

HONG KONG / JUDGMENT

KYCE v. HA

[2025] HKFC 192**COURT**

Family Court

DECIDED

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[2025] HKFC 192 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO 15 OF 2015 IN THE MATTER OF HN, a minor IN THE MATTER OF the application under Section 10 of the Guardianship Minors Ordinance, Cap. 13 BETWEEN KYCE Applicant and HA Respondent Before: Deputy District Judge R So in Chambers (Not open to public) Dates of Hearing: 10, 11 and 18 July and 7 to 9 October 2024 Date of closing submissions of both parties: 30 October 2024 Date of supplemental closing submissions of the Respondent: 5 November 2024 Date of supplemental closing submissions of the Applicant: 13 November 2024 Date of further closing submissions on undertaking of the Respondent: 7 February 2025 Date of further closing submissions on undertaking of the Applicant: 12 February 2025 Date of closing submissions in reply on undertaking of the Respondent: 25 February 2025 Date of Judgment: 24 November 2025 J U D G M E N T Index Page Preliminaries Reasons for dismissing the application by the Father to adjourn the trial and to adduce new evidence Background and salient facts of the case Witnesses and evidence: Father s case.. Mother s case The legal principles

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side, and with the updated documents intended to be produced and adduced be provided to the other side in good time. As most, if not all, of the documents the Father intended to produce and adduce as evidence falls under this category, there is no need to adjourn the trial. As I had dismissed the application, I further order that costs do follow the event. The Father should pay the Mother costs of the hearing time for the application, to be taxed if not agreed, with counsel certificate. Background and salient facts of the case The Father is now 72 years old. He has been practising as a barrister since 1975 and was appointed as Senior Counsel in 1990. The Father had been married twice and his last divorce was in 2008. From that marriage, he has 2 children, elder son (Elder Son) and younger daughter (Younger Daughter), who are now aged 25 and 24 respectively. The Mother is now 52 years old. She was previously a songwriter and artist in Hong Kong and the mainland. The parties met in 2012 and started dating. When the Mother was pregnant, she went to UK to reside in a house owned by the Father. N was born in 2013 in UK. After giving birth to N, the Mother and N remained in UK for about a year before returning to Hong Kong. Upon their return to Hong Kong in 2014, they lived with the Father at his house in Pokfulam, which is a 3-storied house. The relationship turned sour and the Mother commenced these proceedings in 2015 for custody and maintenance matters. In fact, there were many applications taken out by both parties since the commencement of these proceedings. There were times when the Mother acted in person. The Order was given on 20 June 2017 by consent, when both parties were legally represented, ordering:- the Father do pay monthly periodical payment of HK\$80,000 to the Mother for the benefit of N until she attains the age of 18 or ceases full time education, whichever is the later. the Father do pay a lump sum of HK\$160,000 to settle all the Mother s claims for reimbursement and for provision of relocation expenses to be incurred by the Mother and N in respect of their moving out of the House. In the Order, there were various undertakings. Amongst which the following undertakings, which will be relevant to the present trial, are repeated below :- (B) AND UPON the Respondent undertaking to the Applicant and to the Court that, until the Child attains the age of 18 or ceases full time education, whichever is the later (hereinafter referred to as Recital B), he shall directly settle all school fees of the Child within 7 working days upon the presentation of receipt(s) or invoice(s) or payment demand note(s); he shall directly settle and/or reimburse all fees and costs of extra-curricular activities of the Child which shall have been agreed between the parties within 7 working days upon the presentation of receipt(s) or invoice(s) or payment demand note(s); he shall directly settle the monthly premium of an insurance plan named CEO Medical Plan (Worldwide) 3 (CEOW3) offered by AIA Group Limited to be purchased by the Applicant and the Respondent as the joint policy holders by way of auto-payment for the Child up to a maximum of HK\$4,000 per calendar month; he shall reimburse all medical and/or dental expenses for the Child which he has been consulted upon and agreed to as to treatment or procedure and expense to be incurred, within 7 working days upon representation of receipt(s) or invoice(s) or demand note(s), if not so covered by the insurance at paragraph (3) above; and (C) AND UPON the Respondent undertaking to the Applicant and to the Court that for so long as the Applicant has an order for care and control of the Child in her favour, he shall pay monthly periodical payment of HK\$80,000 (Maintenance) to the Applicant for the benefit of the Child (inclusive of the mother s allowance, rent for accommodation and a car parking spacing, and all other expenses for the Child and the

