

HONG KONG / JUDGMENT

K v. L

COURT

Family Court

DECIDED

27 December 2007

CASE / FILE NUMBER

FCMP18/2007

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

bjbj FCMP 18/2007 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDING NO. 18 OF 2007

IN THE MATTER OF Section 8 of the Maintenance Orders (Reciprocal Enforcement) Ordinance, Cap 188, Laws of Hong Kong BETWEEN Applicant Respondent

Coram: Deputy District Judge K.W. Wong in Chambers (not opened to public) Date of Hearing: 30th November 2007 Date of Written Submission from the Applicant: 12th December 2007 Date of Decision: 27th December 2007 DECISION

1. This is the application of Applicant wife through the Registrar of District Court (Registrar) acting by the Department of Justice to confirm a provisional maintenance order dated 15th September 2005 made by the High Peak Magistrates Court of the United Kingdom (the UK Provisional Order) pursuant to Section 8 of the Maintenance Orders (Reciprocal Enforcement) Ordinance, Cap 188 (the Ordinance). That order requires the Respondent husband to pay the Applicant a periodical payment of 500 per month as maintenance for their son J, now 13 year s old.

Background

2. The Applicant is an English and the Respondent a French. They met in Guernsey during the early 1990
- s. The Applicant was then working as a waitress and the Respondent a chef.
3. They maintained a stable relationship and subsequently married on 10th September 1994 in Old Glossop, England. The Applicant was then 26 and the Respondent 30. J, the only child of their union, now almost 13, was born on 12th December 1994.

4. When J was around three, the parties split up. Divorce proceedings were instituted by the Respondent in the Stockport County Court. By a consent order dated 11th August 1998, it was ordered, inter alia, that the Respondent's interest of and in their matrimonial home be transferred to the Applicant upon, inter alia, the Applicant undertaking to the court to procure release of the Respondent from his liability under the then mortgage. The decree absolute of divorce was granted on 22nd June 1998.
5. The Respondent later left England and worked as chef in various parts of the world including Chicago, United Arab Emirates and Barbados. He now works in Hong Kong as a hotel Executive Chef.
6. The Respondent later remarried in July 1999. Another son A was born of his subsequent marriage on 12th October 2003. He is now aged 4.
7. It was not in dispute that the Respondent paid voluntarily a sum of USD350 (around 177 a month at the exchange rate of USD2 to
- 1) to the Applicant as maintenance for J until January 2005. The Applicant said that she was told USD350 was about 10% of the Respondent's earning. According to the Respondent, the reason for stopping payment was that the Applicant refused to let him take J to France visiting the paternal family during vacation. The Respondent had made application to the English court for contact orders but claimed he was unsuccessful. He alleged that stopping payment was the best way to force the Applicant talking to him on J's contact. In response the Applicant made an application for maintenance order against the Respondent in England to compel payment.
8. At the time of the application, the wife said that she worked as a Customer Service Officer for a bank in Scotland earning a monthly income of 1,147.97 including benefits. Outgoings then totalled 1,079.49 a month. The house that the Applicant lived with J was the parties' former matrimonial home. It was valued at 140,000.
9. The Applicant said all the surplus money went to activities of J who was a busy boy. He played baritone, went to junior band and played rugby. He had already given up karate. She considered that J had a right to be maintained to the same level as if the Respondent lived with them. She admitted before the English magistrate that she did not know exactly how much the Respondent was then earning but believed that it would be in excess of 50,000 per annum. She considered 500 a month a fair sum.
10. In the reasons for granting the UK Provisional Order the learned English magistrate considered that the Applicant earned a modest living to maintain herself and her son. He considered J was entitled to benefit from the Respondent to enable him to make most of the opportunities that were open to him. He considered the request for 500 a month reasonable on the basis that the Respondent's earning was in excess of 50,000 per annum, and he so made the UK Provisional Order.

