

HONG KONG / JUDGMENT

H v. T

COURT

Family Court

DECIDED

4 June 2007

CASE / FILE NUMBER

FCJA341/2003

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bjbj FCJA 341 / 2003 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION JOINT APPLICATION NUMBER 341 OF 2003

BETWEEN H 1st Applicant and T 2nd Applicant

Coram : Deputy District Judge K. Levy in Chambers Date of Hearing : 8 May & 9 May 2007 Date of
Judgment : 4 June 2007

J U D G M E N T

The Application

1. This is an application (the Application) by way of an inter partes summons dated 27th July 2006 by the 1st Applicant whom I shall refer to as the Husband to vary a maintenance order made by consent dated 24th March 2006 (the Original Order). According to the Original Order, the Husband was ordered to pay the 2nd Applicant whom I shall refer to as the Wife a monthly sum of \$4,500 as periodical payments commencing from 1st April 2006 with the usual ending date on the Wife s remarriage. The Wife opposed the Application.
2. The Application is pursuant to section 11 (7) (Section 11(7)) of the Matrimonial Proceedings and Property Ordinance (Cap.192) (MPPO), which provides:
 - (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.

3. Like most of the variation applications of this sort, applicants in the applications are usually required to show changes of circumstances. In this case, however, it is a common ground that there have had no change of circumstances since the Original Order. Thus, this is one of the main thrusts of the Wife's arguments against the Application.
4. The Application is based on highly unusual facts. I should at the outset briefly outline the factual background pertinent and leading to the Application. Background Facts
5. The parties were previously married when they first met in around July 2000. After a courtship of about one year, the Wife, together with her young son from the previous marriage, L, and her mother, moved into the Husband's quarters the latter used to occupy as a senior police inspector. The parties were married in January 2002 and continued residing at the said police quarters during the marriage with L and the Wife's mother.
6. This marriage however was short-lived. In the same year of the marriage, around October 2002, the parties were separated and moved out from their matrimonial home. The Husband rented a flat in Wanchai while the Wife rented one in Tai Hang Road.
7. A duly signed Joint Application was filed in March 2003. For the purpose of satisfying the required statutory period of separation, the parties had to bring forward their actual date of separation from October 2002 to February 2002. However, shortly after the filing of the Joint Application and around the time when the Decree Nisi was pronounced in September 2003, the parties were reconciled, though continued maintaining separate households. The parties finally split up in around March 2005. During the period of reconciliation, the following significant events took place:
 - (1) A hearing was fixed on 14 January 2004 by the court to deal with maintenance after the grant of Decree Nisi. The said hearing was adjourned sine die as a result of the parties' absence;
 - (2) A Decree Absolute of divorce was granted in February 2004;
 - (3) A bankruptcy order was made against the Wife in February 2004;
 - (4) The Wife was pregnant with the Husband's child in or around March 2004; and
 - (5) The Wife had an abortion in May 2004.
8. During the period of reconciliation, the Husband continued to give financial support to the Wife. When the reconciliation came to an end and the Husband stopped giving any financial provision to the Wife, the Wife applied to restore the said adjourned hearing for ancillary relief. Hence, the restored hearing on 24 March 2006, in which hearing the court made the Original Order. Grounds of the Application
9. Apart from some vague and tenuous reference to the likely financial dependency of his mother on him upon the latter's retirement, the Husband generally accepts that there is no change of circumstances since the Original Order. However, the Husband argues that the circumstances underlying the making of the Original Order warrant this court to examine

the circumstances of the parties afresh and consider a suitable variation. He averred that on the date when he attended the hearing in respect of the issue of ancillary relief, both the parties were acting in person. The problem of his lack of legal advice, alleged by the Husband, was compounded by the improper pressure exerted by the presiding Deputy Judge in making him to come to an agreement with the Wife.

