

HONG KONG / JUDGMENT

HMSE v. JJS

COURT

Family Court

DECIDED

7 April 2017

CASE / FILE NUMBER

FCMP70/2008

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bjbj FCMP 70/2008 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 70 OF 2008

BETWEEN HMSE Applicant and JJS Respondent

Coram: HH Judge C.K. Chan in Chambers (not open to public) Date of Hearing: 30 March 2017

Date of Decision: 7 April 2017

DECISION (DISCOVERY)

This is a hearing of the Respondent (the father s application for discovery against the Applicant (the mother). Brief introduction The parties met sometime in 2005 and started to have an intimate relationship as from March that year. At one stage, the mother was employed by the father as his personal assistant with an initial salary of \$20,000 which was later increased to \$30,000 per month. In about October 2006, the mother found herself pregnant, after which the parties relationship started to deteriorate. In May 2007, the mother gave birth to a girl, T. There is no dispute that the parties intimate relationship ended sometime in early 2008 at the latest, shortly after which the mother took out proceedings to claim for maintenance for T. A trial was conducted before HH Judge Chu (as she then was) in 2009 and in a Judgment handed down on 29 April 2009, the father was ordered to pay for T s maintenance in addition to certain undertakings given by him including the purchase of a property (in his name) for the use of T. The amount of maintenance to be paid were ordered as follows:

- (1) a lump sum of \$333,520;
- (2) periodical payment of \$47,500 per month as from 1 May 2009; and

- (3) the maintenance of \$47,500 shall be reduced to \$35,000 per month as from the date of the purchase of the property. Despite Judge Chu's judgment, the parties' disputes continued resulting in an order of this court dated 31 March 2010, the main effect of which was to allow the mother to have an accommodation allowance of \$12,000 per month in lieu of the provision of a flat by the father for T's use. As the accommodation of T has been taken care of, the monthly maintenance for T was fixed at the rate of \$35,000 per month. There were no further proceedings after the 31 March 2010 Order until 31 March 2016 when the mother took out a summons asking for an increase of T's maintenance. I understand that one of the issues to be determined is whether a mother's allowance should be granted for the benefit of T. The father takes issue on this mother's allowance and therefore, the personal financial circumstances of the mother has become an important issue. On 7 September 2016, the father issued a summons requiring the mother to answer a Questionnaire in which a number of questions were raised in respect of her financial circumstances. At the call over hearing on 13 September 2016, the mother indicated to this court that she was no longer asking for a full mother's allowance although according to her, she had at that hearing expressly reserved her rights for a travelling allowance so that she could travel with T. Since the mother was not asking for a full mother's allowance, her personal financial circumstances were no longer relevant and Ms Hung for the father agreed to withdraw that part of the father's summons for discovery. The case was then adjourned to 24 October 2016 for mention and in the meantime, directions were given for those questions not touching upon the mother's financial circumstances to be answered. At the return hearing and seeing that the case was ready, a trial was therefore fixed on 30-31 March 2017 and 24 April 2017 for a number of 3 days. Unfortunately, the case took a turn in February 2017 and a summons was issued by the mother on 21 February 2017 in which she asked for, inter alia, a full mother's allowance. As the mother has revived her claim for a full mother's allowance, her personal financial circumstances have once again become relevant and at the call over hearing on 8 March 2017, Ms Hung for the father indicated that she would reinstate her application for discovery on the mother's financial circumstances. In view of this change of circumstances, the trial originally fixed on 30 March 2017 had to be aborted and in its stead, I allowed Ms Hung to issue a new Questionnaire to be argued on that day. I have also ordered the mother to bear the costs thrown away due to the adjournment of the trial. Today is the return day for the argument of the father's summons for discovery. Questionnaire dated 23 March 2017 Despite the fact that a lengthy Questionnaire was filed by the father on 23 March 2017 (which was amended on 31 March 2017 to correct some typo), it has transpired during the hearing that quite a number of those questions can be agreed. I will list out those questions agreed to be answered herein below: Questions agreed to be answered by the mother Q1 (1)(a) Q1 (2) Q2 (1) Q8 (1) Q9(2) Q9(3)(a) Q11 Q12 (1) (2) (3) Q13 Q14 Q15 Q16 Q17 Q18(1)(a)(b)(c)(d)(e) Q18(3) Q18(4) Q20 Q21 Q22 Q23(1)(2)(3)(4) Q24(1)(2)(3) Q25(1)(2) Q26 Q28 except the travelling records Q31 Q32(a)(b) Q34(a)(b) Q35(b)(c) Q36 Withdrawn questions During the course of argument, Ms Hung indicated that some questions would be withdrawn and they were: Q18(2) Q19 Q27 Disputed questions I will now deal with the disputed questions. The Law on Discovery The starting point is that the Court

