

HONG KONG / JUDGMENT

HCMJ v. HYM

[2020] HKFC 238

COURT

Family Court

DECIDED

4 December 2020

CASE / FILE NUMBER

FCMC12078/2014

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

FCMC 12078 / 2014

[2020] HKFC 238

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

MATRIMONIAL CAUSES

NUMBER 12078 OF 2014

BETWEEN

HCMJ

Petitioner

and

HYM

Respondent

Coram: Deputy District Judge J. Chow in Chambers (paper disposal)

Date of Decision: 4 December 2020

DECISION

(Leave to Appeal)

Introduction

The respondent (“the husband”) filed a summons for leave to appeal on 23 September 2020 against my judgment on ancillary relief dated 27 August 2020 (“the judgment”).

The husband’s summons will be considered in accordance with the new arrangement on application for leave to appeal in the Family Court dated 13 August 2018. The husband filed an affirmation of service on 23 September 2020. The husband and the wife filed their respective written submissions on 23 September 2020 and 2 November 2020.

Background

The husband and wife have two children who were aged 20 and 14 at time of trial. I ordered in the judgment, inter alia, the husband do pay lump sum payments to the wife including (i) maintenance for the wife in sum of HK\$12,607,755.17; (ii) children maintenance for the elder son in sum of HK\$1,379,484; and (iii) children maintenance of the younger daughter in sum of HK\$3,127,950 within 1 month from the decree absolute and failing which the husband shall transfer the matrimonial property, a piece of land in Hunghom, Hong Kong to the wife (“the Land”).

The background of the parties has sufficiently appeared in the judgment. The main issue of the ancillary relief trial is premised on the wife’s allegation on material non-disclosure on the part of the husband. The husband defended he has no assets except the Land.

The wife has been housewife since marriage. By consent, she was granted with sole custody, care and control of the both children. The elder son has been studying in Australia and the younger daughter was a secondary student in a local school in Hong Kong. The situation has changed after close of evidence that by consent, an order was granted to remove the younger daughter to Australia for further studies. The wife went to Australia with the younger daughter and reunited with the elder son. Evidence at trial has covered such change when the husband was in support of the wife and the younger daughter to join the elder son in Australia.

Applicable legal principles

Leave to appeal shall not be granted unless the court is satisfied the appeal has a reasonable prospect of success or there is some other reason in the interest of justice why the appeal should be heard. (See section 63A(2) of the District Court Ordinance, Cap 336).

Reasonable prospect of success connotes the prospect of succeeding in the intended appeal must be reasonable and more than fanciful, without having to be probable. An applicant is required to show more than just an arguable case, but he does not have to demonstrate the appeal will probably succeed. Even if the court takes the view that there is a reasonable prospect of success, it still remains a discretion as to whether to grant leave, though the fact that there is, ex hypothesi, a reasonable prospect of success would heavily influence the court in exercising its

discretion. (See commentary of Hong Kong Civil Procedure 2020, §59/2A/4)

Grounds for leave to appeal

Ground 1(a)

The husband submitted I have erred in finding he has concealed assets and has not disclosed his financial position when it did not premise on direct evidence in his involvement in the businesses alleged but the wife's hearsay and unverified evidence on business establishment.

The finding on the husband's true financial position was secured on the evidence of extravagant lifestyle of the family during marriage as opposed to the husband's modest income of HK\$30,000 per month and limited rental income from the Land. Be it the wife admitted she did not have clear evidence on the husband's involvement in his businesses but she has witnessed the scale of business the husband has had before their relationship turned sour. The wife testified extensively on her knowledge on both (i) the husband's garment manufacturing business and (ii) her experience in the school placement exercise.

On admission that the husband did say in cross examination he intended to put fictitious figure in his Form Es, adverse inference was drawn against the husband on concealing his true financial position.

Ground 1(b)

The husband submitted I have erred in admitting vague evidence of reputation or the opinion of the beliefs of third parties, in particular, the husband's status as a CPCC member and his reputation in the construction industry.

The husband's status of CPCC member was not objected by his counsel at trial. The reputation of the husband in the construction industry was deduced from his own evidence during trial.

Ground 1(c)

The husband submitted I have erred to give proper weight on the wife's evidence which has taken on the highest, only support the husband's involvement in the businesses of companies concerned which is a separate and distinct matter from ownership.

The husband has correctly stated his ownership of the businesses could not be found on the wife's evidence because she has no direct evidence. For this reason, I made no finding on the ownership of the husband's business.

Ground 1(d)

The husband submitted I have erred by failing to consider the wife had made no application to join the registered shareholders of the companies concerned for determining the beneficial interest thereof.

I repeat the same reasoning that I have made no finding on the ownership of business of the husband in the businesses he has involved.

Ground 1(e)

The husband submitted I have erred by failing to accept the husband's evidence on disclosure on credit cards being that, I have failed to accept at least one of them is a replacement of lost credit card.

The issue on lost card is raised by the husband in his own evidence during cross examination.

Ground 1(f)

The husband submitted I have erred in a finding of the monthly rental income of the Land exceeded the rental value HK\$30,000.

The earnings derived from the Land was well stated in the expert report. I am given to understand the husband raised no objection to the said expert report at trial. The finding on highest possible earnings came from the assessment in the expert report.