10. For these reasons, the Husband submits that it would not be fair to bind him to the Original Order. The Husband now seeks for a downward variation of the periodical payments to a monthly payment of \$1,000 and further asks for a termination of the said payments within 6 months. The Wife's contentions
11. The solicitor for the Wife, Mrs. Nung, contends that as the Original Order was made by consent, the proper course for the Husband is to apply to set aside the Original Order by way of an appeal should the Husband allege impropriety such as mistake or duress or fraud or the like underlying the Original Order. Further, Mrs. Nung submits that the undisputed absence of any change of circumstances since the Original Order would substantially restrict my discretion to vary the Original Order under Section 11 (7). However, should I reject this contention and decide to exercise my discretion to consider the matter afresh, Mrs. Nung urges me to include L as the child of the family in assessing the Husband's obligations under section 7 of the MPPO.

Issues

12. The issues I need to resolve in the Application are therefore as follows:
 - (1) Whether the Original Order, being in the nature of a consent order, is capable of variation under Section 11(7)?
 - (2) Whether a court's jurisdiction under Section 11 (7) is strictly confined to the requirement of an applicant to show a change of circumstances?
 - (3) Should the court resolve that it is within its power to vary the Original Order, whether the Husband's obligations towards the marriage should include L's needs?
 - (4) Whether the court should exercise its discretion to reduce the monthly maintenance paid to the Wife and to shorten the period of periodical payments? Issue (1) and (2): The ambit of Section 11 (7) the power to vary a consent order and generally a court's power to vary
13. Concerning Issues (1) and (2), I find it convenient to deal with them together as they are principally concerned with the scope and ambit of the court's power of variation under Section 11(7). A resolution of Issues (1) and (2) involves a consideration of a mixture of facts and law. Before I discuss the law, I would firstly deal with the facts. Factual matrix

14. So far as the facts are concerned, there is in fact very little in dispute. Given the short lapse of time between the date of the Original Order and the Application, it could hardly be argued by the Husband that there had been changes of circumstances and indeed the Husband did not contend otherwise. The Husband however submitted that the facts surrounding the Original Order made it appropriate for the court to look at the circumstances of the parties afresh.
15. According to the Husband, the Original Order was made in this way: On the day when both parties appeared before the Deputy Judge at the restored hearing in respect of ancillary relief matters, the parties were both acting in person. In the beginning they were at loggerheads over the amount of periodical payments to be paid by the Husband. The Wife insisted on receiving a sum of \$6,000 as stated in the Joint Application. The Husband however only offered to pay the Wife \$1,000, which amount was subsequently increased to \$3,000 after the learned Deputy Judge stood down the case 3 times to enable the parties to negotiate for a settlement outside court.
16. On the third occasion when the parties returned to the court, the parties informed the Deputy Judge that the difference of the amount remained at \$3,000 and therefore were unable to come to any agreement. The Husband recounted that the Deputy Judge then told them if they were not able to reach an agreement, the Husband might subsequently be required to pay a much higher sum whilst the Wife would also face a risk of being awarded a sum significantly less than the amount offered by the Husband. The Deputy Judge then suggested to split the difference of the said sum \$3,000 and asked them to agree to the amount of \$4,500.
17. The Husband said he reflected upon what the Judge had told him and decided not to take the risk as mentioned by the Judge. He therefore agreed to pay the amount of \$4,500 as suggested by the Deputy Judge.
18. The account given by the Wife was not that dissimilar to that of the Husband
- s. She said that at the hearing she had told the Deputy Judge that the Husband had agreed to pay her \$6,000 per month as periodical payments in the Consent Application. At the end, she agreed to accept the said sum of \$4,500 as suggested by the Deputy Judge because she too was concerned with the possibility of receiving a reduced sum of maintenance.
19. The Husband said it was as a result of the constant urging by the learned Judge that he felt being compelled or coerced into accepting the suggested sum of \$4,500. He further said that without the benefit of legal advice in matters such as his obligations or the Wife's needs, he could not be regarded as having truly consented to the terms of the Original Order. In essence, the Original Order as submitted by the Husband is not a truly consent order. Legal issues

