

HONG KONG / JUDGMENT

KWP v. LCM

COURT

Family Court

DECIDED

30 May 2014

CASE / FILE NUMBER

FCMC1567/2006

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bjbj FCMC 1567 / 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 1567 OF 2006

BETWEEN KWP Petitioner and LCM Respondent

Coram: Her Honour Judge Sharon D. Melloy in Chambers (Not open to public) Dates of Hearing: 3 and 4 December 2013, 4 and 26 February 2014 Dates of written submissions: Received 10 and 13 March 2014 Replies to written submissions: Received 21 and 31 March 2014 Date of Judgment: 30 May 2014

J U D G M E N T (Ancillary Relief)

Introduction

AUTONUMOUT This judgment followed a four day trial to determine the issue of final ancillary relief.

2. As will be seen below the main issues in this case are whether or not the former matrimonial home should be regarded as being held on trust for the parties and their two sons or whether, as would be more normal in the circumstances, it should be regarded as being a simple matrimonial asset. In the event that the property is to be sold there is also disagreement with respect to the timing of the sale. Lastly the petitioner wife alleges that the husband has dissipated part of his pension and that this should be taken into account when dividing the net proceeds of sale. Background to the litigation

3. This trial has been a very long time coming. The petitioner wife originally issued proceedings for divorce on the 27 March 2003 on the grounds of the husband's unreasonable behaviour. Those proceedings were subsequently discontinued and in February 2006 the wife issued a fresh set of proceedings based on two years separation. Although I queried why it had taken such a long time for the matter to come to trial no satisfactory answer was received. According to the court record the issue of custody was initially in dispute. On the 24 April 2006 an order was made for split custody with the elder child remaining with the wife and the younger child going to the husband. A Financial Dispute Resolution hearing was held on the 14 June 2006. It was not successful. There were then subsequent hearings in relation to a possible variation of custody. All matters subsequently appear to have been held in abeyance until 2013 when the issue of ancillary relief returned to court for final determination. It should be noted that according to the court order of the 14 February 2006 the costs of the earlier suit were reserved to be dealt with at the ancillary relief hearing. The decree nisi was granted on the 28 February 2006. There has been no decree absolute.
Background to the marriage
4. The parties married in March 1987 and separated in December 2002, when the wife moved out of the matrimonial home. On the face of it then this was a marriage of nearly 16 years duration. The parties are now both 50 years of age. There are two children of the family both boys the eldest son who is now 24 years of age and self supporting and the youngest who will be 20 years old in July 2014. The main dispute centres on the younger son's education plans and how that impacts on the arrangements for the sale of the former matrimonial home. Both children are now living with the father in the former matrimonial home.

Issues

5. It seems to me that the following issues now fall to be determined by this court:- Are the parties holding the matrimonial home on trust for the family of four in equal shares? If not how should the matrimonial home be regarded? What is the computation of assets available for distribution? When should the former matrimonial home be sold? Has there been any dissipation of assets and how, if at all, should that be taken into account? Bearing in mind all of the above how should the net proceeds of sale of the former matrimonial home be divided? In other words, should the yardstick of equality be departed from and if so on what basis? The law on Ancillary Relief
6. The Court of Final Appeal's decision in LKW v DD (FACV no 16 of 2008) 13 HKCFA 537 sets out the approach that the lower courts should now take when determining final ancillary relief.
7. Mr Justice Ribeiro PJ reiterates that there are four underlying principles that should guide ancillary relief proceedings namely fairness, the absence of discrimination, the upholding of the concept of the yardstick of equality and the rejection of a need for a minute retrospective investigation of the parties' finances.

