

HONG KONG / JUDGMENT

HMSE v. JJS

[2019] HKFC 55

COURT

Family Court

DECIDED

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bjbj FCMP 70/2008

[2019] HKFC 55 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO 70 OF 2008 IN THE MATTER OF the child of the Applicant and the Respondent, namely HOLTT IN THE MATTER OF the application under Section 10 of the Guardianship Minors Ordinance, Cap. 13 BETWEEN HMSE Applicant and JJS Respondent Before: Deputy District Judge R So in Chambers (Not open to public) Dates of Hearing: 21 and 22 September 2017, 17 and 18 January 2018 and 15 February 2018 Date of written closing submissions of the Respondent: 25 January 2018 Date of written closing submissions of the Applicant: 31 January 2018 Date of supplemental written closing submissions of the Applicant: 22 February 2018 Date of Judgment: 1 March 2019 J U D G M E N T Index Page Preliminaries Background and salient facts of the case Witnesses and evidence M s case F s case The legal principles Main issues The financial resources of F The financial resources of M Evaluation of evidence in relation to each of M s application About accommodation The periodical payments for T Rent Utilities (iii) Household expenses (iv) Food

- (v) Foreign domestic helper (vi) Part time nanny (vii) Car park expenses (viii) Driver (ix) T s expenses
- (x) Mother s allowance About the insurance and security Lump sum payment

Conclusion

Preliminaries The Applicant mother () took out application for financial provision for her daughter HOLTT (), who was born out of her relationship with the Respondent father (), and the trial was conducted in 2009. After trial, the judgment was delivered by Her Honour Judge Chu (as she then was) (

Judgment

) regarding financial provisions for T, with the Order granted on 29 April 2009 (2009 Order). The 2 relevant orders for this trial are :- The 2009 Order; and The Order by consent before his Honour Judge C.K. Chan dated 31 March 2010 (2010 Order by Consent). The relevant orders are cited in paragraphs 24 to 28 hereinbelow. This is M s application for variation of provision for T. In the summons dated 31 March 2016 (Summons), M asked for, inter alia, the following :- M be released and discharged from the undertaking not to vary the sum of HK\$12,000 as referred to in Section II (2) & (3) of the 2010 Order by Consent, and that the sum of HK\$12,000 for the housing needs of T be varied and increased to HK\$45,000; The periodic payment for the benefits of T in the sum of HK\$35,000 pursuant to paragraph 2 of the 2010 Order by Consent be varied and increased; F do purchase a life insurance policy pursuant to paragraph (b)(5) of the 2009 Order from HK\$3 million to HK\$10 million or alternatively F do pay M a sum of HK\$30,000 per month to maintain a life insurance policy for the value of HK\$10 million; F do pay a sum of HK\$960,000 for the incurring debts from maintaining T. F opposed to the application. Mr. Chan, Counsel for F, submitted during the trial that F is willing to propose some undertakings in relation to T s extra-curricular activities expenses and extra tuition expenses. Details of the undertakings subsequently offered will be explained in paragraph 38 hereinbelow. The trial was originally fixed to be heard on 30 March 2016 for 2 days. Upon M s earlier clarification that she shall claim mother s allowance and upon F s application for discovery by filing further questionnaire, the trial dates were vacated and adjourned, with argument hearing for discovery proceeded and subsequent orders for filing questionnaire and answer be granted. The adjourned trial had been fixed for 2 days on the basis that M does not need to cross-examine F. M eventually changed her mind and chose to cross-examine F. Shortly before the trial, F filed a summons dated 15th September 2017, returnable on the first day of trial, for :- (a) leave to file and serve the Affirmation of NKY (Mr. Ng), who had been instructed and assigned to conduct a surveillance investigation against M, with investigation reports and DVDs for the said surveillance exhibited in his affirmation; and (b) Mr Ng to stand as a witness for cross-examination in the trial. The application was not opposed by M, but she asked for time to prepare for cross-examination of Mr. Ng. The trial could not finish within the scheduled 2-day, and was adjourned part-heard. On the 2nd day of the trial, by consent, leave was granted to M to take out application to file supplemental documents in relation to the variation of maintenance. On 4 October 2017, a summons, together with M s supporting Affidavit dated 4 October 2017 with supporting documents attached, was filed and served. M clarified in the summons that the lump sum she claimed against F amounted to HK\$3,103,934.40. Background and salient facts of the case The background of the case has been set out in full in the 2009 Order. Only salient facts will be recited in this Judgment for the present application. The abbreviations used in the 2009 Order will be adopted. M was born in November 1973 in Hong Kong and is 43 years old at the commencement of this trial. She was educated in Hong Kong up to Form 4 level and then she left Hong Kong to continue further education in Sydney. She graduated with a Bachelor Degree in Health Science (Rehabilitation Counselling) at the University of Sydney in 1997. In 1997, M also completed a certificate course on horse husbandry at TAFE Sydney. After graduation, she worked part-time in

clinics in Sydney for about 1 year, before returning to work in Hong Kong in about March 1998. After coming back to Hong Kong, M worked with Chinese University as a researcher in the Department of Community Medicine, earning HK\$11,000 per month. Later, she changed to work for Hong Kong Polytechnic University as a researcher in the Department of Rehabilitation Sciences, initially earning about HK\$15,000 odd per month, which was subsequently increased to about HK\$18,000 per month. After April 2002, M ceased working full time and started to cohabit with a Mr. L. At around that period of time, M acquired a Master Degree in Medical Sciences. Their daughter, B, was born in February 2003. In June 2003, M and Mr. L were married. According to M, her relationship with Mr. L had in effect ended by November 2003, but it was until about February 2007 that M started the divorce proceedings with Mr. L. M and Mr. L divorced in about May 2007, at about the time T was born. M has not been working since T was born. F was born in July 1954 and is now 63 years old at the commencement of this trial. He grew up in Australia and attended a boarding school. He started working in a stable as a stable-hand when he was about 14 years old. F came to Hong Kong in 2001 to work as a horse trainer. Throughout the years, he has been a horse trainer working for the Hong Kong Jockey Club. There were 3 marriages of F. In his first marriage, he has an adult son by his first wife, who is about 33 years old at the commencement of this trial, and an adopted daughter, who is about 43 years old at the commencement of this trial. In the second marriage of F, no child was born. F got married with his present wife in 2011 and a daughter, C, was born in the wedlock in 2012. Both his present wife and C are his dependant. M's intimate relationship with F started in about March 2005. She had been employed by F as his personal assistant from about December 2005 to 2007 after her maternity leave in 2007, earning monthly salary between HK\$20,000 and HK\$30,000. T was born in May 2007. The first time F saw T after her birth was in February 2008. F also saw T on a few occasions. Since about early March of 2008, F has had no contact with T. Not long after M started her relationship with F, in 2006, she bought a small flat at Shatin Centre (Shatin Flat) out of her own savings. After T was born, the Shatin Flat was where she was living with M and her half sister, B, together with a maid, until about November 2008. On 1 November 2008, M, together with T, B and a maid, moved out of the Shatin Flat to a rented flat in Mei Foo Sun Chuen (Mei Foo Flat), and she has let the Shatin Flat out. In 2009, M took out the application for financial provision for T. After trial, the Judgment was delivered by Chu J., and it was ordered in the 2009 Order, inter alia, that :-

- (1) The Respondent [F] shall pay the Applicant [M] a lump sum for the benefit of T of HK\$333,520 within one month;
- (2) The Respondent [F] shall pay the Applicant [M] periodical payments for the benefit of T in the sum of HK\$47,500 per month as from 1st May 2009, and thereafter on the 1st day of each month until T reaches the age of 18 or completes full time education, whichever shall be later;

- (3) The sum of HK\$47,500 per month shall be reduced to HK\$35,000 per month, as from the date of completion of the purchase of the property; In the 2009 Order, there were various undertakings by M and F respectively. Amongst which the following undertakings, which will be relevant to the present trial, are repeated :- It is the undertaking by F to the Court and to M, in relation to the purchase of a property :-
- (a) (1) To buy a property in the name of the Respondent [F] at the value of not more than HK\$3.5 million (in Shatin or in Mei Foo Sun Chuen) within 3 months and to provide this property for the accommodation of T, the Applicant [M] and B until T reaches 18 years of age or until T finishes her first full-time tertiary degree whichever is later. It is the undertaking by F to the Court and to M, in relation to protection of T's living expenses and education expenses, and for security :-
- (b) (5) To take out and maintain a life insurance policy for the value of HK\$3 million naming T as the sole beneficiary to provide T the living and educational expenses in the case of the death of the Respondent [F] before T reaches 18 or completes first full time tertiary education whichever is later.
- (c) (10) To use the property purchased as mentioned in undertaking (a)(1) as security for the periodical maintenance of T. Subsequently, by further applications by the parties, the 2010 Order by Consent was ordered. It was ordered in paragraph 2 that :- Paragraph (2) & (3) of the Said Order [2009 Order] be varied to the effect that the Respondent [F] shall pay the Applicant [M] periodical payment for the benefit of T, a sum of HK\$35,000 each month commencing 1st April 2010 and thereafter on the 1st day of each month until T reaches 18 years of age or until T finishes her first full-time tertiary degree whichever is later. In the 2010 Order by Consent, the parties had acknowledged, in the preamble, the following :-
- (1) a property situated at Flat D, XXX, Mei Foo Sun Chuen (the Mei Foo Property) has been purchased at the consideration of HK\$3.65 million in compliance with undertaking (a)(1) of the Order dated 29th April 2009 (the Said Order) [2009 Order]
- (2) the Applicant [M] and T are not living in the Mei Foo Property and have no intention to use this Mei Foo Property as their residence in the immediate future This property at Mei Foo Sun Chuen which F had purchased (Mei Foo Property), which M had acknowledged not living in and have no intention to use it as their residence in the immediate future, is not the same as the Mei Foo Flat. In the 2010 Order by Consent, there were various undertakings by M and F respectively. Amongst which, it is the mutual undertaking and agreement by the parties :- II. Upon the parties mutual undertaking and agreement to deal with the Mei Foo Property as follows : Either The Respondent [F] is to provide the Mei Foo Property for the accommodation of T, the Applicant [M] and B until T reaches 18 years of age or until T finishes her first full-time tertiary degree whichever is later; Or