Applicant as the carer of the Child, not covered by the undertakings stated in Recital B hereinabove) on the 7th day of each month commencing from August 2017 until the Child attains the age of 18 or ceases full time education, whichever is the later, or until further order of the Court (hereinafter referred to as Recital C) (D) AND UPON the Applicant and the Respondent undertaking, agreeing and acknowledging to each other and to the Court that the Applicant shall have the sole and absolute right to decide how the Maintenance is to be spent for the benefit of the Child without intervention or queries on the part of the Respondent whatsoever, subject to the Applicant undertaking to properly maintain and take care of the Child and to provide for her properly in all respects (hereinafter referred to as Recital D) (E) AND UPON the Respondent undertaking to the Applicant and to the Court that, save where an application for variation is made by either party, he shall not query or challenge or dispute how the Applicant apportions or spends the Maintenance as stated in Recital C hereinabove and he shall waive his right to seek production of receipts or invoices or accounts on use of the said Maintenance (which the Applicant shall nevertheless maintain proper record of not less than 12 months), in particular he shall not challenge or dispute or query where the Applicant chooses to reside together with the Child, subject to the Applicant undertaking to properly maintain and take care of the Child and to provide for her properly in all respects (hereinafter referred to as Recital E) (F) AND UPON the Respondent expressly agreeing and acknowledging that he enters into the terms herein on the understanding that the Applicant may join the work force or may resume work as she chooses (hereinafter referred to as Recital F Pursuant to preamble G and H of the Order, concerning the Mother s undertaking to move out of the House no later than 1 September 2017, the Mother and N moved out accordingly. Since then they have been living at an apartment at South Horizon, which is a rented flat. On 16 December 2021, the Father took out the Vary Downwards Application to vary the Order. He asked for, inter alia, :- the Mother to provide all available invoice(s), receipt(s), all bank statements, credit card statements, all bills and other evidence of expenses, quantum and payment/ source and accounts in respect of the expenses of N for the past 24 months; the Order relating to the maintenance for N be varied ; and the undertaking of the Father under item C of the Order be adjusted accordingly . Pursuant to the order dated 13 December 2022, the Mother was ordered to produce all invoices, receipts, and relevant documents to prove payments thereof for the past 12 months from the date of this order for the following items: tutorial fees of the child, expenses for extra-curricular activities; expenses for clothing; and lunch expenses and pocket money . The Mother filed her Affidavit dated 30 January 2023 as a result. On 16 January 2023, the Mother took out an application, asking for, inter alia, :- adjusting the maintenance for N; and pursuing the outstanding payments for N s tuition and ECA expenses. On 9 February 2023, the Mother took out another application, asking for :- varying the Order, by increasing the amount of monthly maintenance to HK\$96,962 or any amount the court see fits. The Mother also asks for the monthly maintenance be increased to HK\$133,062 if moving home from the existing rented premises is allowed; a lump sum of HK\$74,994 for all the ECA and interest class expenses already incurred; and a lump sum of HK\$196,200 for the expenses for moving home. At a hearing on 12 December 2023, it was ordered by consent that joint custody of N be granted to the Mother and the Father, with care and control be to the Mother and reasonable access be to the Father. On 9 July 2024, on the trial date for schooling for N, the parties had

reached agreement as to the choice of school for N commencing August 2024. N has started studying at another international school (New School). This trial is about the maintenance of N, who has just started studying at the New School at Year 7. Witnesses and evidence The Father s case The Father gave evidence and did not call any other witness. The Father relied on his 6th Affirmation dated 16 December 2021, 8th Affirmation dated 5 May 2022, 9th Affirmation dated 11 November 2022 and 14th Affirmation dated 30 October 2023 and 15th Affirmation dated 22 December 2023. The Father also relied on his Form E dated 22 September 2022 and his Answer to the Mother s Questionnaire dated 8 May 2023. In gist, the Father s case is that his application is triggered by a drastic reduction in his income as detailed in his 14th Affirmation and his reasonably held and apparently justified belief that the current amount has not all been expended on N s welfare by has been used instead to support the Mother s own lifestyle. The Father s open offer dated 26 June 2024 are as follows :-