8. In addition he identifies a four step approach to be adopted in an ancillary relief trial which if I may I will summarize as follows:- The identification of the assets An assessment of the parties financial needs (see below) Whether or not the sharing principle should be adopted? Whether or not there is a good reason to depart from an equal division of the assets?
9. The s.7 factors are largely dealt with within this general framework. They are:-
 - (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say-
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
 - (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
10. Although there was initially some dispute about the assets available for distribution and in particular the husband s allegation that the wife was the legal and beneficial owner of a further property, this line of argument was not pursued at trial. Thus it is accepted that the only matter presently in dispute relates to the timing of the sale of the former matrimonial home and the basis upon which the net proceeds of sale are to be divided. Open Proposals
The wife s open proposals
11. The wife set s out her revised and final open proposal in a document called the Petitioner s Supplemental Submission/Revised Open Proposal dated the 4 December 2013. In that proposal she states as follows:- Following the Petitioner s Submission filed on 30th November 2013, the Petitioner originally proposed that the matrimonial home, namely, Flat X, XX Floor, Y House, C Court (Block Z), Tsing Yi, New Territories (the MH) be sold and the net sale proceeds be divided between the Petitioner and the Respondent. As for the entitlement of the sale proceeds, since the Respondent holds out that he has no ready cash to pay the Petitioner for her share of the pension dissipated, the Petitioner respectfully ask the Court to take this into account and grants a greater share of the sale proceeds of the MH

to the Petitioner. The Petitioner was informed of the Respondent's offer yesterday which included a postponed sale of the MH, the Petitioner would like to refine her offer as follows:- The MH be not sold until 31st August 2015 and the Respondent together with the younger son be continued to live in the MH; Unless otherwise agreed by the parties, the MH shall be sold for a consideration of not less than HK\$3,085,000.00; The net sale proceeds after deducting premium payable to Hong Kong Housing Authority, shall be divided between the Petitioner and the Respondent as follows:- 60% be to the Petitioner; and 40% be to the Respondent. The husband's open proposals

12. There was initially some difficulty with the Husband's open offer because the solicitors for the husband had not produced their clients open proposals prior to the commencement of the trial nor were they willing to limit their cross examination to the issues in dispute. On the 4 December 2014 the following document was produced:- NO PROPOSAL OR AGREEMENT TRIAL BE DISPOSED OF BY THE TRIAL OF. One issue: Order for the sale of MH It only emerged yesterday (3/12/2013) that your Hon. Was under the impression that. the only issue in this case was order for sale : hence the restriction of evidence on any other issues or matter of this case I would like to clarify that this is not so. Petitioner is entitled to and still claims all the relief she pleaded in the Prayer of her Petition. Petitioner has not chosen to relinquish all her relief claimed. Indeed she had done so by presenting to the court all the evidence in writing in the 6 volumes of the agreed bundles filed in Court AND further expanded and supplemented by the oral testimony given yesterday. It is respectfully submitted that. Respondent be given freedom to adduce his evidence or I in my cross examination There the court record would have all Petitioner's evidence on all the points of her case while there would be none from the of the Respondent. An application for an Order for sale cannot be treated in isolation excluding all other evidence. It is not an usual run of the mill application, particularly when the property has always been the MH of the parties and the children of the family. To Petition, MH is only an asset. To Respondent and the children it is a roof over their heads. This Honourable Court must enquire into all the circumstances to see if an Order for sale would be justified. MH is trust asset having been purchased on trust for Petitioner, Respondent, and the children they were to have and in contemplation of their then forth coming marriage. Accordingly an Order for sale of MH, a trust asset, will adversely affect the beneficial interests of the beneficiaries, viz, Petitioner, Respondent and each of the two children. In seeking an Order for Sale, Petitioner should have complied with the Matrimonial Causes Rules applicable thereto and proceed on the procedure laid down therein. The applicant, Petitioner, has not done so. If an order should be made without notice or regard to the children of the family, it might provide ground for further litigation on their parts leading to the setting aside of any such order.
13. For the avoidance of doubt it seems to me that this approach was singularly unhelpful and contrary to Practice Direction 15. 11 which states at paragraph 11 as follows:- Statement of Open Proposals Unless otherwise directed by the Court, not less than 21 days before the date fixed for the final hearing of an Application for ancillary relief, the Applicant shall file with the Court and serve on the other party to the Application a concise statement setting out the