Ground 1(g)

The husband submitted I have erred in a finding I could have drawn adverse inference against the husband has concealed his asset and has not disclosed his true financial position.

My finding on adverse inference against the husband is drawn pursuant to evidence tendered at trial.

Ground 2(a)

The husband submitted I have erred in looking at the lifestyle of the parties and to find the husband has concealed his real income. I have failed to consider the events occurred to the husband after he was being charged with and was convicted of the charge of "money laundering".

I rejected the husband's evidence on diminishing earning capacity. I am satisfied he has ability to earn good income. In fulfilling the Court's duty to assess the family asset in case of non-disclosure, I am entitled to take into account the lifestyle of the family. (See: NG v. SG [2011] EWHC 3270 (Fam), [2011] All ER (d) 180 (Dec))

Ground 2(b)

The husband submitted I have erred to consider the husband was represented by the Director of Legal Aid at a later stage of his criminal trial.

The husband was able to raise HK\$3 million in defending himself (including bail application) in the criminal trial. The amount involved in the “money laundering” charge was over HK10 million. The fact that the husband was a legally aided person was a non-point in this ancillary relief trial.

Ground 2(c)

The husband submitted I have erred to consider the risk associated with the illegal activities of the husband which might lead to criminal investigation, arrest or conviction of the husband on the charge of “money laundering”.

The husband was legally represented at trial. This issue was not raised in the parties’ submissions.

Ground 3

The husband submitted I have erred to estimate the husband’s assets at least worth HK\$30 million.

I repeat the exercise to estimate the size of the family asset is on broadest terms. The husband has put nothing on paper available to Court to assess his true financial position save and except evidence undenied by the husband of the extravagant lifestyle of the family and himself.

Ground 4

The husband submitted I have erred in calculating the needs of the wife, the elder son and the younger daughter.

The needs of the wife and children was premised on the wife’s evidence. It is the wife’s case that removal of the younger daughter was expected. The husband who was legally represented had only challenged the necessity of purchasing a permanent accommodation in Australia without detailed cross examination on the expenses of the wife and both children.

Ground 5 & Ground 6

The husband submitted I have erred in making orders that the husband shall pay the wife lump sums of HK\$12,607,755.17; the elder son HK\$1,379,484 and the younger daughter HK\$3,127,950. I have erred in making orders for lump sum payment of the above within 1 month from the decree absolute failing which a transfer of the Land to follow.

The maintenance of the wife and the children are expressly specified in section 4 and 5 of the Matrimonial Proceedings and Property Ordinance, Cap 192 and such sums are separately ordered. It is reasonable to allow the husband time to arrange payment of maintenance, failing which a transfer of the Land shall follow.

Stay of execution

The general principle to order a stay of execution when seeking leave to appeal is well decided by Ma J (as he then was) in *Star Play Development Limited v. Bess Fashion Management Limited*, [2007] 5 HKC 84. This is still good law and the same principle was applied by DHCJ MK Liu in *Progetto Jewellery Company Limited v. Lau Chiu Ying & anor* (by original action; *Joy Design Company Limited v. Progetto Jewellery Company Limited* (by counterclaim) (HCA 2548 of 2014 / [2020] HKCFI 1835) as follows:

“2. The principles concerning stay of execution have been succinctly summarized by Ma J (as he then was) in Star Play Development Ltd v Bess Fashion Management Co Ltd. The matters to be borne in mind include the following:

- (1) The burden is on the party seeking a stay to make out a positive case to justify the indulgence, not for the successful party to justify why a stay should not be granted.
- (2) The existence of an arguable appeal (that is, one with reasonable prospects of success) is the minimum requirement before a court would even consider granting a stay. If there is no arguable appeal, no stay would be granted, however exceptional the circumstances may be otherwise justifying a stay of execution.
- (3) Even if the court is satisfied that there is an arguable appeal, the appellant must provide additional reasons as to why a stay is justified.
- (4) If the suggested additional reason is the possibility of the appeal being rendered nugatory, it is incumbent upon the appellant to provide evidence to substantiate it. Where it is said that the levying of execution would result in financial ruin or serious financial consequences for the appellant, the court will require good evidence to support this contention, such as the production of accounts or other documents to justify the assertion. A bare assertion is unlikely to meet with much sympathy where more substantial evidence is available.”

I failed to see the husband has relied on any reason for a stay of execution in this application. He has also failed to demonstrate or justify if good reasons existed. The application for stay of execution be dismissed.

Conclusion

The husband has no reasonable prospect of success in the appeal. I refuse to exercise my discretion to grant him leave to appeal. I also failed to see there are some other reasons in the interest of justice why the appeal should be heard.

With the foregoing reasons, the husband's application for leave to appeal be refused.

I see nothing in this application shall depart from an order that the husband shall pay the wife's costs of his summons, with certificate for counsel, to be taxed if not agreed.

I make the following orders:

The husband's (the respondent's) summons filed on 23 September 2020 be dismissed.

The husband (the respondent) do pay the wife's (the petitioner's) costs of the said summons, with certificate for counsel, to be taxed if not agreed.

(J. Chow)

Deputy District Judge

Ms Dora Chan instructed by Messrs Robinsons Lawyers for the petitioner

Ms Queenie WS Ng instructed by Messrs Jimmie K.S. Wong & Partners for the respondent

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=132706

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hcmj-v-hym-2020>

Prepared on 26 October 2026 · Esheria