

HONG KONG / JUDGMENT

HKW v. YYC**[2022] HKFC 253****COURT**

Family Court

DECIDED

30 November 2022

CASE / FILE NUMBER

FCMC3123/2021

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bjbj FCMC 3123/2021

**[2022] HKFC 253 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 3123 OF 2021**

BETWEEN HKW Petitioner and YYC Respondent

Coram : His Honour Judge S. Lo in Chambers (Not Open to Public) Date of Respondent s
submission : 8 September 2022 Date of Petitioner s submission : 31 October 2022 Date of
Decision : 30 November 2022

DECISION (Maintenance pending suit)

This is the application taken out by the petitioner (Wife) by summons on 18 May 2021 (MPS Application) for (i) \$10,000 per month for her maintenance pending suit; (ii) \$30,000 per month for interim maintenance for a 3-year old daughter (Child); and (iii) a lump sum of \$74,662.89 for the Child s interim maintenance. On 21 June 2021, upon undertaking of the respondent (Husband) to pay a sum of \$2,000 per month towards the mortgage of the property in North Point registered in the sole name of the Wife (North Point Property), I ordered him, inter alia, to pay the Wife an interim interim maintenance of \$12,000 per month pending the outcome of the MPS Application. The Child is currently living with the Wife and attending kindergarten. The children issues have been set down for trial scheduled from 30 November 2022 to 2 December 2022 (3 days reserved) with interim access granted to the Husband by me. Further pursuant to my order dated 19 April 2022, the MPS Application be disposed of on paper with the directions for the parties to lodge and serve their respective submissions, etc. On 21 September 2022, the Wife

took out a Notice of Application for Ancillary Relief by way of Form 8 (Form 8 Application) for variation of the interim interim maintenance from \$12,000 per month to \$15,000 per month with additional maintenance for the Child of \$30,000 per month, which was returnable before me on 2 November 2022. It is noteworthy that the Wife only lodged and served her written submission lately on 31 October 2022 notwithstanding of my order made on 19 April 2022. At the hearing on 2 November 2022, I directed the Form 8 Application be heard together with the MPS Application on paper without oral hearing.

Background

The parties were married on 12 September 2015 and the Child born in July 2019. The Wife said that the parties had signed a post-nuptial divorce agreement in Chinese on 10 March 2019, which is challenged by the Husband. The Wife then filed the petition for divorce on 9 April 2021. The marriage lasted for about 5 years only. The Husband is 35 years old and is an inspector with the Customs and Excise Department whilst the Wife is 34 years old and working as a personal assistant to a CEO. On 3 April 2021, few days prior to the commencement of the divorce suit, the Wife called the police claiming that she was pushed over by the Husband. The charge of assault occasioning bodily harm was lodged by the police against the Husband in October 2021 and due to the 5th wave of Covid-19, the trial originally fixed on 23 and 24 February 2022 was re-fixed to 21 June 2022 in the Eastern Magistracy under ESCC2438/2021. As the Wife gave evidence under oath at the first day trial that the Husband did not assault her and he voluntarily entered into his own recognizances to be of good behaviour for 18 months, the charge against the Husband was dismissed on the same day. Pending the outcome of the criminal trial, the Husband's employment has been suspended and he was paid only half of his wages. However, according to the recent affirmation filed by the Husband on 22 November 2022, he has already resumed duty in the Customs and Excise Department with effect from 11 July 2022 with no deduction of any wages and 2.5% increment after April 2022 together with refund of all the wages previously deducted between 11 October 2021 to 10 July 2022. Legal Principles Under MPPO Section 3 (maintenance pending suit) and Section 5 (provision for child), the Court may make orders requiring one party in a marriage to pay maintenance for the other party from the date of the presentation of the petition for divorce and for the other for the benefit of children of the marriage for such term as may be so specified. The main governing principle is that the Court will make such order as it considers reasonable based on the reasonable needs of the Wife and the Child and the ability of the Husband to pay. In view of such application being interim in nature, the Court will not conduct detailed investigation of the financial position of the parties, but approach on a broad brush basis. Another important factor in determining this application is consideration of the marital standard of living during marriage. In a Hong Kong Court of Appeal case *HJFC v KCY* [2012] 1 HKLRD, Hartman JA (as he then was) said in 37 of the Judgment as follows: The principles that have emerged over time to guide judges in matters of interim maintenance have been fashioned in the main to ensure fairness. This is well illustrated in the judgment of Nicholas Mostyn QC, sitting then as a deputy High Court judge, in *TL v ML and Others* (Ancillary Relief: Claim against Assets of Extended Family)