nature and amount of the orders which he or she proposes to invite the Court to make; Not more than 7 days after service of a statement under Paragraph 11(a) above the Respondent to the Application shall file with the Court and serve on the applicant a concise statement in answer setting out the nature and amount of the orders which he or she proposes to invite the Court to make; No privilege shall attach or be capable of attaching to either of the statements referred to in Paragraph 11(a) or (b) above. In all probability this stance is likely to have led to the trial taking longer than it should have done. It should also be noted that notwithstanding this document and the husband's solicitor's arguments in that respect, the husband's solicitors limited their closing argument to the issue of the trust, timing of the sale of the former matrimonial home and the alleged dissipation of assets.

14. In the husband's last Form E dated the 11 September 2013 he stated that he was seeking the following:- The Petitioner do pay the maintenance for me and the child, LHC. The Petitioner do pay the driving training fees (medium goods vehicle, taxi, tour bus, and articulated vehicle) for the child, LYC. The Petitioner do pay the living expenses and school fees for the child, LHC (5,000 + 16,000 + 21,000 + 4,800 = HK\$47,400) (2012-2014). These points were not pursued at trial. The assets
15. For the avoidance of doubt, according to the parties updated Form E's, the only joint asset of any real value remains the former matrimonial home. Before the commencement of the trial the parties agreed that the property, which was purchased under the Home Ownership Scheme, shall be valued at HK\$3,085,000. The net value, after payment of the premium etc is estimated at HK\$2,085,151.50. There are no other assets of any real value. The husband is presently unemployed. He has minimal savings and one life insurance policy. He is living with his new partner who appears to be in gainful employment. He says that he owes her money. He receives a small government pension of just over HK\$4,000 per month.
16. The wife for her part is the Vice Principal of a Kindergarten earning HK\$28,775 per month. She holds 3 life insurance policies and has two MPF funds totalling approximately HK\$188,000, which she cannot touch until she retires. She allegedly has debts of approximately HK\$600,000 including HK\$400,000 said to be owed to her mother. She has no other assets of any value.
17. I must now turn to consider the issues, the law and the parties evidence as set out in their Form E's, together with their supporting affirmations and their answers to the questionnaires raised. Further I will rely on each party's oral testimony. Discussion Are the parties holding the matrimonial home on trust for the family of four in equal shares? If not how should the matrimonial home be regarded?
18. The husband's arguments in this respect were unconvincing. I also agree with the wife's solicitor that it seems to have been an argument that developed during the course of the litigation. In the husband's last affirmation dated the 11 August 2006 he said as follows:- Matrimonial Home I had to wait for 3 years before we got married because the Petitioner required that I must purchase a flat first and convinced me such a flat would provide

security not only for ourselves but for the offsprings we planned to have. Accordingly the matrimonial home hereinafter mentioned was purchased with the intention and purpose of holding it on trust for ourselves and each of the children of the family. I worked hard and lived frugally during those 3 years before marriage to save up enough money to pay for the down payment of a flat and to qualify for the Home Ownership Scheme (When I purchased the matrimonial home under HOS in December 1987, I paid every cent for it and the attendant legal costs stamp duty and disbursement and subsequently all the monthly mortgage repayments.