- (2) To pay the Applicant [M] a sum of HK\$12,000 each month if the Applicant [M] chooses not to live in the Mei Foo Property. In this circumstances, the Respondent [F] is entitled to rent out the Mei Foo Property for rental income.
- (3) The sum of HK\$12,000 mentioned in (2) above is independent from the amount of rental income received from the Mei Foo Property and is not subject to variation by either party; This sum is payable on the 1st day of each month commencing 1st April 2010 until the Applicant [M] and T move back to the Mei Foo Property.
- (4) If the Applicant [M] and T wish to move back to the Mei Foo Property in the future, the Applicant[M] shall give reasonable and sufficient notice to the Respondent in order for him to facilitate the delivery of vacant possession of the Mei Foo Property.
- (5) The above arrangement will survive the death of the Respondent [F]. According to F s affidavit filed on 24th October 2016 (s Affidavit), the Mei Foo Property is now free of mortgage. Since the 2009 Order, M, together with T, B and a maid, had moved home for several times. They have been living in Tsimshatsui area. As shown in M s Affidavit dated 22 June 2016, they were living in Kings Mansion in the Observatory Circuit. M, together with T, B, and a maid, have later moved to live at a flat in Cox s Road (s Road Flat) in April 2017, which is now where they are living. Witnesses and evidence M s case M gave evidence and did not call any witness. There are a total of 18 affidavits in the trial bundle relied on. In addition, by consent, leave be granted to M to file the Affidavit dated 4 October 2017. Out of the 19 affidavits, some of them are filed for the purpose of answering the questionnaires of F. M s case is that as T is growing up, more space and a better living environment is needed, especially in view of the living standard of F. In the Cox s Road Flat they are residing now, T has her own room. In the past, she lived in a cramped condition sharing room with the maid. Therefore, according to M, in view of T s interest and benefit, it is necessary and fair to review the accommodation provided to T. It is M s stance that the monthly periodical payment is not sufficient in view of inflation, and also with T growing up, more expenses have been incurred. Therefore, M asks for variation upwards of the amount of monthly periodical payment. Besides, as the monthly financial provision is insufficient to meet ends, M s case is that she has incurred debts, and therefore she is asking for a lump sum payment for the debts incurred from maintaining T, and also for the immediate and non-recurring needs of T. M also asked for better security for the financial provisions for T. F s case F gave evidence and called Mr Ng as his witness. F relied on his Affidavit and his Form E filed on 20th May 2016. F s case is that he has always been willing to pay and has always paid reasonable sum for the maintenance of T. He opposes to M s present application as he is of the view that M has inflated the amounts she asks for and some of her claims are unreasonable. F s counsel, Mr. Chan, submitted that the amount of periodical payment M sought, from HK\$30,000 to HK\$90,000 and now to HK\$184,150, has been exaggerated and much inflated. During the trial, F had offered to provide the below undertakings regarding T s extra-curricular activities and extra tuition expenses :-

1. Upon receiving any bills solely relating to T's extra-curricular activities and/or extra tuition class (the Bills), the Applicant shall deliver the original of the Bills to the Respondent's solicitors, Messrs. Chaine, Chow & Barbara Hung (CCBH) as soon as practicable.
2. The Respondent shall maintain a credit balance on the client's account of his solicitors, Messrs. Chaine, Chow & Barbara Hung (CCBH) with a standing instructions to CCBH that, subject to the conditions set out in paragraph 3 hereinbelow, they shall make use of the said credit balance for direct payment to the payee of the Bills to settle the same in full within 28 days upon receiving the same (the Settlement).
3. The Settlement is subject to the condition that the extra-curricular activities/extra tuition class attended by T and/or the charge thereof shall be reasonable and exclusively relating to T (the Conditions).
4. If the Respondent considers the Conditions have not been fulfilled, he shall instruct CCBH to inform the Applicant in writing no later than 21 days upon receiving the Bills (the Notification). Upon issuing the Notification, the Respondent and/or CCBH will not be obliged to settle the Bills pursuant to paragraph 2 hereinabove unless and until the parties reach agreement subsequently and/or further order is made by the Court. Mr Ng had been instructed and assigned to conduct surveillance investigation against M. In his evidence, he confirmed that he did not do the surveillance personally, but relied on his investigators to do the surveillance for a total of 4 days, on 12 and 15 July 2016, and 11 and 12 September 2017. He relied on his affirmation, with 2 investigation reports and DVDs for the said surveillance exhibited in his affirmation. The legal principles The powers of the court to make orders for a parent to make various financial provisions for a minor and to vary such orders are set out in section 10(2) of Guardianship of Minors Ordinance, Cap. 13 () as follows :-
 - (2) The court may as regards a minor, on the application of a person with whom, whether by virtue of an order under subsection (1) or otherwise, custody of the minor lies at law, make in respect of the minor any one or more of the following orders an order requiring payment to the applicant by the parent or either of the parents of the minor of such lump sum (whether in one amount or by instalments) for the immediate and non-recurring needs of the minor or for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the minor before the making of the order to be met, or for both, as the court thinks reasonable having regard to the means of that parent; an order requiring payment to the applicant by such parent or either of such parents of such periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent; an order requiring the securing to the applicant by such parent or either of such parents, to the satisfaction of the court, of such periodical sum towards the maintenance of the minor as the court thinks reasonable having regard to the means of that parent; an order requiring the transfer to the applicant for the benefit of the minor, or to the minor, by such parent or either of such parents, of such property, being property to which the parent is entitled (either in possession or reversion), as the court thinks reasonable having regard to the means of that parent; an order requiring the settlement for the benefit of the minor, to

the satisfaction of the court, of such property, being property to which such parent or either of such parents is so entitled, as the court thinks reasonable having regard to the means of that parent. Section 10(4) of GMO also empowers the court to vary some of the orders made under section 10(2) above as follows :- An order under subsection (1) or an order under subsection (2) (other than an order for a lump sum payment in one amount, for a lump sum to be paid in instalments where all such instalments have been paid or for the transfer of property) may be varied, discharged, suspended or revived after being so suspended, by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under this Ordinance, or (before or after the death of either parent) on the application of any other person having the custody of the minor by virtue of an order under subsection (1). s present application for increase of the monthly maintenance would come under section 10(4), whilst her claim for a lump sum to meet the needs to maintain T would be under section 10(2)(a) of GMO. The request for securing periodical payment would come under section 10(2)(c) of GMO. Regarding the claim for lump sum payments, I remind myself of what had been ruled by Lam VP in the Court of Appeal case in IDC v SSA, CACV 91 of 2013, at paragraph 20, as follows :-

20. From the examples given in the legislative materials (expenses for medical treatment, school uniform and equipment), it could not have been the legislative intent that this power can only be exercised once as in the case of lump sum award in favour of a spouse under MPPO. A child may need to have non-recurring medical treatment on more than one occasion. Having regard to the statutory context, we are also of the view that the power under Section 10(2)(a) can be exercised more than once. First, there is no explicit wording in the statutory provision which limits the power to be exercised on one occasion only. Second, the power is to cater for the needs of a child which may span over a long period of time. The concept of clean break as between a husband and wife which underlies the lump sum award under the MPPO in such context has no application to the relationship between a parent and a child. Third, the sub-paragraph refers to immediate need . Thus, in each application, the court can only make a lump sum award for needs within the immediate future. In the case of a child of tender age (like Z in the present case who is only 5 years old), there must be non-recurring needs several years down the road which cannot be covered by a lump sum award made today. We cannot see any sound policy reason for denying a second or a third application being made some time in the future with regard to such future non-recurring needs when they become immediate. Mr Chan had submitted in paragraphs 11 and 12 of his written submissions the approach to be taken by the Court in relation to variation of orders, which I agree :-
11. The approach to be taken is well established :- Once an application to vary is before it, the court is fully entitled to make an order considering all the circumstances afresh, paying such regard to the old order as may be thought appropriate see eg. HCTT v TYYC [2008] HKFLR 286 The traditional approach to variation was not to re-fix afresh the amount of maintenance but to consider the amount of change in the actual means of the parties so that the new order should merely be increased or decreased roughly in proportion to the change

in the means The modern approach, as required by section 11(7), is for the Court to consider all the circumstances of the cases. The Court is not required to proceed from the starting point of the original order but look at the matter afresh see eg. *AEM v VFM* [2008] HKFLR 106. For the legal principles in relation to the discharge of an undertaking to the Court, I have considered the English cases of *Mullins v Howell* (1879) 1 Ch D 763, *Cutler v Wandsworth Stadium Ltd* [1945] 1 All ER 103 and *Shepherd Homes Ltd v Sandham* [1971] 1 Ch 341, *Kensington Housing Trust v Oliver* (1997) 30 HLR 608 and *Mid Suffolk District Council v John Edgar Clarke* [2006] EWCA Civ 71. These legal principles had been adopted in the Hong Kong cases in *TLS nee J v RCS*, FCMC 1637/2012, date of judgment 16 January 2014 and *L v C*, FCMC 5952/2012, date of judgment 3 July 2015, which I will discuss hereinbelow in my analysis. In relation to financial provisions for a child born out of wedlock, I have also reminded myself, as rightly pointed out by Chu J. in paragraph 51 of the Judgment that the Court in Hong Kong have been guided by the principles and guidelines set out in the English cases, particularly *Re P*, In considering what financial orders are reasonable for the benefit of a child born out of wedlock. The legal principles as cited in *Re P (Child: Financial Provision)* [2003] 2 FLR 865, as adopted in the Hong Kong cases including *WGL v ASB* [2013] HKFLR 391, have been considered. In *WGL v ASB*, Chu J. had succinctly summarised the legal principles in paragraphs 55 to 57 :-

55. In *Re P*, a summary of the relevant considerations was set out by Bodey J, as follows: The welfare of the child while a minor, although not paramount, is naturally a very relevant consideration as one of ...all the circumstances of the case Considerations as to the length and nature of the parents' relationship and whether or not the child was planned are generally of little if any relevance, since the child's needs and dependency are the same regardless: *J v C (child: financial provision)* [1998] 3 FCR 79 at 81. One of the 'financial needs of the child' (to which by para 4(1)(c) the court must pay regard) is for him or her to be cared for by a mother who is in a position, both financially and generally, to provide that caring. So it is well established that a child's need for a carer enables account to be taken of the caring parent's needs: *Haroutunian v Jennings* [1980] FLR 62 at 66; and *A v A (financial provision for child)* [1995] 1 FCR 309 at 317. By paras 4(1)(a) and (b) of Sch 1, the respective incomes, earning capacities, property and other financial resources of each of the parents must be taken into account, together with their respective financial needs, obligations and responsibilities. So 'the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living: *J v C (child: financial provision)* [1998] 3 FCR 79 at 87 per Hale J. However, as this latter concept lends itself to demands going potentially far wider than those reasonably necessary to enable the mother properly to support the child, 'one has to guard against unreasonable claims made on the child's behalf but with the disguised element of providing for the mother's benefit rather than for the child: *J v C (child: financial provision)* [1998] 3 FCR 79 at 87. In cases where the father's resources permit and the mother lacks significant resources of her own, she will generally need suitable accommodation for herself and the child, settled for the duration of the child's minority with reversion to the father; a capital

allowance for setting up the home and for a car; and income provision (with the expense of the child's education being taken care of, generally, by the father direct with the school). Such income provision is reviewable from time to time, according to the changing circumstances of the parties and of the child. The overall result achieved by orders under Sch 1 should be fair, just and reasonable taking into account all the circumstances.