11. The learned magistrate also certified that the UK Provisional Order might have been opposed by the Respondent on the grounds that he could not afford to pay that sum. However, the magistrate said no information was placed before him as to the Respondent's financial circumstances. Procedure in Hong Kong
12. When the matter first came before this Court on 5th February 2007, Deputy District Judge Levy directed, inter alia, the Respondent to file and serve his grounds, if any, of opposition by way of affirmation together with a Form E (proforma financial statement under oath). The Registrar was at liberty to file a reply. The matter was then adjourned to 29th May 2007.
13. The Respondent filed and served his Form E on 21st February 2007 (Respondent's 1st Form E).
14. However, the Respondent later applied successfully to adjourn the hearing on 29th May 2007, and again the adjourned hearing on 28th June 2007.
15. The matter was subsequently restored before me on 14th August 2007. I then directed the Respondent to file and serve affidavit setting out how much he could afford to pay and the reasons why he could not afford to pay the sum ordered by the UK Provisional Order.
16. On 28th August 2007, the Respondent filed and served his affidavit, saying that he could only be able to pay HK\$5,226 per month as J's maintenance on, inter alia, grounds that he had debts to repay and, as far as I could understand from his affidavit, that he would like to reduce his debts before he was in a position to fulfil his obligations towards J.
17. At the hearing on 12th October 2007, as the Respondent had already admitted that he could afford a sum of HK\$5,226, which amounted to about 320 (exchange rate of about HK\$16 to
1) and that the substantive hearing date would be some time later, upon the invitation of this Court, the Respondent gave an undertaking to this Court to pay the Applicant a sum of 320 per month commencing 1st November 2007 until disposal of this application or discharge of such undertaking, whichever was the earlier. I also directed, inter alia, the matter be adjourned for substantive hearing and updated Forms E be filed and served by the parties on or before 20th November 2007.
18. At the substantive hearing, the Respondent told me that he had remitted 320 to the Applicant in early November 2007, though not on the 1st day of that month. Miss Chan of the Department of Justice, however, was in no position to confirm. She said that the UK authority had not yet replied. It was also noted that an updated Form E was filed and served by the Respondent on 20th November 2007 (Respondent's 2nd Form E). However, a belated, signed but unsworn Form E was filed and served by the Applicant (Applicant's Form E).
19. The Respondent did not oppose the filing of the Applicant's Form E out of time. He, however, would take issue the same being unsworn. The Respondent's Grounds of Objection

20. The Respondent was unrepresented at the substantive hearing. He made no written submission setting out clearly his grounds of objection. However, it is fair to say that he did not dispute his liability to maintain his son J. What he disputed was the quantum of such maintenance. His grounds of objection to the UK Provisional Order, after hearing his evidence and submission, are basically these: he was financially unable to maintain his son J at the rate of 500 a month; he queried what the reasonable maintenance for his son J should be? and the Applicant could have moved to a smaller house so that the Applicant could raise some money by this move for maintenance of J. Although he had once raised that he stopped the voluntary maintenance because the Applicant refused to let him take J to France, I believe the Respondent putting forth this as an explanation only rather than a ground of non-payment. Even though if he were to rely on this ground no doubt I would have dismissed the same for this is a totally unacceptable and unreasonable ground. 21 Since the UK court has certified only one ground, which is basically the same as the Respondent's first ground as aforesaid, question arises as to whether, in the light of section 8(3) of the Ordinance, this Court is precluded from considering the Applicant's other two grounds of objections. Furthermore it is also doubtful what procedure and principles this Court should use in exercising its jurisdiction under section 8 of the Ordinance. The Ordinance 22 The Ordinance is a statute containing elaborate provisions enabling maintenance orders made in countries, referred to as reciprocating countries and designated by the Chief Executive, to be effectively enforced against persons present within the jurisdiction of Hong Kong. It also facilitates enforcement of maintenance order made by Hong Kong courts to be enforced out of the jurisdiction against persons residing in these reciprocating countries. United Kingdom is one of such reciprocating countries designated by the Chief Executive for the purpose of the Ordinance. 23 Miss Chan of the Department of Justice has helpfully researched into the enactment history of the Ordinance by going to Hansard of Hong Kong Legislative Council. According to Hansard, the Ordinance was introduced by a Maintenance Orders (Reciprocal Enforcement) Bill in 1977 to replace the then Maintenance Orders (Facilities for Enforcement) Ordinance Cap.15 (Repealed Ordinance) which was based on the Maintenance Orders (Facilities for Enforcement) Act, 1920 in UK (1920 Act). The 1920 Act was later replaced by the Maintenance Orders (Reciprocal Enforcement) Act 1972 (the 1972 Act) which contained a more detailed treatment of the subject and enabled maintenance orders to be more effectively enforced between reciprocating countries. The Ordinance was enacted so as to come alongside the new 1972 Act in UK. 24 The Ordinance provides, inter alia, that before a maintenance order made in a reciprocating country can be enforced in Hong Kong, it has to be registered by the Registrar with the District Court. Once the order is registered, the order may be enforced in Hong Kong as if it had been made by the District Court and as if this Court had had jurisdiction to make it; and proceedings for or with respect to its enforcement may be taken accordingly: see Section 9 of the Ordinance. 25 The Ordinance also provides for a class of provisional orders. A provisional order is an order that has no effect and cannot be enforced unless and until it has first been confirmed by a court in a country where the person against whom the order is made resides: see section 2 of the Ordinance. The District Court is