19. This was a position that the husband maintained during the trial. With respect this is no different from most married couples, who purchase a property with a view to it becoming a home for both themselves and any future children that they may or may not have. This general intention does not in my view create an enforceable trust instrument. To do so would be to undermine the whole basis of matrimonial law.
20. In her closing the wife also made the following points:- Whether the alleged common intention of trust for 4 persons really existed? The Respondent tried to advance a case of trust in support of his proposal to have the sale proceeds of the MH to be divided into 4 shares, i.e. for the Petitioner, Respondent and 2 sons (instead of 2 shares for the Petitioner and Respondent as proposed by the Petitioner). At the hearing, the Petitioner had pointed out that the argument of trust was never mentioned in the Respondent's Chinese Affirmation of Means dated 10th October 2003 when the Respondent was told to give evidence in support of his claim of ownerships / interest / rights of the MH. As for his share of ownership, it was only stated that, Myself 100% (All mortgage repayment and funding were from me) . [1:B:44-45 /49.9-49.10 (English translation)] It was clear from this 2003 document that it was Respondent's view that since he (allegedly) paid everything, he is entitled to 100% of the share of the ownership of the MH. Nothing on the issue of trust nor preserving MH for children was mentioned. It was only after the filing of many affirmations that the idea of holding the MH on trust for 4 persons of the family first came about in the 5th Affirmation of the Respondent filed on 11th August 2006 [1:B:93, para. 26]. Further, the Respondent attempted at trial, to advance a case that the idea of holding the MH on trust for the family of 4 persons was well rooted even before the marriage / acquisition of the MH. The Petitioner submitted that this cannot be the truth. The Petitioner clearly denied the so-called trust in both her affirmation and her evidence in Court. She never planned in advance to have children and at the time to purchase of the MH, the children had not yet been born. It would not be possible that the MH was to be held upon trust for the children who did not at that time exist. [Lines N-P, p.28 & Lines N-P, p.29, 1st Transcript] Further, at the trial, the Respondent attempted to perfect his case again by giving evidence in Court on how the alleged idea of holding the MH on trust for the children came about and how the same was communicated to the Petitioner. However, these particulars were never mentioned in his 2003 Chinese Affirmation of Means. The Respondent then suggested that at that time Respondent was not legally represented and on cross-examination, Respondent repeatedly said that even if the idea of trust was not mentioned in his 2003 Chinese Affirmation of

Means, it does not mean that the intention of trust does not exist. This cannot be accepted. The Petitioner will ask the Court respectfully to consider the followings:- If the idea of trust for family of four were so deep rooted, the same would not have omitted in the every first 2003 Chinese Affirmation. When the Respondent cross-examined as to the circumstances how the alleged idea of trust came about, e.g. years he had to wait in order to, allegedly, save up enough money for the purchase of the MH, he gave confusing answers. It was stated 3 years in his affirmation but 4 years when he gave evidence in chief and cross-examination in Court. Mostly importantly, during examination in chief, although initially he gave evidence there was so called a joint intention; he later stated in his chief examination that he was the one who had been advocating to his sons that the MH would be left to them over the years. [Lines H-L, p.31, 2nd Transcript]. His said answer was also repeated on cross-examination (and examination by the Court): the Respondent admitted that it was only his intention but not a common intention of both Petitioner and Respondent to have the MH left to his sons. The Petitioner also submits that the details of how the MH is to be held on trust for 4 persons was largely given by the Respondent in Court during his examinations. None of the particularity of how, when and in what circumstance of the alleged common intention of Petitioner and Respondent were ever placed in Respondent s affirmation evidence. And not to mention, the Respondent s evidence on the said issue was contradictory. The Petitioner submits that it was an attempt of the Respondent to perfect his case and the so-called common intention to hold the MH on trust for 4 persons of the family simply does not exist. It was an excuse by the Respondent to exclude the Petitioner s interests of the MH. In view of the above, the Petitioner respectfully submits that the Respondent s case of holding the MH on trust for 4 persons of the family is not believable and cannot be maintained.

21. With respect I agree. I am therefore proceeding on the premise that there was no such trust and that the matrimonial home should be regarded as being a jointly held asset of the parties only. What is the computation of assets available for distribution?
22. As indicated above there are no other joint assets of any value save for the matrimonial home. The wife does however hold an MPF fund in her sole name which was valued at approximately HK\$188,000. When should the former matrimonial home be sold?
23. This is the central dispute between the parties. The husband says that the former matrimonial home should not be sold until September 2019, whereas the wife says that it should be sold in August 2015.
24. The basis for this is that the husband argues that it will take that long for the son to complete his undergraduate degree in banking and finance (or something similar) at A University.