- (1) The Respondent undertaking to the Applicant and to the Court that until the Child attains the age of 18 years or ceases full time education, whichever is the later :- The Respondent shall directly settle all school fees of the Child within 7 days upon the presentation of receipt(s) or invoice(s) or payment demand note(s); The Respondent shall directly settle and/or reimburse all fees and costs of extra activities of the child which shall have been agreed between the parties within 7 days working days upon the presentation of receipt(s) or invoice(s) or payment demand note(s); The Respondent shall directly settle the premium of a medical insurance plan for the child up to maximum of HK\$17,937.92 per year;
- (2) the Respondent do pay to the Applicant periodical payments for the benefit of the child of the family at the rate of HK\$34,000 per month from the date of the Order to be made until she attains the age of 18 years or until she shall cease to receive full time education whichever to the later or further order Before the hearing of evidence, the Father revised his open offer to a sum of HK\$55,000, instead of HK\$34,000 per month. At the closing submissions, the Father clarified and revised the undertaking he is willing to make. The undertakings involved in this case will be considered below. The Mother s case The Mother gave evidence and did not call any other witness. She relied on her Affidavits dated 27 April 2022, 6 December 2022, 12 January 2023, 30 January 2023, 9 February 2023, 2 affidavits both dated 22 September 2023 and the affidavit dated 18 January 2024. She also relied on her Form Es dated 15 September 2022 and 12 January 2023, and also her Answer to the Father s Questionnaire dated 24 August 2023. The Mother s case is that not only is there no basis for the reduction of N s maintenance, over the years, her expenses have generally increased despite the same standard of living actually being maintained. The Mother is of the view that the Father has the ability, be it income, assets and/or financial resources, to afford not only the current maintenance, but also the Mother s proposed increase of N s maintenance. The Mother s open offer dated 3 July 2024 are as follows :- Father will increase his maintenance to \$154,132 (ie. \$163,612 - \$5,900 (reduced claim for rental) - \$1,680 (reduced claim for car expenses) - \$2,500 (reduced claim for utilities)) and for an order that the Father reimburse the Mother for N s extra tuition fees and ECA expenses in the amount of \$167,594 from 2022 up to present date, as well as a one-off sum of \$286,350 for N s moving costs. Before the

hearing of evidence, the Mother revised her open offer to a sum of HK\$120,000 per month, inclusive of ECA. At the closing submissions, the Mother clarified her views as to the undertakings involved in this case and the Father's offer for undertakings to be made. The undertakings involved in this case will be considered below. 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 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). The Mother's present application for increase of the monthly maintenance would come under section 10(4), whilst her claim for lump sum payments to meet the needs to maintain N would be under section 10(2)(a) 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. It is trite that :- The Court in Hong Kong have been guided by the principles and guidelines set out in the English cases, particularly *Re P(Child: Financial Provision)* [2003] 2 FLR 865, in considering what financial orders are reasonable for the benefit of a child born out of wedlock (see *HMSE v JJS (FCMP 70/2008)*). Once an application to vary is before the court, it 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 *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 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 *AEM v VFM* [2008] HKFLR 106). 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.

Analysis

With the above legal principles in mind, I will now turn to the evaluation of evidence in relation to parties applications. Parties have identified the issues as follows:- What are the reasonable needs of N Whether the Father has the ability to pay When considering the reasonable needs of N, in particular about the accommodation needs and her needs for ECA, I have to rule on whether the lump sum payments requested by the Mother should be allowed. Before concluding whether the Father has the ability to pay, I have to consider:- (a) whether there is full and frank disclosure of the Father's assets and financial resources; and (b) whether adverse inference should be drawn for the Father's financial situation. Further, I have to consider the Father's application to vary the undertaking in Preamble C of the Order and how the various undertakings

in the Order should be dealt with. Before considering each of the issues identified by the parties in turn, I have to consider and evaluate the financial resources of the parties, including on one hand, the income, earning capacities, property and other financial resources; and on the other hand, the financial needs obligations and responsibilities. The standard of living of the Father will also be considered as it will be relevant when considering the reasonable needs for N. The financial resources of the Father The Father is a practising senior counsel by profession. According to his Form E filed in 2022, he has the following major assets:- the House, which is estimated to worth about HK\$70,000,000; a BVI company which owns 2 properties in the UK, namely the M Square Property (estimated to worth GBP3,229,273) and B Drive Property (estimated to worth GBP527,000). Having deducted the outstanding mortgage loan of about GBP266,000, the net asset value of the BVI company is about GBP3,490,273 (ie. around HK\$31,412,457 in equivalent; a limited company which owns a motor vehicle with market value estimated to be HK\$60,000; and 300,000 HSBC shares, which worth about HK\$7,044,747. The Father s liabilities in his Form E include personal loan due to a friend, tax payable to the IRD and also various miscellaneous periodical credit card payments and fees to 3 clubs in Hong Kong, namely the Hong Kong Country Club, The Hong Kong Club and the Hong Kong Jockey Club, with a total of about HK\$3 million. As stated in his Form E in 2022, his total net assets amount to HK\$99,876,876 (ie. total assets of HK\$102,881,197 minus total liabilities of HK\$3,004,321). As stated in his Form E, his net income earned from his profession for the year ended 31 March 2022 was HK\$4,646,237, with his total expenses being HK\$587,568 per month (from which a total of HK\$266,534 was for children expenses for his Elder Son (HK\$64,455), his Younger Daughter (HK\$82,451) and N (HK\$119,628)). No updated Form E was filed. The Father provided documents for the updates of the value of his assets, which comprises of :- the House, which was mortgaged for HK\$15,000,000 some time in November 2023, for repaying the margin loan account the M Square Property, which was secured for an additional mortgage in June 2023 for GBP500,000 (ie. around HK\$5,000,000). the Father has a habit of using margin loans to purchase publicly listed HSBC shares for his own expenses. Out of the 300,000 HSBC shares, which is in the margin account, when the price of the shares got down, the Father was told by the bank that he has to bring in money or to sell some shares. He therefore mortgaged his House to give facility to pay off the margin. He also sold some of his shares for about HK\$20,000,000 and when the market price is low, buy back to get the 300,000 shares. According to the Father, he had not dissipated the sum. With the HK\$20,000,000 obtained, HK\$15,000,000 was mortgaged for the House and the remaining about HK\$5,000,000 debt in the margin account. Regarding the Father s income and earning capacity, according to the Father, (a) his income is becoming less; (b) he is running out of financial resources; and (c) he needs to re-mortgage the House to get financial resources. To support the Father s stance, he produced a report from his accountant, which has been exhibited in his 15th Affirmation dated 22 December 2023, who explained in the report that the Father is facing a liquidity and income crisis at present . But the accountant was not called as a witness, and the report is a summary compiled by the accountant, based on presumably information and documents provided by the Father. Upon cross-examination, the Father cannot produced the documents he had provided to the accountant for the compiling of the report. It is the Father s case that his age and his health affects his work and earning capacity as well. But most