empowered to confirm overseas provisional order for the purpose of their enforcement here: see section 8 of the Ordinance. The UK Provisional Order is one of such provisional orders requiring confirmation by the District Court before it can be registered and enforced against the Respondent. The Registrar is the prescribed officer under the Ordinance to apply to the District Court for confirmation of provisional orders. 26 In this confirmation application, the Registrar submitted, inter alia, the following documents which the Chief Executive had received under section 8(2) of the Ordinance: a document, duly authenticated, summarizing the evidence given in the UK; and a statement certified by the magistrate in England of grounds on which the making of the order might have been opposed by the Respondent under the UK Provisional Order. 27 Section 8 (2) of the Ordinance sets out what this Court should do when the Registrar makes the application for confirmation. It stipulates that: .the District Court shall

- (i) if the payer under the order establishes any such defence as he might have raised in the proceedings in which the order was made, refuse to confirm the order; and (ii) in any other case, confirm the order without alteration or with such alterations as it thinks reasonable.
28. Accordingly, if the Respondent is able to establish defence which he might have raised in the proceedings in UK, this Court should not confirm the order. Otherwise this Court shall confirm the provisional order, with or without alteration, depending on whether there is any reasonable ground for alteration. Section 8(3) and (4) of the Ordinance further stipulate as follows:
- (3) In any proceedings for the confirmation under this section of a provisional order, the statement received from the court which made the order of the grounds on which the making of the order might have been opposed by the payer under the order shall be conclusive evidence that the payer might have raised a defence on any of those grounds in the proceedings in which the order was made.
 - (4) For the purposes of determining whether a provisional order should be confirmed under this section, the District Court shall proceed as if an application for a maintenance order against the payer under the provisional order had been made to it.
29. It appears section 8(3) and (4) of the Ordinance concern the two questions which have been raised above, namely whether this court has a jurisdiction, in view of section 8(3), to entertain a ground raised here by the Respondent other than those certified by the learned UK Magistrate in his statement as aforesaid. In other words, whether the Respondent is precluded from raising a defence which was not included in the UK Magistrate's certificate; and what guidance this Court can derive from section 8(4) of the Ordinance in exercising its jurisdiction to confirm provisional order? First Question
30. Re Wheat [1932] 2 KB 716 was a case made under the 1920 Act. In that case a provisional order in favour of the wife made in South Africa was sought to be confirmed in England where the husband resided pursuant to section 4(1) of the 1920 Act. The court in South Africa certified certain grounds of defence in its statements of grounds under section 4(3) of

the 1920 Act. However, the husband raised some other grounds of defence which were not included in the South Africa's statements. When the husband lodged an appeal to the English Divisional Court, the magistrate hearing the confirmation application in England posed for determination of the appellate court of, inter alia, this question: whether he had jurisdiction to hear a ground of defence which was not included in the statements of grounds under section 4(3) of the 1920 Act. It is perhaps useful to reproduce section 4(3) of the 1920 Act here: At the hearing it shall be opened to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