has a wide discretion in giving directions on discovery. The relevant rule is O.24 of the Rules of the High Court, Cap.4A () which governs the issue of discovery. I do not intend to go into details of O.24 because I do not think the principles as contained therein are in dispute. The principles governing discovery are relevance and necessity. Orders for production of documents will only be made if the materials sought are relevant to the issues and they are also necessary for the fair disposal of the matter or for saving costs (O.24 r.13, RHC).

Question 1 (1)(b)(c) The first disputed question is Q1(1)(b) and (c), being: Landed Properties In respect of Unit 2 on G/F of Block F-4, Pearl Island Bungalow, No. 9 Tsing Lung Road, Tuen Mun, New Territories, Hong Kong (the Tuen Mun Property):-

- (1) It is noted that the Applicant claims she owns 50% interests in Tuen Mun Property while she is the sole registered owner thereof. Please:- (a)
- (b) clarify on the basis of the [mother] s said allegation that she is a 50% owner with documentary evidence in support; and (c) provide documentary evidence in support of the [mother] s allegation that her mother had paid for the down payment of the Tuen Mun Property. (2) Mother s objection The mother s objection is mainly that the question is irrelevant (see 4 of her affirmation, p.327 of the Hearing Bundle). My view One of the main issues now is the financial circumstances of the mother and therefore, the amount of her current assets must be relevant. Since the Tuen Mun Property is registered under the sole name of the mother but at the same time, she claims that she is only a 50% owner, I am of the view that the mother does have a duty to give an explanation in this regard, and if she does have documentary evidence to support her claim, those documents need to be disclosed. I am of the view that the mother needs to give a written reply and to enclose documentary evidence (if any) in Q1(1) (b) and (c). Question 3 Question 3 is as follow:
3. Please confirm that, other than the Tuen Mun Property and the Shatin Property, whether the [mother] has any beneficial interests in other landed property in Hong Kong or elsewhere (including those indirectly held via company). If the answer is affirmative, please state the particulars of all those landed properties that the [mother] has a beneficial interests and provide documentary evidence in support. Mother s objection Again, the mother s objection is that the question is irrelevant (see 6 of her affirmation, p.327 of the Hearing Bundle). My view I am of a similar view as to 16-17 above. Whether the mother is a beneficial owner of any other properties must be relevant to her financial wellbeing and should therefore be disclosed. Therefore, the mother has to answer this question and to provide the documents, if any. Question 4 (1) and (2) Questions 4 (1) and (2) are:
4. In respect of Hang Seng Bank account no.295-xxxxxx-882:-
 - (1) It is noted that the 1st page of the bank statement are missing. Please provide the complete bank statement of the account (including the 1st page) from 31st March 2015 to present.
 - (2) Please give full particulars of the following transactions, including but not limited to the source and nature of the deposits and the purpose and destination of the withdrawals. If the deposits are from another account belonging to the [mother] or withdrawals are to another