20. So far as the issues of law are concerned, I am not able unfortunately to obtain much assistance from the Husband as he was still acting in person in the Application. Mrs. Nung has however helpfully submitted two Hong Kong decisions *Gray v Gray* (CACV 121 of 2000, C.A., d.o.j. :23 January 2001) and *M v M* (FCMC 4070 of 1990, the decision of H.H. Judge Brono Chan, d.o.j.: 12 May 2006) in support of her contentions. The authorities submitted by Mrs. Nung were unreported although the former is a reported decision.
21. In *Gray*, the Court of Appeal upheld the decision of the Judge below when dismissing a husband's application for varying a consent order after the Judge below found that there had had no change of circumstances. The facts in the present case are starkly different to those in *Gray* in which the parties to the consent order had the benefit of legal advice. Contrary to *Gray*, both parties in this case did not have any legal advice when they agreed to the terms of the Original Order. Accordingly, I am unable to draw much guidance from *Gray* in respect of the issues under consideration.
22. *M v M*, on the other hand, has provided a very useful analysis of the approach a court should adopt in exercising its power under Section 11(7). In it, H.H. Judge Chan traced the developments in UK in respect of a similar power of a court to vary financial provisions. In paragraphs 28 to 40 of *M v M*, His Honour outlined the old and modern approaches regarding the power of variation in UK. I do not think it is necessary for the purpose of this case to go into detail the developments of the equivalent legislations in UK. Suffice to say that in UK, the old approach is predicated upon the legal position predating section 31 (7) of the Matrimonial Causes Act 1973 when the then statutory power of variation of the court did not include a provision of requiring it to have regard to all the circumstances of the case .
23. The said variation provisions contained in the 1973 Act in UK have also found their way in our Section 11 (7), which statutory provisions are modelled upon the latter provisions. Whilst the UK position has since undergone further changes as discussed below, our Section 11 (7) has remained unchanged up till the present time. What is then the essential difference between the old and the modern approaches?
24. The approach adopted before the said 1973 Act was the so - called old approach, which was applied by the English Court of Appeal in *Foster v Foster* [1964] 3 All ER 541. According to the old approach, the courts regarded their powers being limited to only vary financial provisions in accordance with the proportion of changes they found. In other words, the courts then were not empowered to consider all circumstances of the case and it was regarded to be wrong for them to consider a matter de novo .
25. Since and after the said 1973 Act, the old approach was slowly replaced by the so-called modern approach as reflected in a subsequent Court of Appeal decision in *Lewis v Lewis* [1977] 1 WLR 409. According to Ormrod, LJ (paragraph 31 of *M v M* (ibid.), it was the intention of the Parliament to give an unfettered discretion to courts in respect of matters concerning variation of financial provisions. As a result, Ormrod, LJ emphasised that the court's discretion should not be trammelled by any kind of technical reasoning or technical

grounds (per Ormrod LJ, cited in *M v M* (ibid) at para.31)

26. In UK, a court's power of variation was further expanded by the passing in 1984 of the Matrimonial and Family Proceedings Act 1984, which requires a court when having regard to all the circumstances of the case to include giving a first consideration to the welfare of any child of the family as well as considering the undue hardship of a receiving party of financial provision before terminating financial provisions. Notwithstanding the widening of a court's power in variation, the English courts continued to follow and apply the modern approach expounded in *Lewis* (ibid.). Some of the post - 1984 Act cases discussed in *M v M* are particularly relevant to this case as they concern with the approach a court should take in respect of a consent order.
27. In Hong Kong, our Section 11 (7) has not undergone the same changes as in UK already discussed above. However, in view of the identical wordings of Section 11 (7) to those in section 31(7) of the 1973 Act, I am of the view that a court in Hong Kong should likewise adopt the modern approach which was first expounded in *Lewis* (ibid) and further developed by the subsequent decisions when considering an application under Section 11(7).
28. For the sake of convenience, I would summarise below the principles underlying the modern approach of a court's power of variation as distilled from the cases discussed in *M v M*. These principles by virtue of the similarity of both the UK and HK provisions as discussed above- should be equally applicable to Section 11(7):
 - (1) The legislative intent of the statutory power of variation is to give a wide and unfettered discretion to the court (*Lewis*); A consideration of all the circumstances of a case is not confined to any changes of circumstances (*Garner*);
 - (3) A court is not precluded from using the original order as the starting point but also empowered to look at the matter *de novo* (*Flavell*);
 - (4) A consent order can be varied by the court having regard to all the circumstances including by giving effect to the basis and intended effect of the original order when making financial arrangements (*Garner*, *Boylan*, *Richardson* and *White*).
29. After having surveyed the various authorities in *M v M*, the learned Judge Chan took the view that the statutory requirement under Section 11 (7) empowered a court to consider all the circumstances including any change in any of the matters to which the court was required to have regard under section 7 (1) (a) to (g) of the MPPO when making the order to which the application related (*M v M* (ibid.) at para.37).
30. I defer to the said view of the learned Judge Chan and concur with his view. Accordingly, I, too, am of the view that my discretion in the Application should be wide and unfettered.
31. With these principles in mind, I now apply them to the facts discussed above before resolving Issues (1) and (2) above. Discussion