31. So in *Re Wheat*, one of the issues that called for determination of the appellate court in England was the construction of the above provision: whether the second limb of the above English provision would serve to confine the jurisdiction of the confirming court to consider only grounds of defence certified by the South Africa court but not others.
32. In *Re Wheat*, Humphreys J had this to say towards the end of his judgment at p725 to 726: In our opinion, he [the English magistrate] was plainly right in so holding. The subsection makes the certificate conclusive evidence that the grounds stated therein are grounds upon which objection may be taken, but does not confine the possible objections to those grounds.
33. Although section 8(3) of the Ordinance is not exactly the same as the aforesaid English provision, in my judgment, it is similar to the second limb of section 4(3) of the 1920 Act. As such the construction of the latter is of assistance to the former. At first sight it might be thought that section 4(3) of the 1920 Act restricted the grounds of objection to those exclusively stated in the certificate. Yet the English court in *Re Wheat* construed that the said provision was not exhaustive as to grounds of objection. Now the first part of the said English provision is even absent in the Hong Kong provision. I simply do not see that its absence in the Hong Kong provision will render the Hong Kong provision more restrictive in scope than its English counter-part.
34. The construction of the said provision of the 1920 Act was upheld in *Harris v Harris* [1949] 2 All ER 318 as per Lord Merriman P at 321D to F of the said judgment.
35. The corresponding section 4(3) of the 1920 Act in the Repealed Ordinance was section 6(3). The construction of the latter was the subject of argument in a Court of Appeal case in Hong Kong: *Leong Fat Chee v Lee Miew Ling Alias Annie Lee* [1963] HKLR 760. The Court of Appeal in construing the relevant part of section 6(3) of the Repealed Ordinance which was identical to the 1920 Act, considered that the certificate did not purport to declare the grounds set out in that certificate exhaustive: per Creedon J in *Leong Fat Chee* at p765-6. The

learned judge's view was shared by the learned Hogan CJ.

36. Miss Chan of the Department of Justice has also fairly, and I think correctly, conceded that the Respondent is free to raise other grounds in this court. If the Respondent cannot establish the certified grounds and therefore bring himself outside the ambit of section 8(2)(i), his other grounds should be considered under section 8(2)(ii) of the Ordinance. By reasons of the above, I consider that the Respondent is free to raise grounds of objections other than the certified ones. Second Question
37. In *Horn v Horn* [1985] FLR 984, a maintenance order made in England under the provisions of the 1972 Act was registered in Gibraltar where the husband lived. The husband then applied to have the registered order varied and the Gibraltar court subsequently varied it. The varied order took the form of a provisional order which required confirmation by the English court again. In fact the Ordinance also contains similar mechanism for confirmation by the Hong Kong court of Hong Kong maintenance order varied in a reciprocating country: see section 10 of the Ordinance. In *Horn* the application to the English court was made under section 5(5) of the 1972 Act. The English court refused to confirm the provisional order. The matter then went on appeal. One issue in the appeal turned on the construction of section 5(6) of the 1972 Act which is similar to section 8(4) of the Ordinance.
38. In *Horn* the relevant parts of section 5(5) and (6) of 1972 Act had been cited. The learned Wood J had this to say: The relevant words of those subsections can be distilled as follows:
 - (5) Where a certified copy of a provisional order made by a court in a reciprocating country, being an order varying a maintenance order to which this section applies is received by the court in the United Kingdom which made the maintenance order, that court may confirm or refuse to confirm the provisional order and, if that order is an order varying the maintenance order, confirm it either without alteration or with such alterations as it thinks reasonable.
 - (6) For the purpose of determining whether a provisional order should be confirmed under subs. (5) above, the court shall proceed as if an application for the variation or revocation, as the case may be, of the maintenance order in question had been made to it. (7) It seems to me that the procedure can be by affidavits, discovery and, if necessary, questionnaire, to go with cross-examination if appropriate. (my emphasis)
39. In my judgment, the above construction also applies to section 8(4) of the Ordinance. Accordingly, this Court has a wide discretion in confirming a provisional order. This court shall apply the same yardstick, with regard to the principles and procedure applicable to maintenance applications made in Hong Kong, to confirmation application as if this Court is hearing an application made in Hong Kong against the Respondent for a maintenance order. I shall bear the above principles in mind whenever they are applicable in the determination of this application. The Evidence The Respondent