56. Bodey J then went on to say in *Re P* that from the experience of that case, he would propose three further considerations:
- (i) In considering the mother's budget, at least in bigger money cases, the court should paint with a broad brush, not getting bogged down in detailed analyses and categorisations of specific items making up opposing budgetary presentations. Rather, the court should do its best to achieve a fair and realistic outcome by the application of broad common sense to the overall circumstances of the particular case. (ii) Comparisons with the commercial cost of providing professional care are unlikely to be of great assistance and may only serve to distract. (iii) When setting up a budget for the sort of lifestyle a child should be enabled to have, the court should not generally attach weight to the risk that the father may reduce or withdraw his support when the child comes of age (or ceases education or training) thereby obliging the child to adapt to a lower lifestyle at that time.
57. In Hong Kong, this court's jurisdiction is discretionary. No factors having been set out in legislation, the only criteria in s
- (2) of our GMO is what the court deems reasonable having regard to the means of the parent to whom the application is directed, which in the present case is the Father. In exercising discretion, this court will have regard to all the circumstances of the case, and in my view, these should include those matters as provided in the English legislation. There are a number of UK and Hong Kong cases that both parties have cited in their submissions that I have considered, which I will discuss some of them hereinbelow in my analysis. Main issues With the above legal principles in mind, I will now turn to the facts of the present case and the evaluation of evidence in relation to each of M's application. Factually, parties dispute the financial resources of F, in particular his living standard, and the financial resources of M. The main issues before the court are :- The financial resources of F (in particular the standard of living) The financial resources of M Consideration of each of the applications by M in turn. The financial resources of F According to F's Form E filed in 2016, his income earned from his horse training business is about HK\$8 million per year (ie. about HK\$666,666 per month). He also has rental income from the Mei Foo Property, which the entirety of the rental income received has always been used to pay to M. F had bought his present residence in Tai Po. In F's Form E, a number of items had been answered with irrelevant to the current application. Therefore, whether F has any other landed properties, shareholding or beneficial interest in private companies, directorships that F holds, business interests, details of stocks, bonds and other quoted securities and other investments, insurance and endowment policies, monies which are owned to H, valuable personal items, pension / mandatory provident fund / gratuity interests are unknown.

Under cross examination, F agreed that his present residence is bought for HK\$34.6 million, about 2,000 sq ft in size. He now lives with his wife, daughter C, a maid and a driver. F also agreed that he now owns 2 cars, worth a total of about HK\$2.5 million, one for family use and one for his own use. It is F's position that he is able to meet any order which this Court could reasonably be expected to make, which Mr. Chan referred to as the millionaire defence in his submissions. One of the issues disputed by M is that F is very wealthy and that he has a much higher standard of living than T. I agree standard of living of F has to be looked into, as stated by Hale J. in *J v C (child: financial provision)* [1998] 3 FCR 79 at 87 the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard living. This view was endorsed by Bodey J. in *Re P*. In paragraphs 94 and 95 of the Judgment, Chu J. had considered the standard of living of F in 2009. It is M's view that F's standard of living had increased substantially and that the standard of living of T should not be departed from too much. M's view is based on, including but not limited to, the following: F is earning much more now than in 2009. F used to live in the rent-free quarter provided by the Hong Kong Jockey Club (HKJC) to him, but now he has purchased his own property of about 2,000 sq ft, with value of about HK\$34,600,000. F had no cars nor drivers in 2009 or 2010, only 1 domestic helper, but now he has 2 cars, 2 domestic helpers and 1 driver. Mr. Chan disagreed with M's allegation that F's standard of living has increased substantially. While it is not in dispute that F's income had increased a lot, Mr. Chan submitted that the mere increase in income does not mean the standard of living had increased substantially or living in a lavish lifestyle. Mr. Chan submitted that the size of the rent-free quarter and the flat F now owns are not much different in size. By looking into the expenses of F as shown in his Form E [P2/402-404], one cannot conclude that F is living a lavish lifestyle. F is earning more than in 2009. With reference to paragraph 72 of the Judgment, F's income was just under HK\$428,000 in average per month, plus a HK\$35,000 monthly housing allowance if he moves out from quarters. He also receives discretionary gratuities from horse owners of about HK\$55,000 per month. H now earns about HK\$666,666 in average per month. However, I agree with Mr. Chan that looking at the evidence as a whole and from the evidence before the court, I cannot form the view that the lifestyle of F had increased so substantially to a lavish lifestyle. With F earning more, it is not unexpected that he buys his own property for accommodation. It is noted that the size is not much different from the quarter provided to him before. F used to have 1 domestic helper and a car, which was given to M in about 2009. There was a period of time when F and M were together during courtship that F had a driver. Now with F having got married and with a child, it is acceptable that an additional domestic helper be employed (when F gave evidence, he confirmed that he only has one maid now) and a driver be employed. With the increased salary, I accept that F's standard of living may have increased as well. However, the question is whether T's standard of living should be increased accordingly or proportionately in terms of financial provision received. From my reading of the authorities, T is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living, which means the father's resources and standard of living is to be considered, but not

to be compared proportionately or mathematically. The overall circumstances have to be considered to achieve a fair result. From the evidence before me, I agree that F enjoys a comfortable lifestyle, but not an extravagant one. I do not see F's standard of living had increased so substantially or living a lavish lifestyle that is so different from T, which justifies T to vary the financial provision based solely on this reason. The financial resources of M have 2 properties in her sole name, one is the Shatin Flat, bought in 2006 for HK\$1.68 million [P2/516], with mortgage. The other property is a flat in Tuen Mun (Tuen Mun Flat) which was bought in M's sole name in 2013 for HK\$1.3 million [P2/520] with mortgage. According to M, the Tuen Mun Flat was purchased with her mother and M is not the sole beneficial owner. Her mother paid the down payment, and M paid the renovation fees and miscellaneous fees. However, no documents could be provided. M has not been working since the birth of T. According to M, she receives rental income of HK\$19,500 per month (HK\$13,000 for the Shatin Flat and HK\$6,800 for the Tuen Mun Flat). M provided Property Tax computation of 2015/2016 to show the annual rental income was HK\$227,956 (before tax). M has always been receiving periodical payment from B's father, Mr. L, for the monthly maintenance of B, now in the sum of HK\$8,000. M also has stocks of about HK\$400,000 to HK\$500,000. During cross examination, M was asked about the Tuen Mun property and her stocks. According to M, her stocks have always been managed by her mother, so is the buying of the Tuen Mun Flat. M could not tell whether her share of the beneficial ownership of the Tuen Mun Flat was actually paid from the stocks or money obtained in the selling of some of her stocks. M's reasons of not having provided updates as to the value of her stocks and documents to show payments for the Tuen Mun Flat is that they have always been managed by her mother. As her mother does not know about the trial, M did not ask her mother to provide information to be used for the trial, despite M is fully aware of the court order asking her to provide supporting documents. Mr. Chan submitted that adverse inference could be drawn against M for not providing full and frank disclosure in relation to the provision of documents pursuant to the court order. In relation to the lack of supporting documents in substantiating M's claim for reasonable expenses, I will consider that in the next section hereinbelow. About the lack of documents in relation to the Tuen Mun Flat and the value of stocks of M has, I have considered M's explanation and I accept that it is not unreasonable given the fact that a child being born out of wedlock, and M does not wish to let her mother know about the court case and therefore has not asked her mother to provide documents and details. While full and frank disclosure is expected and compliance of court order for disclosure should not be undermined and compromised, it should be noted that even taking into account all the assets of M (including the entirety of the value of the Tuen Mun Flat and the value of stock that M has) and the possible increase in value of those assets, and also the loans from M's friend and cousin, F certainly has considerably more financial resources and is much wealthier than M. In the circumstances, I do not draw adverse inference against M for non-disclosure of documents, but this will certainly be relevant and considered by the Court in various parts below when I consider all the circumstances of the case. Evaluation of evidence in relation to each of M's applications

About accommodation It is M's case that she should be discharged from the undertaking to

agree on the monthly sum of HK\$12,000 to be received as M chooses not to live in the Mei Foo Property (as stated in Section II (2) & (3) of the 2010 Order by Consent, and as quoted in paragraph 28 hereinabove). It is M's stance that the monthly sum of HK\$12,000 should be varied to HK\$45,000. T has never lived at the Mei Foo Property. Since the 2009 Order, M, together with T, B and a maid, had moved home for several times, living in the Tsimshatsui area. Since April 2017, they have started living in the Cox's Road Flat. The basis for M's application is that the previous accommodation is not suitable for T to live in. As T is growing up, a better place with more space is justified. By living at the Cox's Road Flat now, T has her own room and it is near to her school. It is also M's case that as the living standard of F has increased substantially, that justifies the upgrade and improvement of living standard for T accordingly. As the rent of the Cox's Road Flat is now HK\$48,000 (including the use of a carpark space), M asked for the monthly sum she receives be increased to HK\$45,000. According to F, M's application regarding housing is an attempted de facto appeal against the 2009 Order, which cannot possibly be permitted. It is F's case that when Chu J. made the order for accommodation, it was determined that the same home would be accommodating T until she reaches 18 or finishes full time education. It was not a temporary measure subject to be reviewed from time to time. It was a long term measure providing for T. After the Judgment, the parties came to a mutually agreed arrangement embodied in the 2010 Order by Consent. M has 2 options: (a) live in the Mei Foo Property in accordance with Judgment and 2009 Order; or (b) live elsewhere and receive HK\$12,000 per month from F. M has chosen not to live in the Mei Foo Property, which is clearly stated in the 2010 Order by Consent. It was emphasised by F that according to the 2010 Order by Consent, it was the parties mutual undertaking and agreement that the monthly sum of HK\$12,000 is independent from the amount of rental income received from the Mei Foo Property is not subject to variation by either party and would be paid until [M] and [T] move back to the Mei Foo Property. Nevertheless, F is willing to pay HK\$13,900 instead, as that is the rental received from the Mei Foo Property, even though the 2010 Order by Consent provided that there would be no such linkage with the rental received. According to F, both options still remain open to M now. She can either receives HK\$13,900 per month; or she can move back to the Mei Foo Property upon reasonable notice (in order for F to get the Mei Foo Property vacated). F's position is that M is misconceived when she complains that the rental price has gone up so much and she has to live in a smaller and a smaller place where she is growing [P1/88]. Besides, the authorities do not contemplate upgrading accommodation / housing during the child's financial dependency. What M is doing now, by moving to the Cox's Road Flat, which is one of the most luxurious locations in Kowloon, is in fact attempting to create yet another fait accompli by entering into a Cox's Road Flat tenancy of HK\$48,000 per month in March 2017, in the midst of litigation. Mr. Chan also submitted that there have been no material changes that would tend to persuade the Court to upgrade accommodation. This is especially so in a case where M has been ordered to buy a landed property which he cannot sell until the child reaches 18 or finishes her first tertiary degree. Mr. Chan further submitted that it is not usual for the Court to order the purchase of a precise property. Generally, a budget is ruled by the Court, and then parties later agree on the property to