[2006] 1 FLR 1263, at 1289, in which, having looked at earlier authorities, he derived the following principles that speak specifically to fairness or are based on the need to ensure it. For present purposes, it is sufficient to cite the relevant principles without citing the judge's reference to the source of those principles:

- i. The sole criterion to be applied in determining the application is reasonableness, which is synonymous with fairness.
 - ii. A very important factor in determining fairness is the marital standard of living. This is not to say that the exercise is merely to replicate that standard.
 - iii. In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long-term expenditure, more aptly to be considered on a final hearing. That budget should be examined critically in every case to exclude forensic exaggeration.
 - iv. Where the affidavit or Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee.
- Marital standard of living During the marriage, the parties were living in an apartment of 816 sq. ft. (gross area) in Apleichau provided by the Government (Apleichau Quarter) at monthly rent of \$4,600. They had hired a domestic helper and travelled occasionally during marriage. Mr Marwah for the Husband accepted that the parties had a comfortable but relatively modest standard of living before separation. The Wife's means and reasonable needs The Wife is earning \$39,500 per month (after deduction of MPF of \$1,500) and also receives a further sum of \$9,000 per month as rental income from the North Point Property, totalling \$48,500. The parties jointly own a property in PRC (PRC Property) free from mortgage purchased in October 2017, value of which is estimated by the Husband in the sum of about HK\$905,000 according to his Form E dated 21 May 2021. According to the Wife's Form E dated 31 May 2021, she claims the total monthly expenses of \$90,042 (ie \$50,625 + \$25,317 + \$14,100), breakdown of which is set out as follows:
- | | | | | |
|---|-------------------|--|-------------------------|-------|
| Items for General monthly expenses | Rent | 16,800 | | |
| Mortgage | 13,253 | Utilities | 1,800 | |
| Food | 9,000 | Household expenses | 2,000 | |
| Insurance premia | 325 | Management fees | 657 | |
| Domestic helper | 4,520 | Other (property tax, government rent, transport expenses | 908 | |
| 162 | 1,200 | Sub-total | 50,625 | |
| Items for Wife's personal monthly expenses | Meals out of home | 4,000 | | |
| Transport | 1,500 | Clothing / Shoes | 3,000 | |
| Personal grooming (including haircut and cosmetics) | 3,000 | Entertainment / Presents | 2,000 | |
| Holidays | 2,000 | Medical / Dental | 500 | |
| 1,417 | Insurance premia | 2,900 | Contribution to parents | 5,000 |
| Sub-total | 25,317 | Items for the Child's monthly expenses | School fees | 5,000 |
| Medical / Dental | 500 | Entertainment / Presents | 2,000 | |
| Holidays | 1,000 | Clothing / Shoes | 1,000 | |
| Insurance premia | 2,100 | Lunch and pocket money | 2,000 | |
| Other transport | 500 | Sub-total | 14,100 | |
- However, she provided very little supporting documents or receipts for the expenses in her Form E, her Answer and her affirmations filed. In the Wife's written submission dated 31 October 2022, she claims the total monthly expenses for herself and the Child have increased to \$102,479.19. In my view, some of the expenses claimed by her are inflated obviously. For instance, the Wife claims \$600 for mobile phone whilst she only produced receipt of \$136. She also produced the invoices for September and October 2021 from Deborah International Play School in