40. At the substantive hearing, the Respondent testified under oath and was cross-examined. In fact, apart from explaining that he did not receive any travelling allowance and therefore what he put down in his 1st Form E under that head (at page 14) was a mistake, he relied on his income and expenses as set out in his two Forms E, the relevant parts of which are basically identical. It is useful to set out the material parts under the heads of income, expenses and liabilities in the two Forms E below: Income Amount (HK\$) Basic salary 48,750 Bonus (average per month) 12,500 Housing allowance 20,000 Sub-total 81,250 Current Monthly Expenses Amount (HK\$) General Rent 24,000 Utilities 2,634.99 Food 7,000 Household Expenses 1,150 Sub-total: 34,784.99 Personal Meals out of Home Transportation 1,658 Clothing/Shoes 1,000 Personal Grooming (including haircut and cosmetics) 2,180 Entertainment/presents Medical/Dental Repayment of Debts 26,323 Sub-total: 32,379 Child (A) School Fees 3,800 Extra Tuition Fees Medical/Dental Entertainment/presents Clothing/Shoes Sub-total: 4,583 Total Monthly Expenses: 71,746.99 Liabilities Amount (HK\$) As stated in the Respondent's 1st Form E American Express 238,867 American Express Optima 19,866 Debts in France (Mother) 15,350 Debts in France (Aunt) 51,168 Total: 325,251 As stated in the Respondent's 2nd Form E American Express (blank) American Express Optima (blank) Debts in France (Family) (blank) Total: (blank)
41. In relation to the above, the Respondent's explanation could be summarized as follow: he was appointed as a hotel Executive Chef as from 3rd January 2006 with annual salary of USD75,000, tax free, together with a monthly housing allowance of USD2,564 and other fringe benefits including annual bonus, life insurance, family annual passage and retirement plan; he could not afford to pay J 500 a month now but was willing to pay so when his financial position got better. He had a lot of debts to repay now. He could afford only 320 a month now; the salary he received was in US currency. He simply used the exchange rate of 1USD to 7.8 HKD as conversion for the purpose of completing Form E; a sum equivalent to 3.2 month of his basic salary was received as bonus for last year; as regards expenses for personal grooming he said they included his wife's share, which amounted to 80% under that head; A's school fee was paid once every three month; he expected to incur HK\$30,400 for his vacation in the coming year; he got two AE credit cards and would use his cards to settle some of the food, clothing and household expenses; the credit card company charged USD600 per month as interest and therefore he could pay a minimum amount without settling all the outstanding in one go. He normally paid once a month at a sum above the minimum amount. As revealed in the AE credit card statement which the Respondent downloaded from the internet in February 2007 and exhibited to the Respondent's 1st Form E, he had paid a sum of USD3,000 and USD100 respectively for his two cards. As revealed in a second AE statement which was also downloaded from the internet in November 2007 and annexed to the Respondent's 2nd Form E, he said that he paid two sums respectively USD3,338 and USD35 for his two cards; the debts due to his family in France could be ignored now. He said he had attempted to repay but the family members said that repayment was unnecessary; he estimated his total indebtedness to credit card company being around HK\$232,000, which was arrived at by adding the two outstanding sums (USD26,804.64 +

USD2,939.72, @ 1:7.8) stated in the aforesaid second AE card statement; his wife was not working; and he agreed to adopt the rate of HKD16 to 1 for the purpose of exchange.