account belonging to the [mother], please identify the account(s) and produce copies of the bank statement thereof covering the last 12 months in support. If the deposits are from another account belonging to other(s) or the withdrawals are to account(s) belonging to other(s), please identify the holder of the account(s) and produce documentary evidence in support. [For the sake of saving time and space, the table of transactions will not be repeated here and they can be found at pp 517-8 of the Hearing Bundle] Mother's objection The mother objected to Question 4(1) by saying that the first page of the bank statements is of no meaning and therefore, irrelevant (see 7 of her affirmation, p.327 of the Hearing Bundle). She further submitted in court that she did not keep the first page of those bank statements and it would be too onerous for her to produce the first page now. As to Question 4(2), the mother did try to give an answer in 8 of her affirmation (at p.327 of the Hearing Bundle). My views The first page of a bank statement is part of the document and if the bank statement is relevant, its first page must also be relevant. However, I tend to accept that the mother has not kept those first pages and it would be too onerous for her to copy them from the bank now. Furthermore, I think most of the relevant information can be gleaned from the main body of the bank statement and therefore, I will not order the mother to produce those first pages now. As to the transactions in the Hang Seng Bank account, there were a total of 33 items. I see that the mother has already tried to give an answer, although not to each and every item as requested. I tend to agree that it would be too onerous for her to answer each and every item now. However, I do see that there were 2 big items of withdrawal, one for \$184,500 and the other for \$165,000. I am of the view that the mother does have a duty to give an explanation to these 2 items. Question 9(1) and (3)(b), (c) Question 9(1) and (3)(b), (c) are:

9. In respect of Hang Seng Bank account no.786-xxxxxxx-888:-
 - (1) It is noted the 1st page of the bank statement and the bank statement of October 2015 are missing. Please provide the bank statement of the account (including the 1st page and October 2015) from 31st March 2015 to present. (2)
 - (3) In paragraph 10 of the [mother]'s affidavit dated 22nd June 2016, it is alleged that a sum of HK\$370,000 were money give back to my cousin , however, it is noted that there was no transaction in the sum of HK\$370,000 but only a withdrawal in the sum of HK\$370,500 on 13th April 2015. Please:-
 - (a)
 - (b) please identify the cousin with reference to name and address and state the reason why the [mother] paid the sum to him with documentary evidence in support.
 - (c) If this is repayment of a personal loan from the cousin which the [mother] has not disclosed previously, please give particulars of the loan including the date and amount of advancement, the terms of the repayment and the purpose of the loan with documentary evidence in support. Mother's objections The mother's objection to Question 9(1) is the same as 22 above and I would not repeat the same here. As to Question 9(3)(b) and (c), the mother said she would not answer this question because her cousin did not want to get

involved. My views As to Question 9(1), I would repeat my view in 24 above and rule that the mother does not need to provide the first page of the bank statements. As to Question 9(3) (b) and (c), it seems that the loans from and repayments to the cousin are of rather substantial amount and must therefore be relevant to the personal finances of the mother. I agree that the father is entitled to ask for information on this cousin and the mother has a duty to provide that information. Question 10 Question 10 concerns with the following:

10. Please provide updated bank statements of all bank accounts held under the [mother] s name or the [mother] has a beneficial interests therein from May 2016 to present. Mother s objection In court, the mother said she has kept some but not all of the documents. She said she would not give any of those documents. My view Disclosure is a continuous process and it is important for the court to know the latest financial positions of the parties. Therefore, the mother does have a duty to provide all updated bank statements up to present. Question 28 Question 28 is:
28. It is noted from the [mother] credit card statements that she had booked many air-tickets with Cathay Pacific and Dragonair between April 2015 and May 2016. Please therefore give details (including the destination, duration and purpose) of each trip within the past 24 months taken by the [mother] and state whether T had travelled with the [mother] in each of the trip taken by the [mother] and produce travelling record of the [mother] and T issued by the Immigration Department in support. Mother s objection The mother is willing to answer this Question except to provide the Immigration Department record. My view Despite quite a number of trips were being taken by T overseas, I agree with the mother that immigration Department records may not be necessary in this case. The issue here is the reasonable amount of allowance to be given to T for her travel, but not how many trips she had actually taken. Questions 29 and 30 Questions 29 and 30 are related and they are:
29. Please provide updated credit card statements of all credit cards that held under the [mother] s name from May 2016 to present.
30. Please confirm that, other than the credit cards disclosed by the [mother] in her previous affirmations filed, whether the [mother] has any other credit cards and if so, provide the credit card statements thereof from 31 March 2015. Mother s objections The mother objected by saying that she had applied for many credit cards many of which were unused or not frequently used. She had not kept all the credit card statements and it would be too onerous to require her to produce all those statements now. My view Generally speaking, one has to disclose all his or her credit card information as they form part and parcel of a party s financial circumstances. This duty of disclosure is also a continuous one. However, in this particular case, I accept the mother s explanation that like many Hong Kong people, she had applied for a number of credit cards which are unused or not frequently used. If she had to provide all those statements, it would be too onerous for her as she is acting in person. After all, what we are dealing here is the reasonable amount of maintenance to be provided by the father to T and I am not convinced that the provision of all the mother s credit card statements is absolutely necessary for the fair disposal of this issue. Question 33