purchase and sign an undertaking in that regard. I notice a peculiar fact in this case, unlike the usual scenario as submitted by Mr. Chan, is that when the undertaking was offered and agreed, which was later embodied in the 2010 Order by Consent, M had indicated at the beginning that they have no intention to live in the Mei Foo Property bought by F. There was no agreement as to which flat to buy before F bought it. Parties ended up in agreeing on the monthly sum of HK\$12,000 to be paid in lieu of living in the Mei Foo Property. Obviously, parties must have in mind it is a reasonable and proper way to comply with the 2009 Order to provide for suitable accommodation for T, with the welfare of T having considered. The question now is, whether leave should be granted to M to be released and discharged from the undertaking in the circumstances, and if yes, what is the next step. Accommodation for T is one of the areas considered by Chu J. thoroughly, which is explained in paragraphs 83 to 94 of the Judgment, which I now summarise the important parts which are relevant for the consideration of this application :- According to M, the Shatin Flat is 507 sq ft in gross area, and the net area is only about 410 sq ft, with 2 bedrooms. M and T used to occupy one bedroom, with T sleeping in the playpen as T was aged about 2 at that time, and B and the maid shared the other bedroom. M said the Shatin Flat was too small, as T needed a bigger bed and that was why she moved to the Mei Foo Flat, which is 890 sq ft gross, or about 800 sq ft net, with 3 bedrooms. In the Mei Foo Flat, M and T still occupy the same bedroom, whereas B now has one bedroom to herself, and the maid occupies one bedroom. Although T still shares the room with M, she now sleeps on a folding bed by her mother's bed. The rent for the Mei Foo flat is HK\$12,500 per month, excluding the carpark rental. The carpark is a public carpark for which M has to pay rent of another HK\$2,950 per month. M has changed her evidence several times in relation to the proposed accommodation. Initially in her then 1st Affidavit, she was asking F to contribute only 1/3 of the total value of a new apartment of about 850 square feet in the area of her Shatin Flat, which would cost about HK\$5 million. In her then 3rd Affidavit, she changed her mind and asked F to purchase a 3 bed-roomed apartment either in Homantin or Shatin, which would cost about HK\$5 million, to be held by a trustee and to revert to F after T attains the age 21 or ceases full-time education. Shortly before the resumed trial in March 2009, M informed the Court that the landlady of the Mei Foo Flat was willing to sell the flat for HK\$3.5 million, and she asked that F purchase the flat for her and T, and B, to live in until T reaches the age of 18 or completes full time education, whichever is the later. F eventually did make an open offer. However, F has limited the price to be not more than HK\$3 million, as a valuation of the Mei Foo Flat from HSBC had been sought, which was only HK\$2.64 million. M does not accept HK\$3 million being the ceiling, and she does not agree to the property being purchased with a mortgage loan. She asked for a property of HK\$3.5 million and that F should pay the purchase price outright. The Court did not see there being any urgency for M to move out of the Shatin Flat 3 months before the trial. In her Form E, she has already indicated that she intends to move to a bigger apartment and the date of moving will depend on the outcome of the trial. The tenancy agreement was signed on 7 November 2008, but M did not mention that either at the hearing on 8 December 2008 or at the Pre-Trial Review on 23 December 2008. By moving to the Mei Foo Flat shortly before the trial, without informing anyone and

without waiting for the Court to make a decision on the matter, M has clearly chosen to take matters into her own hands, presenting the Court and F with a fait accompli, leaving the Court with little alternative, since it would not be in the interest of T for every one to move again, when they have only just settled down. M has referred to the standard of F's own accommodation, as compared to what she is seeking. In Hong Kong, F lives in quarters a flat of about 2,000 sq ft, with 3 bedrooms and 2 bathrooms and maid's quarters. He lives mainly by himself, with his wife visiting him occasionally. In February 2009 during the trial, his wife happened to be in Hong Kong. M and F have maintained separate addresses throughout the period of their relationship. T has only been to F's flat on a few occasions for over a period of about less than 3 weeks in February/March 2008 when she was about 9 months old. T has not had any contact with her father since, nor has she been to his home since. It is clear from Re P that the starting point should be to decide what housing provision the father should be called on to make, and where the father's resources permit and the mother lacks significant resources of her own, she will generally need suitable accommodation for herself and the child. M in the present case does own the Shatin Flat, but is this suitable accommodation for T, with her mother and her half-sister? Initially, it appears that F's case at that time was that M has her own obligation to provide for her own accommodation and for B. This issue is now largely resolved in that by agreeing to provide F's Undertakings, F's position now is that he is willing to purchase Mei Foo Flat or another property for T, but he is only willing to pay up to HK\$3m. It has been said in J v C (Child: Financial Provision) that the child is entitled to be brought up in circumstances which bear some sort of relationship with the father's current resources and the father's present standard of living. After the background had been thoroughly considered, Chu J. reached the conclusion in paragraphs 94 and 95 :-

94. Looking at F's standard of living, since he came to live and work in Hong Kong in 2001, he has spent most of his time in Hong Kong, working 7 days a week. Although he has maintained a home with his wife in Australia, he has only returned there almost every year in the summer for about 14 days, and sometimes less. In Hong Kong, as mentioned earlier, he lives in quarters of about 2,000 sq ft. F had 2 cars in Hong Kong, a 1993 Mercedes Benz, which he got rid of about 6 weeks before the trial, and the old Camry which he later transferred to M. He said he got rid of the Benz as the car was very rarely used, although according to M, his wife has a BMW. He did employ a driver previously, but has not employed one for about 2 years. According to F's Form E, his own monthly expenses would be only about HK\$ 40,000 per month, excluding the HK\$20,000 for T, and the HK\$80,000 for taxes. According to M, F usually spends less than HK\$50,000 per month generally, which included credit card payments, maid's salary, household utilities and others (A1:19), except for the months of July and August (A1:19), and that he probably spends another HK\$20,000 per month on his girlfriend, and that his wife is allowed to use AUD 100,000 per year for her own use (A1:19). All this information was provided by M, which no doubt was gathered by her during her relationship with F.

95. From the above, I am of the view that F enjoys a comfortable lifestyle but not extravagant. His home in Hong Kong is spacious by Hong Kong standard, whether for one person or for a couple. Although his Hong Kong home is not owned by him, he has interest in his matrimonial home in Australia. By comparison, the Shatin Flat was purchased by M only for her and B to live in. With B entering into the picture and with B and T growing bigger, I agree with M that the Shatin flat was becoming cramped for the three of them, together with a maid. I am of the view that F should provide a more comfortable home for T. Having regard to F's resources and his standard of living, I am of the view that the amount sought by M, i.e. HK\$3.5m is reasonable, whether this be the Mei Foo Flat, or another flat. M does not seek to appeal the Judgment. She now seeks to be released from the undertaking as referred to in Section II (2) & (3) of the 2010 Order by Consent. In relation to the legal principles in relation to the discharge of an undertaking to the Court, I refer to the case *TLS nee J v RCS*, in which Deputy District Judge G Own, as he then was, considered the English cases of *Mullins v Howell*, *Cutler v Wandsworth Stadium Ltd* and *Shepherd Homes Ltd v Sandham*. I also consider the case *L v C*, in which Deputy District Judge Grace Chan, as she then was, also considered the English cases of *Kensington Housing Trust v Oliver* and *Mid Suffolk District Council v John Edgar Clarke*. The legal principles on discharge of an undertaking can be summarised as follows :- An undertaking can be discharged, but not varied. The Court has jurisdiction to discharge an undertaking given to the Court at any stage, even if it was given in an order made by consent. A party who has given an undertaking to the Court may seek an uplift of release himself/herself from an undertaking in any of the following situations :- When there has been a material change of circumstances since the undertaking was given which is not foreseeable at the time and which make compliance not feasible; When the subject matter to which the undertaking relates no longer exists which renders compliance impossible; The party to whom the undertaking was given releases the undertaker from complying with the undertaking; When the undertaking was obtained through fraud, misrepresentation or mistake. Whether an undertaking given to the Court should be discharged is a matter of judicial discretion to be exercised if it is just to do so, in order to achieve a fair result. It is trite law that undertakings should not be given lightly. I am fully aware of the wording of the mutual undertakings by the parties as embodied in the 2010 Order by Consent, in particular the sum of HK\$12,000 is independent from the amount of rental income received from the Mei Foo Property and it is not subject to variation by either party. From the Judgment, after considering F's resources and his standard of living, it was concluded in paragraph 95 that the amount sought by M, ie. HK\$3.5m is reasonable, whether this be the Mei Foo Flat, or another flat. The Mei Foo Flat is about 890 sq ft gross, or about 800 sq ft net, with 3 bedrooms, and the rent at the time of the Judgment, ie. in 2009, was HK\$12,500 per month. It should be noted that the Mei Foo Flat is different from the Mei Foo Property. The Mei Foo Flat was where M had moved in shortly before the trial in 2009, while the Mei Foo Property was bought by F subsequently in compliance with his undertaking in the 2009 Order. According to M, there was no agreement of which Mei Foo flat to buy. The Mei Foo Property was not bought in consultation of M, which could be evidenced by the fact that in the 2010 Order by Consent, M had indicated that she and T

were not living in the Mei Foo Property and have no intention to use the Mei Foo Property as their residence in the immediate future. Parties have further agreed that F to pay M a sum of HK\$12,000 each month if M chooses not to live in the Mei Foo Property. With reference to the analysis in the Judgment, the rent of the Mei Foo Flat in 2009 was HK\$12,500. The agreement by the parties in the 2010 Order by Consent must have in mind to comply with the court order to provide for suitable accommodation for T, and the then current rental must be one of the considerations. After all these years, the property market in Hong Kong has changed a lot, with property prices risen a lot, and understandably, so have the rental prices. As HK\$12,000 will no longer be sufficient to rent the same property or property of similar size, I accept that there has been a material change of circumstances since the undertakings were given which was not foreseeable at the time when M agreed the sum of HK\$12,000. Therefore, leave should be granted for the undertaking to be discharged. The question now is, with leave granted to M to be released or discharged from the undertaking to accept the HK\$12,000 monthly sum, what should be the next step. According to M, she asks for HK\$12,000 to be increased to HK\$45,000. She is of the view that the Cox s Road Flat, with monthly rental of HK\$48,000, is an appropriate accommodation for T. I notice that the HK\$12,000 is agreed by way of mutual undertaking of the parties. With reference to the legal principles as stated in paragraph 93 hereinabove, the undertaking shall not be varied. Besides, with the standard of living of F that I have analysed in paragraph 56 to 62, I do not agree that F s standard of living has increased so substantially that justifies T s accommodation to be upgraded to a much more prestigious place as in Cox s Road Flat. It is stated in the mutual agreement that the sum of HK\$12,000 shall be independent from the rental income received and is not subject to variation. It is understandable that the welfare of the T must have been considered and it must be parties intention to avoid unnecessary variation application to be affected by the rental received. But when it comes to a time when there is substantive change in the property market and rental value, and the sum is no longer feasible to rent a place similar to the Mei Foo Flat or the Mei Foo Property or another flat of similar size, it is justified for parties to be released and discharged from the undertaking of the agreed value to be paid to M. According to M, it is her understanding that the rent of the Mei Foo Flat has not been increased and has remained the same as HK\$13,900 for a number of years. But I have not been provided with the current market price for the rental of the Mei Foo Property or the Mei Foo Flat (ie. a 3-bedroom flat in Mei Foo). With the reasons aforesaid, leave will be granted for M to be discharged from the undertaking to receive the sum of HK\$12,000, but not to vary or to increase the amount. I have analysed above that the sum parties agree should be with reference to the market price of the rental of the Mei Foo Property or the Mei Foo Flat, ie. a 3-room flat in Mei Foo. I expect parties to reach agreement on the sum to be paid to M, if M chooses not to live at the Mei Foo Property, failing which a single joint expert be engaged to make a valuation report on the market price of the monthly rental. The periodical payments for T The periodical payments for the benefit of T, as determined by Chu J. was HK\$35,000 per month, with breakdown as follows :- Utilities of HK\$2,400 Household expenses of HK\$1,500 Food of HK\$6,350 Foreign domestic helper of HK\$4,230 Car park and running costs of a car of