25. Previously the son was enrolled on an Advanced Diploma course in Business Studies (Banking and Finance). Unfortunately he failed the Putonghua exam and was not therefore able to continue to take the second year of the diploma course. He retook that exam in January of this year and passed it. He will therefore be able to resume his studies in September 2014. In the meantime he is not working or studying, although he is also apparently interested in the performing arts and particularly in singing and magic !!
26. The wife also pointed out that the son has a criminal record including a shoplifting offence, which seems to me to make a career in finance somewhat unlikely. In any event it is the husband's case that the son will need to complete the diploma and then take a four year degree programme. Thus he argues, the former matrimonial home should not be sold until September 2019 i.e. in 5 years time. He says that he will take that long for the son to complete his studies and that he will not be able to afford to support the son financially otherwise. This is a compromise on the husband's part. Originally he asked that the matrimonial home not be sold for 8 years.
27. The wife for her part says that she is willing to similarly compromise so that the former matrimonial home is not sold until after the son completes his diploma. Thereafter she says that he should be in a position to work and to be self supporting and self reliant .
28. The wife also points out that the son should be able to complete a degree course within two years once he has completed the diploma course successfully. This is disputed by the husband.
29. However if one looks carefully at the A University brochure it seems clear that what the wife says in this respect is correct. Normally only sub-degree (SD) graduates/final year students (except for those who entered directly to the final year of SD programmes) will be eligible for admission to senior year places (i.e. Year 3# of the 4-year curriculum for the 2014 intake). Only under very exceptional circumstances that SD Year 1 students be specially admitted to Year 2# of the 4-year curriculum. In this connection, SD Year 1 students are encouraged to complete the SD study first for future articulation to senior year places. Applicants holding other academic qualifications will be eligible for admission to Year 1 of the 4-year curriculum.
30. Thus in normal circumstances if a student successfully completes a sub degree programme such as an advanced diploma course as here, then he will then be admitted to year 3 of the 4 year degree programme. Thus if all goes according to plan the younger son should be able to complete his undergraduate degree by August 2017.
31. Bearing all of the above in mind it seems to me that in order to give the son the very best chance in life that it would be optimal if the sale of the former matrimonial home could be delayed until September 2017. This will ensure that the son has a roof over his head while he completes his studies and, if the husband is to be believed, that the husband is then able to support him financially during this period. Even if that is not the case the son should be able to avail himself of either a government grant or student loan. Thus it seems reasonable to

me that the former matrimonial home should not be sold until September 2017. I should add that there will be no extension of time if the son fails further exams or if he decides contrary to the information received from A University to try to enter the university course at year 1 instead of year 3. I should add that in making that order I am also cognizant of the fact that the wife is only 50 years of age and that it is unlikely that she will be able to retire for some years yet certainly not before September 2017. Has there been any dissipation of assets and how, if at all, should that be taken into account?

