social welfare officer, I am unable at this stage to conclude whether it is indeed the case here. I therefore allow this arrangement to continue, but in the meantime I also call for a social investigation report to be submitted on or before 31st December 2007.
57. In summary, my orders are as follows : -
 1. The Respondent Husband shall pay to the Petitioner Wife maintenance pending suit in the following sums :
 - (a) \$75,000 per month for her maintenance by way of credit card and cash payment commencing 1st April 2007 and thereafter on the 1st day of each month until further order;
 - (b) \$50,000 per month as contribution towards her legal costs commencing 1st October 2007 and payable thereafter on the 1st day of each month until further order.
 2. In addition to the weekend and holiday access which the parties have already agreed, the Husband shall continue to have staying access to the 2 younger children on Wednesday when he is in Hong Kong until further order.
 3. There be a social investigation report to be submitted to court on or before 31st December 2007.
 4. Costs reserved. (Bruno Chan) District Judge Mr David Pilbrow SC instructed by Messrs Boase Cohen & Collins for the Petitioner Ms Francis Irving instructed by Messrs Hampton Winter & Glynn for the Respondent PAGE - PAGE - &`#\$ ~!P] ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$ \$ : 'L- E{k' XW(\$ s ` (-3*\$ 43*\$:p . {^2\ (\$p2\$ 4g3\$ 4QQ4 0b50p M|;\$ wzO?p= H#@ \$ 3i@\$ nSDH lEFE kxL\$ /eNH S\$O\$ 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= TCn\ gsTu\$ 4xv\$ xDs\ *y\$ __z4w C? } R\$ ~\$ f!\$- C:~W N)/h E{k'

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