HK\$8,000 T's expenses of HK\$4,500 Mother's allowance of HK\$8,000 M asks for variation of the monthly payment from HK\$35,000 to HK\$90,000 at the time when the Summons was taken out on 31 March 2016 and to the sum of HK\$184,150 as stated in M's Affidavit dated 14 March 2017 [P2/577], with breakdown as follows :- Rent of HK\$48,000 Utilities of HK\$4,500 Household expenses of HK\$5,000 Food of HK\$21,000 Foreign domestic helper of HK\$6,500 Part time nanny of HK\$1,280 Car expenses of HK\$13,000 Driver of HK\$13,000 T's expenses of HK\$25,870 Mother's allowance of HK\$46,000 F opposed to M's application, but during trial, F offered to provide undertakings to pay directly T's extra-curricular activities and extra classes, which is explained in paragraph 38 hereinabove. It is F's position that M has exaggerated the expenses for T and some of the items claimed are not justified. Mr. Chan also pointed out that M had failed to provide sufficient supporting documents to show there is substantial change that justifies the variation upwards of the financial provision and to substantiate the amount she claims. Mr. Chan relied on the case WGLv ASB [2013] HKFLR 391 at 431, para. 199 :- In some cases it may be appropriate for the court to expect the mother to keep relatively detailed accounts of her outgoings and expenditure in the first and then in succeeding years of receipt. Such evidence would obviously be highly relevant to the determination of any application for either upward or down variation. I agree with the submissions of Mr. Chan about the importance of M keeping relatively detailed accounts of her expenses, and I also notice that there was court order asking M to provide supporting documents. I also understand the difficulty the Court may face if sufficient supporting documents are not provided. In relation to these criticisms, I have the following observations on evidence before going into evaluation of the evidence for each of the items in dispute for the periodical payments. First, with the passage of time, from 2009 when T was less than 2 years old to date when T is 10 years old studying in primary school, and with the inflation during these years, I accept that there is substantial change in circumstances that justify the review of the periodical payments as a whole. Second, about the lack of all and sufficient supporting documents, while acknowledging the legal principles that M has to prove her case and the importance of complying with court's order for discovery and providing supporting documents, I have to emphasise that the provision of supporting documents of expenses in the matrimonial context has to be considered in a practical and reasonable manner. Even with provision of supporting documents, it is for the Court's determination to consider the reasonableness of the expenses. In circumstances where no or insufficient supporting documents are provided, the court still has the discretion to consider whether to accept the reason why no supporting documents be provided and to consider if M has proved her case based on the evidence, and to rule accordingly what is reasonable and fair in the circumstances. I will now turn to each of the disputed items. Mr. Chan has helpfully prepared a summary table in his submissions with breakdown of items and amounts (Table) M claims.

- (i) Rent M proposes that rent in the sum of HK\$48,000 be included in the periodical payments. This item was not included in the periodical payments in the 2009 Order, as it had been considered and ruled separately under the undertaking that F was to buy a property at the

value of HK\$3.5 million. Accommodation for T has been considered in the earlier paragraphs hereinabove. Therefore, the monthly rent of HK\$48,000 should not be included in the periodical payments. (ii) Utilities M proposes that utilities be increased from HK\$2,400 to HK\$4,500. M had provided breakdown for utilities in her Affidavit dated 2 May 2017 [P2/666], comprising electricity (HK\$2,800 to HK\$3,000), gas (HK\$800 to HK\$1,000) and water (HK\$500 to HK\$700) [P2/666]. It is F's position that the amount for utilities should not be varied. Mr. Chan submitted that the utilities are another area where the Mother accommodation upgrade litigation tactic has had repercussions. From the Table summarised by Mr. Chan, by adding up the amounts shown in documents provided by M, expenses for electricity was about HK\$1,505 per month on average and gas was about HK\$318 per month on average. About water, M only produced a document showing that HK\$400 deposit was paid to the Water Department. M did not challenge the accuracy of figures summarised by Mr. Chan. During cross examination, it was pointed out that the increase in utilities was due to after moving into Cox's Road Flat. M also agreed that before 2017, the added up figures was HK\$2,400, and agreed that the sum of HK\$4,500 is the amount she estimates and hopes to obtain, not the actual amount spent. M submitted that it was almost 9 years ago since the 2009 Order was made. In the Affidavit dated 4 October 2017, there is a page of statement from the CLP Power Hong Kong Limited for the period from 30 June 2017 to 30 Aug 2017, showing that the electricity expense is HK\$4,275 (making it HK\$2,137 per month) [P3/956]. There is another one page statement from Towngas, showing the 2 months of July and August 2017 in the sums of HK\$277 and HK\$284 [P3/957]. I agree with Mr. Chan that it is undesirable that M only showed limited utilities statements, but not statements for a consecutive of 12 months. From the documents provided by M, I cannot see any documents or evidence supporting the expenses of utilities up to the amount of HK\$4,500. However, after consideration of all the evidence, including the utilities statement provided by M, the growing up of T and understandably with the inflation and rise in prices, I am of the view that slight increase in utilities is justified. I allow increase of utilities to HK\$2,700. (iii) Household expenses M proposes that household expenses be increased from HK\$1,500 to HK\$5,000, and she has provided breakdown in her Affidavit dated 2 May 2017 [P2/667], comprising :- PCCW of HK\$360 Internet and NOW TV of HK\$280 to HK\$320 3 Mobile of HK\$430 3 mobile of HK\$206 to HK\$280 Smartone HK\$106 I cloud of HK\$8 Diamond water of HK\$268 Printer ink of HK\$700, by cash Cleaning agent and laundry of HK\$500, by cash Computer, phones and printer of HK\$1,500, by credit and cash Kitchen equipment / tools / wares of HK\$500, by cash Reading lamps, TV, refrigerator, washing machine of HK\$300, by credit card Beddings, towels, quilt and blankets of HK\$300, by cash F disagreed that these are reasonable sums. Mr. Chan submitted that there is no need for keeping 3 landline telephones at home, and F should not have to pay for yet another 2 mobile telephones. Besides, as there is no documentary evidence for the household expenses, M is only estimating or guessing how much she wishes to claim, not actually how much the actual expenses are. I notice there is only very limited documents substantiating the household expenses. From the statements and bank statements for landlines, mobiles and internet and NOW TV, I notice there are 2 landlines with monthly fees of HK\$198

[P3/784] and HK\$110 [P1/312]. I agree there is no need to keep 3 landlines. I allow 1 landline and 1 mobile. I accept that some of the expenses paid by cash may not be shown in any supporting documents. However, I notice that some are not monthly recurring items, such as printer ink, computer, phones and printer, kitchen equipment / tools / wares, reading lamps, TV, refrigerator, washing machine, and beddings, towels, quilt and blankets. I have to point out that it is not desirable with the lack of supporting documents. According to Mr. Chan, M has failed to discharged the duty to justify substantial change of circumstances and the amount to be increased. However, I have to point out that I do accept M s explanation that some of the expenses are paid by cash and documents or receipts are not provided or kept. As I explained earlier, receipts are important, but it is not the only determining factor. The Court has the discretion to rule on a broad brush approach based on the circumstances of the case. After consideration of all the evidence and the background of the parties, I am of the view that M could not prove the case of increase to HK\$5,000 for household expenses. However, having viewed the items she claimed, I am of the view that expenses for 1 landline and 1 mobile, internet and NOW TV, I Cloud, diamond water, printer ink, cleaning agent and laundry, and repair or replacement for the remaining items stated under this head is reasonable. With T growing up and with inflation with the passage of time, I am of the view that increase in the sum of HK\$800 to HK\$2,300 under this head is reasonable. (iv) Food M proposes that expenses for food be increased from HK\$6,350 to HK\$21,000. M explained in her Affidavit dated 2 May 2017 [P2/666] that the daily expenses for food is HK\$550 to HK\$760 per day. Considering 25 days in a month which makes HK\$16,375 (HK\$655 on average x 25), adding dining out on Sat night and the whole day of Sunday (about 6 days per month) with a total of HK\$6,000 to HK\$8,000 per month. M further explained that they have a table reserved every Sunday at Four Seasons Hotel Loong King Hin Restaurant, and T has been having lunch there every Sunday since 2013. Again, F criticised M that there are no complete supporting documents provided. During cross examination, it was put to M that the evidence provided is much less than HK\$21,000, which M agreed. M explained that she did not added up the total of the receipts provided and some of the receipts had been thrown away. But M also explained that some expenses for food are stated in her credit cards. Mr. Chan pointed out that in M s Affidavit on 31 March 2016 [P1/90], the expenses for food was HK\$18,000. In Mr. Chan s closing submissions, F agrees that the reasonable sum be increased to HK\$12,000. Without documentary evidence, it is difficult for the court to rule on the exact amount spent. Mr. Chan pointed out that court should focus on the amount used up and necessary, but not the wish list , ie. the amount M hopes to get. The importance and necessity to provide documentary proof should not be undermined, especially in this case when F disputes the items and the amounts, and there was court order for M to provide documentary proof. However, it should be noted the court has to be practical and strike a balance. With the passage of time from 2009 (ie, the time the last order was made), until now, it is understandable that there is a rise in living index. Even without the provision of each and every supporting document, some items could reasonably and sensibly be expected to increase. The Court will not simply endorse whatever amounts with receipts and supporting documents. But at least, with receipts and documents, the Court can consider

whether they are reasonably incurred. I see no justification why the expenses for food be increased to HK\$21,000 as claimed by M. Under this head, I am of the view that it is reasonable for the expenses for food, including food and beverages at HKJC of the Kowloon Cricket Club () be increased from HK\$6,350 to HK\$13,000.