Tseung Kwan O but the Child is now attending North Point Methodist Church Kindergarten & Day Nursey. The Husband said that the Child's school fees are paid by the government subsidy scheme. She claims transport expenses under different heads, ie the general, her own and the Child's expenses for the total sum of \$3,200 (ie \$1,200 + \$1,500 + \$500) every month, which are excessive and duplicated. As the Husband is a civil servant, the Wife and the Child shall be entitled to receive free medical and dental service from the government clinic and hospitals. She also incurs a lot of expenses for insurance for both of herself and the Child. I consider that her claims for medical/dental are excessive. The Wife is claiming for expenses of 6 different online movie/tv/music etc. I am of the view that some of them are unnecessary and unreasonable based on the parties standard of living during marriage. The Wife also incurs some expenses for a pet, which is not part of the marital standard of living. I disallow. As the parties are unable to maintain the standard of living during marriage, they shall try their best to lower their expenses after separation in two different households. I therefore disallow the Wife's claim for contribution to her parents. On broad brush basis without detail investigation into the parties finances, I assess and only allow reasonable needs of the Wife and the Child at the sum of \$68,742 per month (ie \$44,925 + \$14,717 + \$9,100) as follows: Items for General monthly expenses Rent 16,800 Mortgage 13,253 Utilities 800 Food 6,000 Household expenses 1,000 Insurance premia 325 Management fees 657 Domestic helper 4,520 Other (property tax, government rent, transport expenses) 908 162 500 Sub-total 44,925 Items for Wife's personal monthly expenses Meals out of home 4,000 Transport 900 Clothing / Shoes 2,000 Personal grooming (including haircut and cosmetics) 1,000 Entertainment / Presents 1,000 Holidays 1,000 Medical / Dental 500 1,417 Insurance premia 2,900 Contribution to parents disallowed Sub-total 14,717 Items for the Child's monthly expenses School fees 2,000 Medical / Dental 500 Entertainment / Presents 1,000 Holidays 1,000 Clothing / Shoes 1,000 Insurance premia 2,100 Lunch and pocket money 1,000 Other transport 500 Sub-total 9,100 I consider that the total reasonable monthly expenses for the Wife and the Child are \$20,242 (ie \$68,742 - \$48,500). The Husband's means and reasonable needs The Husband is a civil servant previously earning \$75,135 every month and since April 2022, his earning increases to \$77,015. After deduction of MPF of \$1,500, his net income is \$75,515. Upon the removal of the Wife and the Child, he was required to return the Apleichau Quarter to the Hong Kong Government on or before 2 May 2021 as per letter from HK Custom and Excise dated 12 April 2021. There is no evidence that the Husband is further receiving cash from the government as his housing allowance or other benefits as alleged by the Wife. The Husband claims the total monthly expenses of \$74,387 in his Form E filed in May 2021 but his monthly expenses are suddenly said to increase substantially to about \$131,515 according to his affirmation filed 28 July 2022. He thus claims running at a deficit of about \$70,000 every month and has to borrow from his friends and family. Similar to the Wife, he provided very little supporting documents or receipts for the expenses in his Form E, his Answer and his affirmations filed. Since all along the Husband was responsible for the expenses of the whole family during marriage, I disagree that his monthly expenses are increased to over \$130,000 as alleged. In my view, he is exaggerating his expenses. For instance, even if he has to move to North Point, I disagree that he has to

incur \$16,000 monthly rental for one person's accommodation when comparing with the rental incurred by the Wife for 2 persons accommodation in the same district. It is not justified for him to hire a foreign domestic helper for himself. I cannot accept that he has to pay \$50,000 every month for his legal fees. Since the criminal charge against him has been completed, he has resumed his original wages and received all the suspended wages from the Government in July 2022, which shall be sufficient to pay his legal costs incurred. As he produced no receipts for \$3,500 for the Child's monthly expenses and he has indeed very limited access, I disallow these expenses. On broad brush basis without detail investigation into the parties' finances, I assess and only allow reasonable needs of the Husband at the sum of \$54,830 per month (ie \$20,850 + \$33,980) as follows: Items for General monthly expenses Rent 13,300 Mortgage contribution of North Point Property as per his undertaking 2,000 Utilities 800 Food 2,000 Household expenses 1,000 Insurance premia of North Point Property Management fees of North Point Property disallowed Other (maintenance of PRC Property) 1,500 Sub-total 20,850 Items for Husband's personal monthly expenses Meals out of home 4,000 Transport 2,000 Clothing / Shoes 1,000 Personal grooming (including haircut and cosmetics) 600 Entertainment / Presents 1,000 Holidays 1,000 Medical / Dental 500 6,500 Insurance premia 1,780 Contribution to parents disallowed Others (loan repayment to bank and finance company) 15,600 Sub-total 33,980 I find that the Husband has the ability to pay the Wife about \$20,000 a month (ie \$75,515 - \$54,830). Regarding the PRC Property which is jointly owned, the Husband said to have incurred \$1,500 every month for its maintenance but the parties fail to make submission as to why it cannot be rent out so as to increase their incomes. I consider that they have to be reasonable and sensible to reach some consensus concerning its rental or even sale as soon as practicable in order to alleviate their financial difficulties. The Wife's one-off relocation costs The Wife also claims a lump sum of \$74,662.89 as the Child's interim maintenance, which in fact are the expenses for relocating from the Apleichau Quarter to her current address. In my view, it is a capital but not regular expenditure. I agree with the submission of Mr Marwah for the Husband that despite of the incurrence of such costs, the Wife still has over \$390,000 in cash and stock \$267,000 in stock according to her Form E. I therefore disagree her lump sum claim for interim purpose.