32. The accusation by the Husband against the learned Deputy Judge is a very serious one. Upon a very careful consideration of the evidence concerning the circumstances surrounding the Original Order, I am unable to find any shred of evidence that the learned Deputy Judge had acted improperly as alleged. Neither do I find that the Original Order is tainted with any impropriety such as mistake, misrepresentation, fraud or duress. Should any of these elements of impropriety are found to be present, the appropriate redress in accordance with the established legal principles- is for the Husband to apply to set aside the Original Order by way of an appeal.
33. Absent any elements of impropriety, the English cases discussed in *M v M* (ibid.) have firmly established that the proper remedy available to the Husband would be to look to the statutory regime of variation. Consent financial orders in the Family Court are not uncommon. Indeed, a large number of financial matters are disposed of by consent orders, which may subsequently be varied for various reasons. The fact that there is no change of circumstances is one of the factors to be considered but it should not be a fetter on a court's power.
34. In this case, it is rather unfortunate in my view that the assistance by the learned Judge to help the parties to settle financial disputes is now used by one of the parties as a ground for reopening a litigation which the very judge had ironically strived to end amicably. After having carefully considered all the evidence, I am not satisfied that the Husband was under any pressure or coercion when he agreed to pay the Wife the amount of periodical payments stated in the Original Order. Rather than being pressured into a settlement- I am inclined to find -the Husband was instead motivated by the attraction of the early resolution of the disputes between him and the Wife. To conclude, therefore, I am unable to find a scintilla of evidence of any improper pressure by the court as alleged. The complaints by the Husband against the Deputy Judge are most unfounded.
35. That said, however, this case highlights the importance for the court to always be vigilant to the possibility of a perception by the parties that the court is exerting pressure on them to settle financial disputes. A financial consent order made without any financial disclosure having been given by the parties or legal advice having been received by them, can lead to a perception of undue influence by the court- which is highly undesirable- and can be akin to the opening of a Pandora's box. Answers to Issues (1) and (2)
36. In view of the matters aforesaid, I am unable to find that the Original Order is tainted with any impropriety. However, in spite of the admitted absence of changes of circumstances, the Husband is entitled to apply for variation of the Original Order. To conclude, therefore, I will answer Issue (1) in the affirmative and Issue (2) in the negative and that I have power to vary the Original Order. I should next consider the issue as to whether L should be regarded as the child of the family before considering all the circumstances of the case including the matters set out in section 7 (1) (a) to (g) of the MPPPO. Issue (3): Does the husband have an obligation towards L? L is the Wife's son from her previous marriage. At the time of the parties' marriage, L was 7 years old and he is now 12. L lived with the parties during the

period of their cohabitation as well as during their short-lived marriage. The Wife said after her divorce with her first husband, as the latter was in heavy debt, L could not be maintained by the first husband, but instead by the Husband who had treated L as the child of the family. The Wife pointed out that although in the Joint Application, L was not named as the child of the family, this could not have changed the fact that the Husband continued to treat L as the child of the family even after the Joint Application was filed in March 2003. This according to the Wife- was clearly borne out by the purchase by the Husband of an insurance policy for the benefit of L s future education in around July 2003. Furthermore, the Husband continued paying for the said insurance and only stopped in September 2006 when she objected to the Application.