42. He said the insurance policy referred to in the Form E was in fact a benefit of his employment. It was a life insurance policy with no saving element. His wife was the beneficiary under the policy and the benefit would only be vested in his wife upon his death. Miss Chan of the Department of Justice did not dispute otherwise.
43. He also added that since the hotel he worked for was going to close down by the end of this year, he was served with notice of termination on 29th November 2007 to be effective by end of 2007. Because of his position in the company his employment would be extended by one month to end of January 2008. Although the Respondent expressed that it could not be said that he had officially got a new contract, he admitted that there was a real prospect he would get one soon. Although it would be at a higher position the terms of engagement were more or less the same as the present one. He would continue be staying in Hong Kong. He said he had an appointment to sign the new contract the Thursday following the substantive hearing i.e. 6th December 2007.
44. Although he admitted that he had a surplus according to the Form E of about HK\$9,500 (HK\$81,250 71,746.99), which was about 590, and was more than sufficient to pay J as ordered, he considered that he should be given a chance to pay 500 later so that he could save some money for his future.
45. The Respondent launched several attacks including the figures under the heads of the liabilities and income not tallied. He said the house, which the Applicant was now living was over 2,000 feet whereas his was about 1,188 feet. There was no reason why the Applicant could not move to a smaller unit so as to raise some money for J. On the other hand, the Applicant was now in co-habitation with a partner who earned about HK\$11,939 a month according to the Applicant s Form E. That partner should also make contribution to the living expenses as well. The Applicant
46. The Applicant s evidence in England had been summarized, authenticated and exhibited by the Registrar in his affidavit in support of this application. According to section 14 of the Ordinance, this evidence is admissible as evidence in these proceedings without further proof. The relevant parts of the evidence have been set out in the background above.
47. Although the Applicant s Form E is not sworn, the authenticity of the same is not challenged by the Respondent. Further, the Applicant had also sent a letter dated 6th November 2007 (November 07 letter) to this Court which I had given to the Respondent at the hearing for his comment. As the admissibility of evidence is not prejudiced by the other provisions of the Ordinance including section 14 thereof, and the Applicant is beyond the seas, I consider that it is open to this Court to consider all the evidence available to the Court, be it sworn or not, and the question is the weight, if any, to be attached to it.

48. The relevant parts of the Applicant's evidence as revealed in her Form E and the November 07 letter are as follows: she was now working one day per week for a bank in Scotland earning about 200 per month. She was now running her own business and drawing about 500 per month. She was also receiving Government allowance for J at the rate equivalent to HK\$3,606.3 for 4 weeks; her partner was supporting her financially. He paid all other living expenses which she had not listed in the Form E; and the property which she and J was living was their former matrimonial home at which J was living there since birth.
49. The monthly disposable income of the Wife is as follows: (200 + 500) x 16 + HK\$3,606.3 4 x 52 12, which is HK\$15,106.83, or roughly HK\$15,000.
50. Although the Respondent launched some attacks on the evidence of the Applicant, nothing really turned on her current expenses and therefore I accept them in its entirety. These expenses are as follows: Current Monthly Expenses Amount (HK\$) General Mortgage instalment 1,839.7 Utilities 4,323.4 Car expenses 2,282.9 Insurance Premia 458.84 Sub-total: 8,904.84 Personal Clothing/Shoes Personal Grooming Sub-total: Child (J) Extra Tuition fees Transportation to school Holidays Clothing/Shoes Lunches and Pocket money 1,133 Uniform Rugby, Tennis, Guitar Lessons Sub-total: 4,327 Grand Total: 13,877.84 Rounded up to: 14,000
Discussion The Respondent's Financial Capability
51. During the substantive hearing, the Respondent had been repeatedly asked as to whether he had double-stated his expenses. The Respondent denied despite his evidence was that some of his food, clothing and household bills were paid by credit cards. Accordingly the credit card repayment must also cover part of her current expenses under those heads. This fact is apparent from the AE card statements annexed to the Respondent's two Form E. In the statement annexed to his 1st Form E, it is revealed that he had repaid a sum of USD3, 000 towards one of his credit card and the corresponding card expenses in this payment period is USD346.65. Regarding the one annexed to the 2nd Form E, it shows a payment of USD3, 338 whereas the expenses are USD1, 719.73.
52. Furthermore, despite the allegations in the Respondent's 1st Form E that he paid a monthly sum of HK\$26,326 in settling his outstanding credit card debts, which stood at about HK\$258,733 (HK\$238,867 + 19,866) as at 20th February 2007, the outstanding of his credit cards remained at USD29, 744.36 (USD26, 804.64 + USD2, 939.72) as at 20th November 2007: see the 2nd AE statement. This is equivalent to about HK\$232,006. This figure represents a surprisingly small reduction of about HK\$26,700 over a period of 9 months. In contrast, the repayment during this 9-month period amounted to about HK\$236,934, which if fully applied for debt repayment, ought to have substantially reduced, if not extinguished his credit card debts. Even taking into account of the alleged high interest rate of USD600 (about HK\$4,680) per month charged by the credit card company, the drop in the credit card debt is just too small.