- (v) Foreign domestic helper For foreign domestic helper, M asks for an increase from HK\$4,230 to HK\$6,500. As shown in the employment contract [P1/382], the salary is HK\$4,010, with food allowance of HK\$920, adding up to a total sum of HK\$4,930, which is the amount Mr. Chan agreed in the closing submissions. It is provided in Clause 8 of the employment contract that the employer has to buy insurance. As shown in the documents provided, the annual insurance is in the sum of HK\$285 (ie. HK\$24 per month) [P2/548]. In F's Affidavit, he had agreed the reasonable expenses for maid is HK\$6,000, which I rule is a reasonable sum, considering the monthly salary, insurance fee, medical examination fee and round trip air tickets from the homeland to Hong Kong. Under this head, I rule that the reasonable expenses be HK\$6,000. (vi) Part time nanny M asks for an additional item of part-time nanny in the sum of HK\$1,280. M explained in her Affidavit dated 14 March 2017 [P2/577] that the part time nanny is needed for 20 days in a year (ie. about 1.6 days in a month x HK\$800), making it HK\$1,280. M further explained that the part-time nanny is needed when the maid is on leave or when M is sick. F opposed, but in the closing submissions, F agreed to pay for part-time helper (when the maid is sick or on holiday) in the sum of HK\$500. Mr. Chan submitted that there is no need for a nanny at all. T is now 10 years old and it is M's evidence that after school class, it was the maid picking up T most of the time. It was not ruled in 2009 when T was 2 years old and there is certainly no need for such a nanny when T is now 10 years old. I agree with Mr. Chan's submissions. I allow HK\$500 for this item. (vii) Car expenses It should be noted that the HK\$8,000 awarded in the 2009 Order was for car park and car running costs. M asks for an increase from HK\$8,000 to HK\$13,000 [p2/677], with the breakdown as follows :-
- (a) car park rent of HK\$3,500 (but it is pointed out that for the rent for Cox's Road Flat includes car parking space)
 - (b) fuel of HK\$4,400
 - (c) license of HK\$482
 - (d) Maintenance of 2,250
 - (e) Government inspection of HK\$600
 - (f) Steaming of HK\$150
 - (g) Car waxing of HK\$150 F cross-examined M on the amount of fuel used. It was put to M that the amount of fuel used in the sum of HK\$4,400 per month is excessive. M answered that it should be HK\$3,000 to HK\$4,000, and agreed that it should be less than HK\$4,000. Chan further pointed out that the evidence showed that it was about HK\$2,000 per month from the documents provided by M [P2/765]. F also commented that M has failed to show the

material changes warranting variation under this head, and M has not come up to proof. F said this item should be the same of HK\$8,000. With the broad brush approach and considering the reasonableness of the items and amounts claimed, I am of the view that the amount for the fuel is excessive. While the court should rule according to evidence, there is room for the court to consider the reasonableness of the amounts claimed, with the passage in time. It is understandable that rental for car park must have increased comparing to the time in 2009. From F's own evidence, as stated in paragraph 39 of his Affidavit, the value of the Mei Foo Property had risen from HK\$3.5 million to about HK\$7 million. It is understandable that the rent for flats and car parking space must have increased as well. However, I do notice that there is no evidence provided as to how much car parking space expenses had increased. I am not convinced that the increase under this head should be as high as M claimed. With a broad brush approach, I rule that there should be increase in the sum to HK\$10,000 under this head. (viii) Driver M asks for an additional item of a driver, in the sum of HK\$13,000 per month, which is opposed by F. M's stance is that F once had a driver at the time before the breakdown of the courtship and before T was born, and F now has a driver. M also submitted that as her health is not as good as before and when the rheumatoid affects her occasionally, her hands pains and she needs a driver to drive T to classes or activities mainly on Saturday and Sunday. This item was not ordered by Chu J in the Judgment. There is no evidence to the extent that M is physically unable to drive M. I do not see the need that justifies this additional item of expenses about engaging a driver. I therefore disallow this item. (iv) T's expenses M asks for T's expenses be increased from HK\$4,500 to HK\$25,870, as explained in her Affidavit dated 4 October 2016 [P2/478], with the breakdown as follows :- Homework class of HK\$2,800 Chinese tutor of HK\$1,800 Mathematics of HK\$1,200 English of HK\$1,200 Basketball of HK\$60 Badminton of HK\$1,120 Riding of HK\$2,400 Red Cross of HK\$80 School books & miscellaneous of HK\$500 Medical & dental of HK\$1,000 Medical insurance AIA of HK\$200 Comvita supplements of HK\$800 Education Fund AIA of HK\$1,300 Books & Stationery of HK\$500 Clothing, shoes, uniform of HK\$2,000 Presents of HK\$300 Pocket money of HK\$900 Personal grooming of HK\$300 Hong Kong Jockey Club (HKJC) of HK\$2,510 Kowloon Cricket Club () of HK\$900 Holidays / travelling of HK\$4,000 In the closing submissions, it was confirmed that F agrees to item (11) medical insurance AIA of HK\$200, item (14) books and stationery of HK\$500, item (16) presents of HK\$300 and item (18) personal grooming of H\$300. As item (13), insurance expenses of HK\$1,300, is with saving in nature, M has agreed, during cross examination, that this item be withdrawn. Items (1) to (8) About extra-curricular activities and extra classes, ie. items (1) to (8) in para. 162 hereinabove, F proposed to provide an undertaking for these extra-curricular activities and extra classes expenses. The undertaking proposed is repeated in paragraph 38 hereinabove. According to Mr. Chan, it is advantageous dealing with these items by way of undertaking. Mr. Chan submitted that the alleged extra-curricular activities and extra classes are substantial in amount, ie. over HK\$10,000 per month, but there are minimal documents in support. Besides, with the amount claimed by M, they have not taken into account holidays / vacations when there are no such activities or classes. Mr. Chan also pointed out that during cross-examination, M agreed that those

activities and classes were only correct at the time when the affidavit was made, but is now completely different, and it is understandably that activities and classes can change and do change with time. What is more alarming is that, during cross-examination, when M explained that even for cash paid to private tutors (which added up to HK\$4,200 per month), she can arrange for bills / receipts. When being asked w grees to the way these items of extra-curricular activities and extra classes are dealt with and paid by way of undertaking, as it has been difficult to communicate with F s lawyers. I notice there is hardly any supporting documents in relation to these items. The evidence and further explanation by M is included in her Affidavit dated 4 October 2016 [P2/476-477], as follows :-

- Homework class, Mon to Fri, 3pm to 6:30pm (except Mon, 4:20pm to 6:30pm) in Jordan of HK\$2,800 Chinese class, Thur, 8pm to 9:30pm in Kowloon City of HK\$450 x 4 = HK\$1,800 Mathematics class, Fri, 8pm to 9pm in Beacon Hill of HK\$300 x 4 =HK\$1,200 English class, Sun, 5pm to 6pm in Shatin Town Plaza of HK\$300 x 4 =HK\$1,200 Basketball, Mon, 3:10pm to 4:10pm at St. Mary s of HK\$100 Badminton, Tue, 8pm to 9pm at Kowloon Cricket Club of HK\$280 x 4 =HK\$1,120 Red cross, sat, 9:30am to 12:00pm at St. Mary s of HK\$80 Horse riding, Sat afternoon at Beas River/Tuen Mun/Lo Wu of HK\$600 x 4 = HK\$2,400 M explained that the time scheduled for Chinese, English and Mathematics may change according to tutors and T s weekly time schedule. I agree with Mr. Chan s submissions that these items of extra-curricular activities and extra classes are quite substantial, as according to M, amounted to over HK\$10,000 per month, but there are minimal documents in support, which certainly not adding up to over HK\$10,000 per month. By balancing T s needs to be considered and not to be affected by the fact that there are insufficient supporting documents provided by M to come up to prove for the reasonable amounts she claims in this trial, I am of the view that the payment of these items direct by way of undertaking is reasonable. However, with the background of this case and the alleged relationship between the parties, including with F s solicitors, and in view of the wording of the undertaking with the condition of the term reasonable , I can anticipate the possible difficulties of parties arguing what is reasonable. In that regard, I now express my observation that in general, homework class, extra class of Chinese, Mathematics and English (especially in view of T s result as presented by M) as explained by M, and the activities as stated in M s list of basketball, badminton, red cross and horse riding (and any alternative extra-curricular activities that T may attend in future) seem to be reasonable. If these are exclusively for T, I see no reason why the payments cannot be settled by F. As a result, I accept the undertakings as proposed by F. Item (10) About medical and dental, M asks for HK\$1,000. F disagrees and proposes the sum of HK\$500 in Mr. Chan s closing submissions. In paragraph 24 of F s Affidavit, F agreed HK\$1,000 to be reasonable expenses for medical/dental. From the evidence provided by M, she had produced the medical certificates of :- in clinic of HK\$350 on 20 April 2016 [P1/330] in clinic of HK\$300 on 21 May 2016 [P1/380] in clinic of HK\$300 on 29 Sept 2016 [P1/493] bill of HK\$230 of Baptist Hospital on 11 July 2016 [P2/486] bill of HK\$19,918 of Baptist Hospital on 15 July 2016 [P2/488], as T had been admitted to hospital for 4 days bill of HK\$6,000 of Baptist Hospital on 11 July 2016 [P2/489] As agreed by

M in her Affidavit dated 4 October 2016 [P2/478], she got reimbursement of only HK\$20,576 from insurance for the medical expenses in the sum of about HK\$26,000 when T was admitted to hospital. With reference to the evidence and documents provided, and considering parties stance and background of the case, I rule that the medical expenses, including dental for T in the sum of HK\$1,000 is reasonable. Items (11) For insurance, M submitted in closing that in addition to the HK\$200 AIA medical insurance that F had agreed [P2/482], there is another medical insurance policy that M had subscribed for T after she was admitted to hospital in 2016, which M had produced the document in support [P2/711]. I rule that HK\$500 under insurance is reasonable. Items (9), (12), (15) and (17) I will consider these few items together in a broad brush approach, based on the evidence of parties and background of the case, including F's stance in paragraph 24 of his Affidavit. About item (9) school books and miscellaneous, I am of the view that this may be partly covered in the agreed item of books and stationery of HK\$500. Although without supporting documents, I accept that with T now aged 10 and studying in primary school, I rule that for school books and miscellaneous, a sum of HK\$250 is reasonable. About item (12) supplements, M asked for HK\$800 for comvita supplements and probiotics. F disagrees and proposes the sum of HK\$300, as it was stated in the earlier affidavit of M that she only claims for HK\$300. I rule that reasonable sum for supplements is HK\$300. About item (15) clothing, shoes and uniform, M asks for HK\$2,000. F disagrees and proposes HK\$1,000 in the closing submissions. I rule that HK\$1,500 is a reasonable sum. About item (17) pocket money, M asks for HK\$900, which F said is too much for T's age and proposes HK\$300. I am of the view that about HK\$30 per day is not unreasonable with T's age and parties background, and I rule that HK\$900 per month (HK\$30 x 30) is reasonable. Items (19) and (20) About HKJC fees, M asks for HK\$2,510, comprising of monthly subscription of HK\$850 and an arbitrary sum of club fees HK\$1,660 (HK\$20,000/12). M has been a member of HKJC since before T was born. It is not in dispute that the monthly membership fees is HK\$850, and the monthly fees for T's supplementary card is HK\$60. F is of the view that F should not be responsible to pay for M's own monthly membership subscription, which I agree. F agrees to pay for T's fees in the sum of HK\$60. About KCC membership fees, M asks for HK\$900. F disagrees to pay the amount. F is of the view that M has been a member of KCC since before T was born. She would have to pay for membership fees regardless of T. F is not obliged to provide for M's own monthly membership fees, which I agree. Spending at HKJC and KCC would be covered under other headings such as food or extra-curricular activities of T, which will not be double-counted here. For these 2 items, I only allow HK\$60. Item (21) About the holidays / travelling, M asks for HK\$4,000, as she had been travelling much when she was young, and she also expects T to be brought up in the same way. F disagrees and proposes HK\$2,000. M submitted in her closing submissions that she took T to holidays 4 to 5 times per year, usually 2 long hauls and 3 short, or 1 long and 4 to 5 short. With T only being able to get away during school holidays which is usually the peak season, and she is going to be charged with full fare soon, HK\$2,000 is clearly not enough. During cross-examination, M agreed that the supporting documents for the travelling expenses does not come up to prove about HK\$48,000 per year to be spent on travelling. I have also considered paragraph (viii) of M's

Affidavit on 31 March 2016 [P1/91] and point 28 in her Affidavit dated 2 May 2017 [P2/668], about the places T has travelled to between 2010 to May 2017 :- In 2010: Macau 1 day, Thailand 5 days and Korea 5 days In 2011: Macau 3 days, Thailand 4 days, Kuala Lumpur 6 days and Taiwan 5 days In 2012: Dubai 9 days, Taiwan 2 trips with a total of 26 days In 2013: Thailand 5 days, Taiwan 25 days and Vietnam 4 days In 2014: Sabah 4 days and Taiwan 21 days In 2015: Vietnam 5 days, Penang 7 days and Cambodia 4 days In 2016: Cambodia 5 days, Singapore 4 days, Macau 3 days, Vietnam 5 days and Penang 5 days In 2017: USA 10 days and Cambodia 5 days Having considered the background of the parties and the evidence as a whole, I am of the view that HK\$3,000 is a reasonable sum. To sum up, the total expenses for T that I rule is HK\$8,610 (HK\$250 + HK\$1,000 + HK\$500 + HK\$300 + HK\$500 + HK\$1,500 + HK\$300 + HK\$900 + HK\$300 + HK\$60 + HK\$3,000).