32. The husband does not dispute the fact that he gambled away more than half of the lump sum that he received on retiring from government service. On the 3 September 2003 he received the sum of HK\$902,255.36. Of that he used HK\$398,386.27 to repay debts leaving a remaining sum of HK\$503,869.09. In relation to that remaining sum he said as follows in his affirmation of the 11 August 2006:- Trading in shares I did not and still do not have the habit of gambling. I worked very hard to make money: at times doing more than one job at a time other than my job with Government, even menial jobs as labourer at container yards (moonlighting) and lived frugally. However, the money I made could not catch up with the rising living expenses and mounting debts. I have been in debt since I got married. To break out of my financial strait, I had to resort to other means to maximize the money I made or saved. To such end, I traded in shares in the stock market. Unfortunately, the final result was that I suffered losses. I would refer to my account No. XXX-XX-XXXXX-X with Shanghai Commercial opened for the trading of shares and bank statement marked 8(a)(1)(i) and 8(a)(1)(ii) supplied under my Particulars filed on 14/6/2003. Casinos Macao In the same spirit and for the same end aforesaid and as an alternative to trading in shares aforesaid, I went to Macau to play in the casinos there with the intention of winning enough money to finance the purchase of a new flat (which the Petitioner had been clamouring for) before I could try to amend my relationship with the Petitioner and reinstate our marriage. At the time, it seemed to me that both venues, the stock market and the casino, were common in nature in that they both offered an option to augment one's wealth in a short time although differing from each other only by the means of achieving the same end. Unfortunately, I lost all my money. I returned to Hong Kong intending to end my life. I changed my mind, only on my mother's plea that she did not want to lose another son as she had lost my elder brother who took his own life.
33. The wife does not ask that this sum be added back into the computation of available assets for distribution. Instead she argues that this is a reason to depart from the yard stick of equality and that given this she should receive 60% of the net proceeds of sale of the matrimonial home. The law on the dissipation of assets
34. The law on dissipation is well established. For the avoidance of doubt please note the following section of Rayden in that respect: If one or both of the parties have by their dealings with the assets enjoyed by the family severely depreciated or destroyed those assets, this is a matter to which the court might properly have regard in the award that is made. It might be appropriate to add back the value of the asset lost or diminished in value

to the balance sheet of the defaulter's assets. (Rayden 18th edition, para 16.80) As I have said the wife does not seek an add back. Bearing in mind the above how should the net proceeds of sale be divided? In other words, should the yardstick of equality be departed from, and if so on what basis?

35. If the wife were to receive 60% of the net proceeds of sale she would receive HK\$1,251,090 as against HK\$834,060 for the husband. In other words she would receive an additional sum of just over HK\$400,000. In the context of this particular case that is a considerable amount of money. If the parties were to receive half each, then they would each receive a sum of approximately HK\$1,042,575.
36. I am though mindful of the fact that the wife should be recompensed in part for the dissipation of the husband's pension and that this is an appropriate case in which the yardstick of equality should be departed from. I will therefore order that the wife shall receive 55% of the net proceeds of sale or approximately HK\$1,146,833. The husband will receive the balance of approximately HK\$938,318. Thus the wife will receive just over HK\$200,000 more than the husband. In making this order I have also taken into account the fact that the wife has at her disposal a MPF fund of approximately HK\$188,000, although most of that sum will have accumulated post separation. I am also cognizant of the fact that the husband has lived in the property rent free whereas the wife has had to pay rent. All in all however I am satisfied that this is a fair disposal of the matter. The section 7 factors
37. I have largely dealt with these factors in the context of the general discussion above. However for the avoidance of doubt I will reiterate as follows:- the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
38. The husband is not currently working and is in receipt of a small government pension of just over HK\$4,000 per month. He is living with his partner who is in gainful employment. He clearly has some earning capacity but one that he is not actioning at the moment. He previously worked in a number of different capacities in addition to his job with government as an assistant officer including inter alia working as an assistant dog trainer. The wife for her part is now working as a Vice Principal of a Kindergarten earning HK\$28,775 per month. The financial resources of each are limited and are unlikely to improve in the future. As stated above the only significant asset is the former matrimonial home. the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
39. Both parties need sufficient money in order to maintain themselves into retirement. The husband has argued that he needs to remain in the matrimonial home until the younger child has completed his tertiary education and that he has certain obligations in that respect. I have accepted that in part. As indicated above however I am also conscious of the fact that the younger son may also be able to avail himself of government grants and loans in order to help him fund his studies. the standard of living enjoyed by the family before the

breakdown of the marriage;