53. As such, the logical inference is that either the Respondent has not applied the sum of HK\$26,326 towards reduction of his debts every month as alleged, or he and his family have grossly over-spent beyond what he has stated in the Form E so that only a small fraction of such repayment goes to reduce debts. In the circumstances of this case, particularly in light of the matters stated in preceding paragraph, I incline to believe that it is the latter case. It should be noted HK\$26,326 is not small money. It amounted to almost one-third (32.4%) of his average monthly income, and over half (54%) of his basic salary!
54. By reason of the above, I have no hesitation to conclude that the Respondent has or ought to have more than sufficient means and ability to maintain his son J beyond the sum of 500 (about HK\$8,000). The question is a matter of priority in spending. I come to this conclusion despite the fact that the Respondent will be losing his present job because the evidence is that he will be obtaining a new employment in Hong Kong with terms more or less the same as the present employment. If the Respondent exercises better control over his spending I do not think he will have any problem to have his debts fully paid off in the near future. In fact even according to the Form E filed by him, he has the ability to pay up to a sum of 590 per month without any adjustment to his expenses as stated by him: see paragraph 44 above. I am prepared to allow the Respondent to retain out of his monthly expenses a sum of about HK\$ 25,000 (and not HK\$26,323 as alleged) for repayment of his debts and perhaps to save for rainy days. That being the case, I pitch the Respondent's financial ability to maintain J up to a sum of 673 per month arrived at by adding 83 to 590. 83 is in turn arrived at as follows: HK\$26,323 HK\$25, 000 16 = 83.
55. The question is whether I should confirm to the extent of 500 per month, or to a less extent taking into account of the other two grounds of the Respondent. Selling of the former matrimonial home
56. I now deal with the other two grounds in the reverse order. I do not consider that the third ground of the Respondent justifiable. The request for maintenance is to make the Respondent shoulder his responsibility to maintain his son, which responsibility the Respondent does not deny. The maintenance is also to enable J, as pointed out by the learned English magistrate, to benefit from his father so that J can make the most of the opportunities that are open to him. According to the available evidence, there is really no urgent need that the property be sold to meet any immediate needs of J. The Respondent has more than sufficient means to maintain J up to
500. In any event, the change of living place means upsetting the status quo and I do not think it is to the best interest of J unless with good reasons, which are lacking here. Reasonable Requirements of J
57. As revealed in the evidence of the Respondent, he did not challenge the spending of the Applicant or J. What he would like to query is that the partner with whom the Applicant is cohabiting should also contribute to the household expenses. The Applicant had explained that her partner was now contributing to some extent and therefore the expenditure parts

which she had not filled up were in fact paid by her partner. It is obvious from the Applicant's Form E that essential items such as food, household expenses, meals out of home, entertainment, holidays, medical, etc are all omitted. I have no hesitation to accept the Applicant's evidence that her partner has already made contribution towards her expenses otherwise such expenses should have been reflected in the Form E. The concern of the Respondent has been addressed. I accept what have been stated in the Applicant's Form E as an accurate current monthly expenses of the Applicant and J. I just want to add that these expenses are very modest and basic.