- (v) Mother s allowance M asks for mother s allowance be increased from HK\$8,000 to HK\$46,000. F disagrees. It is F s position that no mother s allowance should be granted to W, let alone the substantial increase as claimed by M. I notice there is no application by F to be discharged from the paying of mother s allowance. The reason, as explained in paragraph 25 of F s Affidavit, I have not made any application to deduct the HK\$8,000 (being mother s allowance pursuant to the Order of HH Chu) from the maintenance but would treat it as an increase of T s expenses to represent the inflation in the past years . Obviously, F acknowledged that there is inflation in the past years. I am of the view that whether M s claim for mother s allowance should be continued should be considered separately. The sub-issues I have identified under this head is : (a) whether mother s allowance should be continued; and (b) if yes, whether the sum should be increased and if yes, to what amount. The leading case on what is commonly known as the mother s allowance or carer s allowance is *Harountunian v Jennings* (1980) 1 FLR 62. It was ruled by Sir George Baker P at p. 65 that :- It has long been accepted in fixing maintenance in this Division that the mother may well be forced and rightly forced to give up employment or not to take employment in order to look after a child. It seems to me perfectly proper that that should be reflected in a maintenance order for the child After all there is long historical precedent for accepting that a rich man will pay more than a poor man for the maintenance of his child, legitimate or illegitimate. This well established principle that a child s need for a carer enables account to be taken of the caring parent s needs is recognised in *Re P (Child: Financial Provision)* (as set out in paragraph 47 hereinabove). Subsequent to *Re P*, there are other cases of *F v G* and *H v M* (also known as *F v M*) that Chu J. had considered in her Judgment that I find useful to remind myself with :-

132. Then, as I have set out earlier in paragraph 40, Bodey J set out the relevant considerations, including those for mother s allowance . Later, came *F v G (Child: Financial Provision)*. In *F v G*, the mother had already gone back to work by the time of the trial. In setting the amount to be paid as periodic maintenance, Singer J adopted a generous approach and decided that the cost of the nanny be notionally allocated to the mother s salary, leaving the mother with about one third of her net salary for her own use, and the father was to pay the mother the full primary carer s allowance. Singer J had said that by notionally allocating the cost of the

nanny to the mother's salary, this would allow the mother to make her own decisions about employment.

133. In *H v M* (also known as *F v M*), the father was a multi-millionaire who had a two-year relationship with the mother which ended before the child's birth. The mother had both graduate and post-graduate qualifications, had had a career in banking to which she had not yet returned. The mother had an 8 year old daughter by a different father, from whom she received maintenance under a court order which did not include a carer's allowance. The father and the mother had entered into a written agreement negotiated through experienced family lawyers which had never been made into an order. It was held, *inter alia*, that the agreement gave insufficient consideration to the child's future housing requirements and the desirability of these bearing some relationship to the father's lifestyle, and that following Singer J's approach *F v G*, in cases involving a wealthy father and a mother who ultimately chose to work, it was appropriate to require the father to pay a full carer's allowance and the mother to pay for child care and to retain any surplus (page 928, November [2006] Fam Law). There are also subsequent Hong Kong cases that Chu J. had considered, which I had also considered, including *K v W* (Children-Removal from Jurisdiction) [2006] 2 HKFLR 292 and *T v J* (FCMP 38 of 2007, date of judgment: 26 August 2008). With the cases cited by both Mr. Chan and M, my understanding is that these legal principles are not disputed, it is the application of these legal principles to the circumstances of the present case that I have to focus on. The basis of M's application for continuation and increase of the mother's allowance can be summarised to be including the following :- T needs M to take care of her. T has grown up without the care of F, and T has been looking after by M since T was born. T has uncountable times of sickness since she was 4 years old. T has not been doing well in her academic work. 5 subjects were failed in final exams in June 2017, including Chinese, English, Mathematics, Science and Computer. M has involved in voluntary work, with some in T's school. M has been taking T travelling to many places since T was 3 years old. T enjoys horse riding very much and she wants to go horse racing too. M plans to go horse riding with her after this case comes to an end and plans to take her to racing. Comparing with F's daughter born in the wedlock, C, she could enjoy being raised and looked after by her mother. In paragraph 147 of the Judgment, Chu J. had allowed M to make her own decisions about employment. M is of the view that she has to be reasonably provided in order to continue taking well care of T. T's financial needs is linked with mother's needs. Being a primary carer of T, M asks F to pay 3% of his net monthly income (ie. HK\$46,000) as mother's allowance so that M can look after T and to raise her in a better way and standard. F opposed to M's application, on the following main reasons :- When Chu J. ruled that mother's allowance in the sum of HK\$8,000 be given to M, it was in those circumstances that T was very young (less than 2 years old in 2009) [P1/59; para. 146]. In the Judgment in 2009, Chu J. recorded that in M's affidavit for that trial, she has herself proposed that her mother's allowance be paid until [T] is 6 years old or when [T] enters first year of primary school. The time now has long passed. After 8 years time, T is now over 10 years old. With M being an intelligent and capable woman with well educational background, M should have resumed

working. In the Judgment, when Chu J. was considering whether M should go back to work and if so when, Chu J. found and held that M is a very capable and intelligent lady I am sure if she wanted to, she would be able to cope with working at least part time as well as taking care of her children. [P1/58; para. 145] Chu J. then further of the view that [M] should be able to start working some part-time work now, gradually returning to full time work [P1/59; para. 147]. During cross examination, M agreed that she could now work, but she refused to work in the interest of T. From the evidence, it is not in dispute that in 2009, M's disclosed assets was about HK\$1.44 million in her then Form E, including her MPF and the Shatin Flat. Since then, even without work, M has purchased yet another landed property, ie. the Tuen Mun Flat and the amount of stock M currently owns is not clear. It is F's case that M has financial resources, and therefore mother's allowance paid to her should stop. It is F's stance that M has inflated T's maintenance claim and she then inflates the mother's allowance claim, which should not be allowed. I have considered the legal principles as cited in the cases relied on by parties, and I remind myself especially the following :- This is not ancillary relief trial. M is not entitled to financial provision as a spouse in a divorce case. The amounts to be paid should not be a disguise of what M claims for her own use or for security of her future. Mother's allowance should be for the reasonable needs to take care of T and to recognise the contribution of M to T's welfare. F's means and resources should be considered to determine what is reasonable. The Court is also entitled to consider all circumstances, including the means and resources of M. T's welfare, even if not paramount, should be one of the important and relevant considerations of the Court. After all, it should be the exercise of discretion to consider what the Court deems reasonable in the circumstances. It is not uncommon to have a working mother in Hong Kong, and with family employing a maid to take care of children. Having said this, it could not be denied that a natural mother's care is preferable to that of a hired maid, especially for a young child. In one of the Affidavits for the trial in 2009, M had indicated she had the intention to be back to work when T is 6 years old or in primary school, and the time has long passed. What I have to consider is, with T now 10 years old, is it still justified that mother's allowance be continued. I agree with Mr. Chan that days of absence in school is not the same as days of sick leave, and it is also not uncommon for working mothers in Hong Kong to take leave to take care of their child who is sick. I have not lost sight of all the points submitted by Mr. Chan, including the financial resources of M. I also agree with Chu J.'s observation that M is an intelligent and capable woman, evidenced by the fact that she could manage conducting the trial on her own, with detailed written submissions including her interpretation of the legal authorities. But at the same time, I have to consider all the evidence in context and in the circumstances. In this present case, unlike other cases that the child born out of wedlock with the father exercising access and participating in the life of the child, who could help taking care of the child physically and financially, F does not see T and plays no part at all in T's life. M is all T relies and depends on. It is not easy to fix a time line as to when a mother should be back to work, as it all depends on the facts of each case and circumstances can change. I believe that is the reason why while Chu J. was of the view that I am sure if she wanted to, she would be able to cope with working at least part

time as well as taking care of her children , as M is a very capable and intelligent lady [P1/58, para. 145], on the other hand, Chu J. did not fix the time M should start working, as she said in paragraph 147 :-

147. Although I am of the view that M should be able to start working some part-time work now, gradually returning to full time work, I would allow her to make her own decisions about employment, following the approach of Singer J did in *F v G*. If M does decide to return to full time work, then the costs of any additional domestic helper should be notionally allocated to her salary, and she be allowed to deploy the balance of her earned income (i.e. over and above any additional domestic helper) as she thought fit, e.g. towards her own savings or pension provision. In this case, I accept that the health of T is not very good, as evidenced not only by the number of leave from school as explained by M, but also the fact that T had been admitted to hospital in 2016 for a few days. T's results, as shown in reports provided by M, is hardly satisfactory. On the other hand, F does have the resources to support M. Taking into account the financial resources of M, including the entirety of the beneficial interest of the Tuen Mun Flat (which she denies, as M said she jointly owns it with her mother), the stocks M could reasonably have and the amount of loan M received from her friend or cousin, comparing that to F, F has much more financial resources and means than M. I have considered the 2 cases cited by Mr. Chan in the submissions, which can be distinguished factually from the present case. In *WGL v ASB* [2013] HKFLR 391, Chu J. considered the situation where the mother had a rich boyfriend. Chu J. found and held that the KEWS-test is applicable, with third party financial support to be considered, and accepted that loans from the mother's boyfriend were financial resources available to the mother, and she was not awarded any element of mother's allowance. The boyfriend in that case had a stable relationship with the mother for about 5 years, and he had signed a lease for a house for the mother and the child to live in, and he also paid the deposit and rent. In the present case, there is no evidence of such a rich boyfriend of M. In *CWYW v CCH* (FCMP 124 of 20-13, date of judgment on 19 August 2016) where the mother's claim for carer's allowance: was refused because of the mother's financial resources. In that case, the mother was from a well off family in Hong Kong. After graduated from university, she then started to work for her family business. It is the mother's case that her pay package was in the region of HK\$140,000 per month. The father in that case asserted that the mother had deliberately divested herself of her interests in the family business shortly before the commencement of the proceedings. Besides, it is not in dispute that the mother was a registered shareholder of 50% shares in one of the family companies, and the mother admitted that her family had been providing her with financial assistance. In the present case, the background of M is much different and modest compared to the mother in that case. Considering all the evidence and circumstances of the case as a whole, I rule that it is justified that mother's allowance be continued, and I also allow M to make her own decision about employment. The next question is whether the mother's allowance should be allowed to be increased, and if yes, to what amount. From the legal principles that I have considered, there is no formula in calculating mother's allowance. It is inappropriate to consider the