Conclusion

To conclude, I order that the Husband to pay the Wife the maintenance pending suit of \$20,000 per month for her and the Child's benefit from 1 June 2021 and thereafter on the 1st day of each month until further order. For the avoidance of doubt, the order made on 21 June 2021 for interim interim maintenance of \$12,000 per month be discharged but the Husband's undertaking to pay a further sum of \$2,000 per month towards the mortgage of North Point Property do stand. The parties have to do calculation for the outstanding maintenance due to the Wife, namely the amount payable by the Husband according to this order minus the actual amount paid by him since 1 June 2021. As the Husband has got full pay of his salary and refund of the wages previously deducted between 11 October 2021 to 10 July 2022 (roughly around \$338,000 (ie $\$75,135/2 \times 9$)), he shall have ability to pay back all outstanding maintenance to the Wife immediately. Regarding

the question of costs, I think that the Form 8 Application is not entirely unnecessary since the Husband has thereafter filed his updated affirmation as to his present finance and the outcome of ESCC2438/2021. Although the Husband's solicitor argued that the Wife has failed to obtain leave of the court to file the Form 8 Application and the correct form to be used should be Form 25. I think that this is just a technicality which can be waived by the court. More importantly, as I only approach and deal with the MPS Application on a broad brush basis, I consider that the proper costs order should be costs of this application including the Form 8 Application and all costs reserved in relation thereto be costs in the cause of the ancillary relief proceedings. I now make such an order. Last but not least, as the criminal charge against the Husband has been finalised, I strongly encourage the parties to re-consider mediation for the ancillary relief claims actively. The Wife may approach the translation office of the District Court and the court interpreter is directed to translate this Decision to her orally, if necessary. (Simon Lo) District Judge The Petitioner, Wife acting in person Mr Shaphan Marwah instructed by A Lee & Partners and subsequently Payne Clement Velasco for the Respondent, Husband The Wife also claims the same amount of management fees of North Point Property in her expenses MPS Application was taken out on 18 May 2021 PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V gdjn gdjn h*tj gd!#/ hdw/ hdw/ hoIx ph!!! hzZD hdw/ hU^J h*tj h*tj hS*U hS*U hS*U hS*U hS*U ph!!! ph!!! hS*U ph!!! hzZD hS*U hS*U ph!!! hUq* hU^J ph!!! gdB' gdB' gdB' gdB' gdB' hS*U hS*U hS*U ph!!! hS*U hS*U ph!!! gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' kd2 gdB' gdB' gdB' gdB' gdB' gdB' hUq* hS*U hS*U hS*U hS*U gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' hS*U hS*U ph!!! hS*U ph!!! ph!!! hS*U ph!!! hS*U hS*U ph!!! ph!!! hS*U ph!!! gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' gdB' hS*U hS*U hS*U hS*U hS*U gdB' gdB' gdB' gdB' gdB' kd0! gdB' gdB' gdB' kd:# gdB' gdB' kdD% gdB' gdB' gdB' kdH' gdB' gdB' gdB' kdI) gdB' gdB' h3%; h*tj hdw/ hUq* hS*U hS*U gdB' kdJ+ h3%; ph!!! ph!!! h3%; gdaL gdaL hS*U ph!!! hS*U hS*U ph!!! ph!!! hS*U ph!!! h3%; ph!!! kdN- kdX/ hS*U hS*U hS*U h3%; hS*U hS*U ph!!! ph!!! hS*U kdb1 gd3%; kdl3 kdv5 kd\$6 hGPN h3%; h3%; ph!!! ph!!! hS*U hS*U h3%; hS*U kd.8 kd8: {ulululululflf hGPN hS*U ph!!! cjZjQ hGPN gdN| ho2[h&jk h&jk ph!!! h&jk h&jk [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8jd- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /EE\} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> T\$rm T\$rm *T\$rm 9T\$rm G=T\$rm tFT\$rm *\3M /-WT\$rm K#kY ^FOZT =HiT\$rm kT\$rm =uH {p TU |T\$rm ^FOZ *\3M K#kY .TN8zn@ 94'& 4 6; & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"

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