38. The Husband adamantly denies this. He said L was never treated as the child of the family. He said that during the marriage although he had provided to the Wife two supplementary credit cards to enable her to meet unexpected expenses, which might have incidentally included payments for some of L s expenses, he had never maintained L or assumed an obligation to do so. The Husband agreed that he had purchased an educational insurance policy for L in July 2003, but it was purely for pleasing the Wife upon the parties having being reconciled. However, in September 2006 he terminated payments for the insurance when, much to his embarrassment and anger, he discovered the Wife had written to the Commissioner of Police- who was effectively his boss- to complain about the Husband s alleged failure to pay her maintenance.
39. According to the definition section in the MPPO, when a child is not a child of both parties as in this case, a child of the family is defined as a child who has been treated by both those parties (to the marriage) as a child of the family . For the purpose of determining the Husband s financial obligations to L, it would be necessary to determine whether L is the child of the family as he is not a child of the parties in this marriage. Such determination is important as a child of the family enjoys the full legal right of maintenance as if he were a child of the parties while a child who is not a child of the parties or being treated as a child of the family will not have the same legal entitlements. Nonetheless, a party may be required to make some financial provisions should the circumstances justify the imposition of a moral obligation on a party towards a child who is neither a child of both parties nor a child of the family as discussed in paragraph 41 below.
40. On the evidence, apart from the occasional payments of some of L s expenses by the Husband while the parties relationship was still working, I am unable to find much evidence that the Husband had treated L as the child of the family. Indeed, there is scanty evidence of the Husband s involvement with L s upbringing. In my view, the fact that the parties had decided to leave out L as a child of the family in the Joint Application is a crucial evidence from which I am entitled to draw an inference against the Wife s assertion. Further, the mere fact that the Husband -after the presentation of the Joint Application - purchased an insurance policy for the benefit of L, cannot, in my view, be regarded as conclusive evidence that the Husband had treated L as the child of the family. The Husband s true reason in

purchasing insurance for L, perhaps, could be best considered in the context of the parties relationship existing at the time. The evidence clearly shows that the only insurance the Husband set up for L was purchased, not during the parties marriage or when they were living together, but during their reconciliation. The said background of the purchase should therefore further reinforce the Husband's case. Further, I observe that at the hearing before the Original Order was made, there is no evidence before me that the Wife had made reference to L being treated by the parties as the child of the family or demands to the Husband to maintain L. All these matters are factors I am entitled to take into account for resolving this dispute. Conclusion to Issue (3)

41. In the circumstances, I find that the evidence is insufficient to enable me to answer the question posed in Issue (3) in the positive. Hence, it is a resounding no. In spite of this finding, however, it is still open to the Wife to include in her reasonable requirements the reasonable expenses of L should the Wife establish that the Husband, during the parties relationship, had assumed some form of financial obligation towards L's support. In some cases, a court as submitted by Mrs. Nung by referring a passage in a matrimonial textbook may need to take into account a party's moral obligation towards a dependent, whether he or she is an aged parent or a child, in the consideration of the matters under section 7 of the MPPO Issue (4): Consideration of all circumstances of the case- Relevant consideration under section 7(1) of the MPPO
42. This marriage is, sadly, rather short-lived. The extremely brief duration in my view pales the majority of the matters set out in section 7 (1) of the MPPO when compared to a marriage lasting for many years into insignificance. As mentioned above, the main ground of the Husband's Application is not based on his lack of means, but rather on a lack of the Wife's contribution as a result of the short union. I should just briefly mention the means and financial resources of the Husband. He is now 37, a University graduate, earning a monthly salary of about \$73,000. He now lives with his girlfriend in his sole-owned property worth about \$3 million.
43. The Wife, on the other hand, is not as financially comfortable as the Husband. The Wife is now 39 years of age and was educated to Form 5. She has however always worked, initially in her own fashion and design business, then as an insurance consultant and now works as a planning and procurement officer earning \$21,000 per month. She now lives with her mother and L in a rented apartment. The expenses for the entire family of three is about \$24,000 and L's expenses are about \$3,500. The Wife was adjudicated bankrupt in about February 2004. The said expenses of the family of three, according to the Wife, have been approved by the Official Receiver.
44. A quick look at the said income and expenses of the Wife seem to show that the Wife's present earnings are sufficient to support her personal living expenses without any need of maintenance from the Husband, but are insufficient to maintain her family of three. Hence, in order to decide whether it is appropriate to include the needs of the Wife the reasonable expenses of her mother and L, I should consider the living arrangement of these four