Question 33 is:

33. In respect of the alleged trips to Penang, Da Nang and the United States with T in paragraph 2 of the Affirmation on page 2 [referring to the mother's affirmation dated 14 March 2017], please give a breakdown of the expenses of each trip (including travelling expenses, accommodation expenses and other expenses) with documentary evidence in support.
- Mother's objection** The mother objected to this question. My view I accept that it is too onerous for the mother to state each and every item of the expenditures. I do not require the mother to give an answer to this question. Question 35(a) Question 35(a) is:
35. In respect of the alleged loan of HK\$220,000 in paragraph 3 of the Affirmation, please:-
- (a) State on which date the [mother] received the alleged HK\$220,000 or any part thereof from the Citibank with documentary evidence (such as bank statement) in support; **Mother's objection** The mother simply refused to answer this question. My view As \$220,000 is not a small amount of money, it forms an important part of the overall financial picture of the mother. It is my view that the mother needs to answer this question and to give the documents if she has any. Conclusion and Orders Based on the above discussion, I now grant the following orders in respect of the father's summons for discovery:
- (1) Leave to the father to file and serve an Amended Questionnaire within 7 days from the date of this order.
 - (2) By consent, the mother shall give a written answer to or provide the documents as requested in the following Questions: Q1 (1)(a) Q1 (2) Q2 (1) Q8 (1) Q9(2) Q9(3)(a) Q11 Q12 (1) (2) (3) Q13 Q14 Q15 Q16 Q17 Q18(1)(a)(b)(c)(d)(e) Q18(3) Q18(4) Q20 Q21 Q22 Q23(1)(2)(3)(4) Q24(1)(2)(3) Q25(1)(2) Q26 Q28 except the travelling records Q31 Q32(a)(b) Q34(a)(b) Q35(b)(c) Q36
 - (3) The mother is ordered to give a written answer to or provide the requested documents in the following Questions: Q1(b)(c) Q3 Q4 (2) but restricted to the 2 items of \$184,500 and \$165,000 Q9(3)(b)(c) Q10 Q35(a)
 - (4) The answers and the provision of documents as ordered in (2) and (3) above shall be given by the mother within 28 days from the date of this order.
 - (5) The mother needs not answer the following Questions: Q4(1) Q4(2) except the 2 items of \$184,500 and \$165,000 Q9(1) Q18(2) Q19 Q27 Q28 in relation to the mother and T's Immigration Department records Q29 Q30 Q33 Costs Costs to follow event. The father succeeds in some but not all parts of his Questionnaire and I think it is fair for him to have half of the costs of the summons, including today's hearing, to be taxed if not agreed. This will be in the form of an order nisi to be made absolute after the expiry of 14 days from the handing down of this Decision. C. K. Chan District Judge Representation: The Applicant acting in person Ms Barbara Hung of Messrs Chaine, Chow & Barbara Hung, solicitors for the Respondent PAGE - 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 A B C D E F G H I J K L M N O P Q R S T U V gdF1 h Bo n\K8n gd'd |tltldldltl\|T h#nB h#nB h#nB h#nB h#nB h#nB hqIf

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