40. The standard of living enjoyed by the family was that of a normal grass roots family. the age of each party to the marriage and the duration of the marriage;
41. The parties are both 50 years old. They were married for nearly 16 years. any physical or mental disability of either of the parties to the marriage;
42. There are no physical or mental disabilities that need to be taken into account when determining the matter. the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
43. I accept that both parties made a valid contribution towards the family, both in terms of a financial contribution and in terms of their care for the children. in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
44. I have taken this into account as set out above. Costs
45. Given that both parties are legally aided each side has submitted that there should be no order as to costs. I have some difficulty with that proposal given the way in which these proceedings have progressed. Nonetheless I will make an order nisi to be made absolute in 14 days time that there be no order as to costs of the ancillary relief proceedings. In doing so I would add that it seems to me that this is a case that could and should have settled. The costs are completely disproportionate to the level of assets involved. This means that after the legal aid statutory charge has taken effect that there will be very little money left for either side. The wife s Form H dated the 24 February 2014 puts the wife s costs, prior to legal aid taxation at HK\$496,300, whereas the husband s costs are even greater at an estimated HK\$695,000. This is a tragedy for the parties and one that could perhaps have been avoided.
46. In so far as the costs of the original divorce suit are concerned I will also make an order nisi to be made absolute in 14 days time that there be no order as to costs in relation to FCMC 3524 of 2003. Order
47. I will therefore make an order as follows:-
 - a) There shall be an order for sale with respect to the property known as Flat X, XX/F, Y House, C Court (Block Z), Tsing Yi, New Territories, Hong Kong such order to take effect from the 1 September 2017. The house shall be placed on the market for sale at the best price obtainable at the time and unless by agreement for a figure of not less than HK\$3,085,000.
 - b) The net proceeds of sale after payment inter alia of the housing premium shall be divided between the parties with 55% of the net proceeds going to the wife and 45% of the net proceeds going to the husband.
 - c) Each party shall retain any other assets held in their sole names.

- d) This division shall be on a clean break basis. Each parties claims for all forms of ancillary relief shall be dismissed upon the net proceeds of sale being divided between the parties as set out in paragraph 47 (b) above.
- e) There shall be an order nisi to be made absolute in 14 days time that there be no order as to the costs of the ancillary relief trial including all costs reserved, the petitioner and respondent s own costs to be taxed in accordance with legal aid regulations.
- f) There shall be an order nisi to be made absolute in 14 days time that there be no order as to costs of the original divorce suit namely FCMC 3524 of 2003, the petitioner and respondent s own costs to be taxed in accordance with legal aid regulations.
- g) A section 18 declaration to issue.
- h) Liberty to apply in relation to the implementation of the terms of this order. (Sharon D. MELLOY) District Judge Ms B. Chan of Ho & Wong for the Petitioner Mr A. Loong of Yu, Tsang & Loong for the Respondent PAGE - PAGE - A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk hu/- hu/- hu/- ~wofofoX h}lr h}lr hIAi xphph`WhOFOFOh h<Gd h<Gd h<Gd h<Gd gd)s gd)s gd)s {tkdkt]T]Tt{ h<Gd h<Gd he~1 gdKm gdmtd% gd! gdKm gd)s hmt% hmt% hmt% tktdkS hmt% hmt% hmt% hmt% hmt% hmt% hmt% hmt% hmt% hmt% hmt% gdmtd% gdmtd% gdmtd% gdY8 gdmtd% gd! gd! gd! gd! gdmtd% gd5{. uij rcUcU hz'\$ h)UD h4N} h4N} h4N} gdq| gdo^ ~sg\gP hz'\$ hz'\$ hz'\$ d^XR hv4B gd5{. gd,T gd,T gd5{. h5{. h5{. h5{. h5{. } rmhmaZaSa ~y~u upypup hIAi gd?wj gd?wj hY#x hY#x gd?wj gd?wj he~1 hY#x gd?wj h7mJ h7mJ hY#x sks^s he~1 h7mJ &`#\$ H I J K L M N O P Q R S T U V [Content\_Types].xml Iw}, \$yi} \_rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v )I`n 3Vq%`#q x}r :TZA G I u3 L+M2 e\O\* \$\*c? )6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/ theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http:// schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> t-B<z ,5l plZ< i|^t i|^t /rDL & 6" CACV Judiciary English.dot Judiciary Microsoft Office Word Judiciary hong Kong CACV CACV Title Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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