persons during the parties marriage. It is not disputed that when the Wife started cohabitating with the Husband, the Wife mother and L had always lived with the parties under the same roof. The said arrangement continued during the marriage. The evidence however does not show that the Husband provided direct maintenance to the mother or L although it is not in dispute that the Husband had provided supplemental credit cards to enable the Wife to meet household and occasionally L s expenses, which expenses were on average in the amount of about \$3,000 to \$6,000 each month. The said arrangement, in my view, tends to show that the Husband had accepted the mother and L as the Wife s dependents during the marriage. I therefore consider it appropriate to take into account the said arrangement when assessing the Wife s needs.

45. Apart for the aforesaid arrangement, there are also special features in this case which, in my view, are particularly relevant in my regard to the circumstances of the case. One of these features is the Husband s conduct in the divorce application. According to the Wife, before the Joint Application was filed, it was the Husband who prepared all the papers, on which she was asked to sign in one go. The Wife explained that she signed on the Joint Application without paying much attention to the content after she was satisfied that in the Joint Application the Husband had recorded his agreement to pay her periodical payments of \$6,000 until her remarriage.
46. The Wife further alleged that the Husband had deliberately concealed from the Wife the progress of the divorce application by intentionally stating a wrong address of the Wife in the Joint Application so as to prevent her from receiving any notices from the court. The Wife said that the Husband s said intention was clearly evidenced by the addresses in the Joint Application. At the time of the filing of the Joint Application in March 2003, the Husband was living at Harbour Road in Wanchai whilst the Wife at Tai Hang. However, the Husband instead in the Joint Application wrote his mother s Mei Foo address as his own address and his own Wanchai address as the Wife
- s. As a result, whilst the Husband was able to receive all the court correspondence at both of the addresses he had stated in the Joint Application, the Wife was unable to do so. Not surprisingly, without the knowledge of the Wife, the Husband applied for directions for trial.
47. The Wife explained that the parties did not attend the hearing on 14 January 2004 because she had not received any notice of the hearing. As a matter of fact during the period of reconciliation, the Husband had been providing financial support to her in the sum of about \$3,000 to \$6,000 per month. As a result, it did not occur to the Wife that the Husband had secretly taken steps to finalize their divorce application by applying for an order of Decree Absolute in January 2004- which conduct, according to the Wife, was clearly inconsistent with the fact of reconciliation.
48. The Wife further said that during the reconciliation, the Wife had requested the Husband to withdraw the Joint Application. The Husband had lied to her that the Joint Application would have been stayed by the court as they had not taken steps to prosecute it, which

statement according to the Wife- was plainly false. The Wife was therefore led to believe that they were completely reconciled, and she even decided to give what the Wife believed to be a nice surprise to the Husband, by deliberately getting pregnant with the Husband's child in around March 2004. She was only forced to terminate the pregnancy when she later realised that the Husband did not really want to have a child.