58. J and the Applicant lived together and therefore part of the Mortgage instalment payment, utilities and car expenses should also be regarded as J's expenses. An equal split is reasonable. Accordingly, Jack's monthly expenses are: HK\$4,223, under the heads of mortgage instalment payment, utilities and car expenses (HK\$1,839.7 + HK\$4,323.4 + HK\$2,282.9 = HK\$8,446, then 2); and HK\$4,327 being his expenses as revealed in the Applicant's Form E.
59. The reasonable requirement of J is therefore HK\$8,550 (HK\$4,223 + HK\$4,327), which is roughly 534 (at the rate of 16:1). If the Applicant and the Respondent are to share the expenses of J equally, the Respondent's share should be at least 267.
60. The average monthly income of the Respondent is HK\$81,250, which is more than 7 times that of the Applicant (about HK\$11,250 or 700). The evidence is that there will not be any material changes in the Respondent's income though he will be switching to another job because of redundancy. On the other hand, there is no evidence showing that the Applicant's income will improve in the near future. I must say that she is living with J on a quite low income. Given the substantial difference in their earnings, I do think it unreasonable to ask the Respondent merely to pay a sum of
267. Given the income level of the Respondent, J should be entitled to be maintained at a level far better than he is now.
61. J is now at his teenage and should, like others, have immense curiosity about this interesting world. He should be given as many opportunities as possible to explore his interest, receive training, expose himself to all possible challenges that he may wish to pursue and to establish himself. He is at an important station of his life but he is in necessitous circumstances. His mother only earns a modest living but his father's income is high comparatively speaking. As rightly pointed out by the learned English magistrate who granted the UK Provisional Order, J should be entitled to benefit from his father so that he can make most of the opportunities that are open to him. As analyzed above, the Respondent has an ability to maintain up to
673. After contributing his share of 267 towards J's present expenses, it is fair that the Respondent should split the remaining and pay over at least half share for J's benefit. As such a sum of 500 ($267 + 406 \div 2 = 470$, rounded up to

- 500) as maintenance for J in the circumstances appears very reasonable.
62. The UK Provisional Order was dated 15th September 2005. Section 9(7) of the Ordinance provides that the sums payable under the provisional order, if to be confirmed, shall be deemed to have been payable in accordance with the order as from the date on which the sums are required to be paid. Under the same provision, this Court may, if it decides to confirm a provisional order under section 8, confirm the same to be payable under a later date as this Court may specify. In this particular case, the Respondent was only at his present job as from 3rd January 2006. I consider it fair that the UK Provisional Order shall be confirmed as from 3rd January 2006, the date on which the Respondent's present employment commenced in Hong Kong, instead of from 15th September 2005, and I do so order. Conclusion, Costs and Order
63. The Applicant is successful in confirming the UK Provisional Order against the Respondent. I see no reason why the Applicant should not be entitled to costs of the proceedings. As the application is taken out by the Registrar for the Applicant acting by the Department of Justice under the statutory scheme of the Ordinance, the Respondent should pay the Registrar costs of the proceedings, to be taxed, if not agreed.
64. To conclude, I make the following orders: the UK Provisional Order be confirmed to the extent that as from 3rd January 2006, the Respondent do pay the Applicant for the benefit of J 500 pound sterling monthly; the undertaking to the Court to pay 320 to the Applicant is accordingly discharged; and iii) there be a costs nisi that the Respondent do pay the Registrar costs of these proceedings, to be taxed, if not agreed, such costs nisi be made absolute if no application is made to vary the costs order within 14 days from today. (WONG King Wah) Deputy District Judge The Applicant applied through the Registrar: Represented by Miss Jess Chan, Government Counsel of the Department of Justice The Respondent: Acting in person, present - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk)bU"0F8 |! &<]e5@L @ ZNh` F"op*Vv zC|~]e5@)bU" Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

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

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=59764

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/k-v-l-2007>

Prepared on 25 October 2026 · Esheria