amount with the income of what M earned before or with the expenses of an employed helper. I also reject M's calculation that a percentage of F's income should be used as calculation of the amount to be awarded. I disagree with M's submissions that the mother's allowance be increased as the standard of living of the F has increased. I do not form the view that F's standard of living has increased so substantially that mother's allowance should be increased accordingly based on the living standard of F. I shall use a broad brush approach, considering the reasonable needs of M in the circumstances, with reference to T's needs and budget as a whole. I accept that F in the present case may not be as wealthy as the father in *F v G* [2005] 1 FLR 261, and not at the same level as the father in *H v M* (also known as *F v M*) [2006] EWHC 3676 (Fam), but the earning and financial resources of F are much greater than M. F had submitted that he is able to meet any reasonable orders the Court shall make. Following *Re P* and *H v M*, I would adopt a broad brush approach in relation to the consideration of a reasonable budget for T, with M being her carer. M submitted that her needs are linked with T's needs, which I agree to a certain extent. However, the amount should be reasonable in the circumstances, considering the overall budget for T and the taking care of T. I will also consider how much had been awarded before, whether a reasonable increase is justified in view of rising price index, the reasonable needs of T and of M, and also criticisms on M's financial resources. Considering all the evidence as a whole, I find mother's allowance be increased by around, but not more than HK\$2,000. To summarise, the periodical payment to be paid by adding up the above is rounded up to \$53,000, comprising of :- Utilities of HK\$2,700 Household expenses of HK\$2,300 Food of HK\$13,000 Foreign domestic helper of HK\$6,000 Part time nanny of HK\$500 Car expenses of HK\$10,000 T's expenses of HK\$8,610, plus the undertaking provided by F. Mother's allowance of around, but not more than HK\$10,000. About the insurance M asks that F do purchase a life insurance policy to HK\$10 million pursuant to paragraph (b)(5) of the 2009 Order or alternatively F do pay M a sum of HK\$30,000 per month to maintain a life insurance policy for the value of HK\$10 million. I notice that in paragraph (b)(5) of the 2009 Order, it was an undertaking of F to purchase an insurance policy in the sum of HK\$3 million, with T being the beneficiary (in case F died before T reached 18 or finishes full time education). Undertaking should not be varied by the Court, as it is the voluntary agreement made by parties. I notice that in the 2009 Order, it was ordered that the Mei Foo Property was also secured for the payment. Considering the value of the Mei Foo Property, which is about HK\$7 million, free of mortgage, and considering all the circumstances of the case, even taking into account the raised periodical payment for T, I am of the view that the security of the existing life insurance policy, with the security of the Mei Foo Property, is sufficient for the security for payment to T. Therefore, M's request in relation to a life insurance policy of HK\$10 million or the monthly payment of HK\$30,000 to maintain such a life insurance policy is dismissed. Lump sum payment In the Summons, M asked for lump sum of HK\$960,000. In her Affidavit on 4 October 2017, she clarified and updated the amount of lump sum she asks for, which is now HK\$3,103,934.40. Evidence for the claim for lump sum is included in various affidavits of M (with the amount claimed underlined) :- In M's Affidavit dated 31 March 2016 [P1/93], M said she has been borrowing money from the bank

since 2013. Her friend knew that she needed some financial assistance and in 2014, a male friend gave her a hand and towards the end of 2015, her cousin started helping her by giving her some cash monthly to pay the debts and the expenses. She therefore asked F to pay a lump sum of HK\$960,000 for the incurring debts from maintaining T. In M's Affidavit dated 4 October 2016 [P2/479], she asked for taking into account the hospital fees and the costs of a part-time nanny, and therefore asked for a lump sum of HK\$975,572. In M's Affidavit dated 14 March 2017 [P2/577], she asked F to pay her back the sum of HK\$1,106,032 (immediate and non-recurring needs) as she had taken out a few loans and borrowed some cash from her cousin to meet the extra expenses in maintaining T. M further explained that the sum comprises of HK\$975,572 (being extra expenses for maintaining T in the last 2 years, HK\$12,000 (for part-time nanny), HK\$118,060 (for purchase of a second hand car) and HK\$400 (for car insurance). In addition, M said she had borrowed a loan of HK\$220,000 from Citibank on 7 March 2017. In M's Affidavit dated 16 March 2017 [P2/597], she clarified that the lump sum she asked for should be HK\$1,331,032, but not HK\$1,106,032 for the immediate and non-recurring needs for maintaining T (having included the Citibank loan and interests). In M's Affidavit dated 27 March 2017 [P2/617], she said as she did not have any cash, a loan of HK\$1,000,000 was borrowed from Freeway Finance Company Limited for current and future expenses, and M asked F to pay for all the debts and interests incurred. The sum of HK\$1,459,032 M asked for comprises of HK\$1,131,032, commission of HK\$24,000, interests of HK\$ 96,000 and lawyers fees of HK\$8,000. In M's Affidavit dated 17 May 2017 [P2/771], she asked for the sum of HK\$1,483,434.4, comprising of HK\$1,459,032 and HK\$24,402.4 (being a total of expenses incurred in moving in the Cox's Road Flat). In M's opening submission, she asked for a sum of HK\$2,728,934.4 (HK\$1,483,434.4 + HK\$1,245,500) . In M's Affidavit dated 4 October 2017 [P3/977], she asked for the sum of HK\$3,103,934, comprising of HK\$2,728,934.4, HK\$400,000 (money borrowed from her cousin) and HK\$75,000 (money to pay to Freeway Finance Company). F opposed to M's application and submitted that there is no evidence to show that the alleged loans, if they are even loans at all, had been used on the maintenance of T, let alone reasonably so. F said they could have been financial resources provided to M. During cross-examination, it is M's evidence that the liabilities incurred represent everything , ie. expenses not only for T, but also for T's half-sister, the family and M herself (such as holidays on her own). From the evidence and supporting documents from M, she is unable to distinguish and show the amounts incurred in maintaining T, so that the Court could consider and rule whether those amounts have been reasonably spent in maintaining T or whether those amounts are for the immediate and non-recurring needs of T. Having said the above, Mr. Chan suggested a practical way to consider reimbursement , that is, with the amount of variation that the court allows, the difference or shortfall be backdated and paid to M by way of a lump sum. I have considered parties submissions carefully. Even I accept that M had incurred liabilities and had borrowed loans from bank, friend and cousin, M has the burden to prove that those liabilities or expenses had been reasonably incurred in maintaining T. Simply showing the amount she had borrowed is far from sufficient. Having considered all the circumstances of the case, including the non-disclosure of M in relation to sufficient documents, and the

failure of her to provide more details of her friend or cousin, who had lent loans to her, I accept Mr. Chan's proposal. With the amount of variation that I have ruled above, I will also rule that the difference should be backdated and paid to M by way of a lump sum. With my ruling above that the periodical payment be increased to HK\$53,000, I accept that there is a shortfall in reasonably maintaining the child, and the expenses have reasonably incurred. On that basis, I rule that there could be backdate payment to M for those sums. The next question is when should the backdating start. It is F's case that the period of backdating should not go beyond March 2016, the date the Summons was taken out. M disagreed, she asks for backdating before the taking out of Summons in March 2016. The reason is that T had not been in good health and that was one of the reasons she did not take out the application earlier than in 2016. Having considered all the circumstances, including the limited supporting documents provided, I rule that the calculation of backdating by considering the short fall should start from the date of the Summons, ie. 31 March 2016, for a total of 36 months.

Conclusion

With the reasons aforesaid, I am of the view that M be released and discharged from the undertaking not to vary the sum of HK\$12,000 as stated in Section II (2) & (3) of the 2010 Order by Consent. I have analysed the reasons for granting leave to M to be released and discharged from the undertaking. As the sum of HK\$12,000 was an agreement by way of undertaking, it is not to be varied. However, when considering the welfare and interest of T, which should be one of the considerations of the Court in dealing with such applications, parties should reach agreement as to the reasonable amount to be paid to M, if M chooses not to live in the Mei Foo Property. Failing any agreement, an expert could be engaged in view of the market value of renting the Mei Foo Property or the Mei Foo Flat. In relation to the periodical payments for T, as explained hereinabove, I rule that the total sum is HK\$53,000 per month. The application for purchase of a life insurance policy or the payment of an additional sum of HK\$30,000 to maintain a life insurance policy for the value of HK\$10 million is dismissed. About the lump sum payments to be made, as I have ruled that the reasonable periodical payments for T is HK\$53,000 each month, there is a shortfall of HK\$18,000 per month $(HK\$53,000 - HK\$35,000) \times 36 \text{ months} = HK\$648,000$.

Orders

Regarding Section II (2) & (3) of the 2010 Order by Consent, I direct parties to agree on the market value and file a consent summons within 28 days in that regard, together with consequential directions, if any. Failing agreement on the market value, parties shall appoint a single joint expert in relation to the market price of the Mei Foo Property or the Mei Foo Flat. About the extra classes and extra-curricular activities, F's proposal of the undertaking is allowed, as follows :- Upon receiving any bills solely relating to T's extra-curricular activities and/or extra tuition class (the Bills), the Applicant shall deliver the original of the Bills to the Respondent's solicitors, Messrs. Chaine, Chow & Barbara Hung (CCBH) as soon as practicable. The Respondent shall

maintain a credit balance on the client's account of his solicitors, Messrs. Chaîne, Chow & Barbara Hung (CCBH) with a standing instruction to CCBH that, subject to the conditions set out in paragraph 3 hereinbelow, they shall make use of the said credit balance for direct payment to the payee of the Bills to settle the same in full within 28 days upon receiving the same (the Settlement). The Settlement is subject to the condition that the extra-curricular activities/extracurricular class attended by T and/or the charge thereof shall be reasonable and exclusively relating to T (the Conditions). If the Respondent considers the Conditions have not been fulfilled, he shall instruct CCBH to inform the Applicant in writing no later than 21 days upon receiving the Bills (the Notification). Upon issuing the Notification, the Respondent and/or CCBH will not be obliged to settle the Bills pursuant to paragraph 2 hereinabove unless and until the parties reach agreement subsequently and/or further order is made by the Court. It is ordered that :- Leave to M to be released and discharged from the undertaking about HK\$12,000 as referred to in Section II (2) & (3) of the 2010 Order by Consent. The F do pay M a lump sum of HK\$648,000 within 1 month. The monthly sum of HK\$35,000 as stated in paragraph 2 of the 2010 Order by Consent be varied to the effect that F shall pay M periodical payment for the benefit of T, a sum of HK\$53,000 each month commencing 1 April 2019 and thereafter on the 1st day of each month until T reaches 18 years of age or until T finishes her first full-time tertiary degree whichever is later. Liberty to apply for the implementation of the orders. Generally, costs should follow the event. In this case, M has to come to Court in order to get the increase in financial provisions. However, M could not get all she wants as claimed in her Summons. As the award of cost is in the discretion of the Court and in view of the result of the judgment, and the conduct and background of the parties, I am of the view that it is fair to order no order as to costs, including all costs reserved. This is a costs order nisi, which shall be made absolute within 14 days.

(Rita So) Deputy District Judge

The Applicant acted in person Mr Jeremy Chan, counsel, instructed by Chaîne, Chow & Barbara Hung, for the Respondent

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