49. The Wife further said that as the address purportedly stated to be hers in the Joint Application was not her address, she therefore did not receive any of the Orders of Decree Nisi or Decree Absolute issued by the court. It was not until May 2004 that she found those Orders in the Husband's flat. She was very upset but since she thought they had completely reconciled, the Wife simply ignored these orders. Their relationship only started to deteriorate when she discovered the Husband started dating another woman around March 2005.
50. The Wife said that when the Husband told her in January 2006 that he planned to get married again, then she firmly believed that they had no prospect of reconciliation. After made inquiries from the Family court, she applied to restore the said adjourned hearing and sought maintenance from the Husband.
51. The above evidence by the Wife is not without controversy. However, I do not think it is necessary, apart from the disputes relevant to the consideration of the circumstances of the case, to determine each and every controversy between the parties. It is not disputed that the parties reconciled after the Joint Application. However I find as a fact that the Wife did not receive the Orders of Decree Nisi or Decree Absolute as the address purported to be the Wife's address in the Joint Application plainly was not her address. In most cases, once a decree absolute is issued, the parties legally are no longer regarded as man and wife. In this case, however, the facts warrant quite a different consideration. I find that the Husband had, without informing the Wife, taken steps to annul the marriage while misleading the Wife into believing that their marriage had not been legally dissolved. In the circumstances, I do not consider it inequitable to treat the marriage continuing beyond the date of the grant of Decree Absolute until the end of the reconciliation in early 2005.
52. Furthermore, I do not accept the Husband's submission regarding the delay by the Wife in restoring the hearing for ancillary relief. He submitted that since the Wife, instead of doing it immediately, only restored the adjourned hearing a year after he had stopped paying her maintenance, it showed that she had no need of maintenance. There is nothing unusual or unreasonable- in my finding- for the Wife to wait and see if there was any further prospect of reconciliation and if the Husband would honour his promise to pay her maintenance before resorting to the court process.
53. Furthermore shortly after the parties reconciliation, the Wife was declared bankrupt. There is no dispute that the Wife's bankruptcy was not related to do the Husband as the Wife's debt was caused by the forced sale of a negative equity property of her first marriage. However, the Husband, with knowledge of the Wife's a bankruptcy, did not just give financial

provision to the Wife, he even provided the Wife a sum of \$80,000 in around August 2004 to enable her to operate a business in the name of another person. When the business failed and the Wife became jobless, the Husband continued to support the Wife financially until she found another job in March 2005.

54. I have no doubt that the Husband, being a highly educated man in the field of law-enforcement, must have realised that the Wife, being an undischarged bankrupt, is duty-bound to report fully and frankly to the Official Receiver of all her financial resources. The above financial assistance to the Wife in the disguise of a third party was not even improper, it probably had an undesirable consequence of affecting the proper administration of the Wife's financial affairs by the Official Receiver.
55. Whilst it is not clear if the Wife had disclosed to the Official Receiver the above financial assistance by the Husband, I find that, since the making of the Original Order, the Wife has disclosed to the Official Receiver - as evidenced by the production by the Wife of the correspondence to the Officer Receiver - the periodical payments she had received under the Original Order. It is therefore reasonable to infer that the Official Receiver would have taken into account the Husband's periodical payments when assessing and approving the amount of monthly expenses the Wife was permitted to spend for the living of herself, her mother and L. Hence, in considering the reasonable needs of the Wife, I consider it just, in the circumstances, to include the financial dependency of the mother and L.

Conclusion

56. For the reasons foregoing, I find that the Wife is able to establish that her needs should include apart from her own expenses - the reasonable living expenses of L and her mother. After having had regard to all the circumstances of the case, I am of the view that the Husband has an obligation to make financial provision to the Wife. As the Husband's means is not in issue and that there has been no material change of circumstances, I am unable to find any reasonable ground to vary the amount of maintenance downward.
57. Apart from applying for a downward variation, the Husband also applies to shorten the payments period. The Husband had not included the application in the summons but only raised it during the hearing. Technically, the Husband would be required to amend the summons to include this application. That said, however, in accordance with the principles discussed above, it is now established that a court, when considering a variation application, should not be bogged down by technical fetters if it is just to do so. Further, in view of the lack of objection by the Wife and that Mrs. Nung was also able to adequately deal with this issue in her submissions, I do not think any prejudice would be caused to the Wife by allowing the Husband to include this application in the Application. Thus, I will consider this application though it was not formally included in the summons.

58. The Husband submitted that -in view of the short and child-less marriage and, in the absence of any special reasons such as mental or physical disabilities of the Wife -this is a suitable case for a financial clean break. Mrs. Nung did not seem to quarrel with this. Mrs. Nung however urged upon this court not to vary the ending date of the periodical payments on the ground that the Husband's obligation would not be expected to be long because the Wife here is a young and outgoing wife. Mrs. Nung suggested that the Wife's remarriage prospect would be high.
59. I consider there is force in the Husband's arguments. This is indeed a classic case where a financial clean break order would be proper. Before coming to this view, however, I have had regard to the agreement in the Joint Application by the Husband to maintain the Wife until her remarriage. However, the said agreement, similar to the Original Order, was also made without any legal advice having been given to the parties, and the inherent problems underlying such a situation were already discussed above. I therefore decide - in order to do justice between the parties to look at the matter afresh. After having considered all the circumstances of the case, I am inclined to take the view that it is appropriate to end the Husband's financial obligation to the Wife when she is discharged from bankruptcy by the operation of the regime of automatic discharge, which would be around February 2008.
60. Unlike the current position in UK, our Hong Kong Section 11 (7) does not statutorily require a court to have regard to the possibility of any undue hardship caused to a party entitled to financial provisions when considering terminating a financial obligation of a paying party. Nonetheless, in coming to the above decision in ending the Husband's periodical payments to the Wife when the latter is discharged from bankruptcy, I have in fact balanced the possible hardship that might cause to the Wife and the need to do justice to both parties. I have considered matters such as the Wife's earning power which is reasonably good- as well as the need for the Wife to achieve financial independence upon her discharge from bankruptcy.
61. Finally, I should further mention that although I have now put an ending date on the periodical payments to be received by the Wife, my order falls short of dismissing the parties ancillary relief claims as I do not think it proper to do so when I have not given them an opportunity to address me in this matter. It is hoped that the content of this judgment should speak for itself so that the parties do not need to make any further applications in relation to their ancillary relief matters after February 2008. Order
62. The order I therefore make in respect of the Application is as follows:
1. The 1st Applicant (Husband) shall continue to pay the 2nd Applicant (Wife) periodical payments in the sum of \$4,500 during the parties joint lives or until the latter's remarriage or until 1st February 2008, whichever is the shorter.
 2. A costs order nisi that the 1st Applicant do pay the 2nd Applicant's costs of the Application including all costs reserved, to be taxed if not agreed. The 2nd Applicant's own costs are to be taxed in accordance with the Legal Aid Regulations. Any application to vary the said costs

order nisi is to be made within 14 days hereof, failing which the costs order nisi will be made absolute. (K. Levy) Deputy District Judge The 1st Applicant, acting in person The 2nd Applicant, represented by Mrs A. Nung of Messrs Gloria Chan & Co. Gray v Gray[2001]1HKLRD580. Boylan v Boylan [1988] 1 FLR 282; Garner v Garner [1992]1 FLR 573, CA; Richardson v Richardson (No.2) [1996]2 FLR 617; Flavell v Flavell [1997]1 FLR 353, CA and White v White [2000]3 WLR 1571. Athena Nga Chee Liu: Financial Obligation : moral or legal (1999 ed.) p.396. PAGE - PAGE - &`#\$ ~!P] j% Td ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$\$ 1 #' :L-E{k' XW(\$ s ` ()H/0 -3*\$ 43*\$ c7*+ m5!, :p . {^2\ (\$p2\$ 4g3\$ 4QQ4 4lp4 0b50p 6H6L iQr; M|;\$ wzO?p= H#@ \$ 3i@\$ nSDH lEFE 5)GTd kxL\$ /eNH S\$O\$ vuWOTd c;R\$ Y CR G%9UT RW!W C:~W x% X\$ whyX x8Y\$ L}YH (Yq[*n\T #b2^\$ Q^f _Ta` Y6xc\$ e>tD ?Dep= ZJg\$ hx;r N)/h vCip= T{sk TCn\ "hsTd gsTu\$ 4xv\$ xDs\ \*y\$ Yay~\_ \_\_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 . s `(vuWO c7*+ Y CR T{sk 1 #' RW!W m5!, iQr; whyX @\\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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Prepared on 29 October 2026 · Esheria