importantly, the Father said his income received professionally has drastically reduced. Mr. Westbrook summarised in the closing submissions about the gross and net income of the Father to illustrate the drastic drop in his professional income, as follows :- Year ended 31 March Gross Income Net Income (before tax) 2021 HK\$4,930,500 HK\$3,651,876 2022 HK\$6,412,500 HK\$4,646,237 2023 HK\$2,974,375 HK\$1,256,200 Jul 2023 to Jun 2024 HK\$398,750 Mr. Westbrook also summarised in the closing submissions about the current monthly income from all sources of the Father, as follows :- Bar professional (say): HK\$75,000 Dividend payments on HKBC shares worth HK\$20 million: HK\$75,000 Interest at 4.9% on HK\$3.7 million raised by mortgage of M Square Property: HK\$15,000 (Total: HK\$165,000 per month) Mr Leung disputed about the Father's evidence and the lack of sufficient documents provided to support his stance that he lacks sufficient financial resources or income to continue paying for the amount of maintenance the Mother requests. Even if there is much reduction in professional income, there is no provision of the tax return concerned. Mr. Leung emphasized especially the following to show that the Father has much financial resources :- The 300,000 HSBC shares are highly realisable and are currently worth at least HK\$20.6 million at HK\$68.8 per share. Furthermore, the Father receives dividends from those shares of around HK\$200,000 per quarter, ie. HK\$1 million per annum. The decision of whether to sell the M Square Property is a matter of the Father, but if he does so, he will immediately come into funds of over GBP2.4 million, ie. about HK\$24 million (after deducting the outstanding mortgage) based on even his conservative estimate that the M Square Property is worth GBP 3 million. Although it is quite understandable that the Father would not want to sell the House, given that it has been his long term residence for many years and it is where his children stay and visit him, it may come to a time of considering selling the House to lower his expenses as a last resort, and then to purchase or rent another property that can still spaciouly accommodate the Father, his partner, the domestic helper and the children when visit him. About the Father's financial needs, obligations and responsibilities, Mr. Westbrook summarized the Father's current monthly outgoings, as follows :- (a) Chambers Expenses (including rent and staff) \$42,639 Utilities \$ Rates (for the House) \$12,537 Management Fees (for the House) \$11,500 Household Expenses \$3,872 Car expenses \$2,000 Domestic Helper \$5,000 Repairs & Maintenance (for the House) \$18,131 Meals, clothing, shoes, grooming, entertainment \$15,000 Travel & Holidays \$5,000 Medical & Dental (beyond insurance cover) \$11,380 Club Subscription & Expenses \$7,284 Maintenance to ex-wife \$30,000 Support to Elder Son \$5,000 Support for Elder Daughter \$10,000 Current maintenance for N \$80,000 Insurance for N \$3,876 s school fees (for the New School) \$14,492 s school bus fees (for the New School) \$1,675 s ECA (for the New School) \$3,765 Interest payment on the \$2 million loan from the friend, a Mr. C \$12,166 Mortgage payments on \$15 million loan secured against the House \$202,500 Mortgage payments on GBP850,000 loan secured against the M Square Property \$85,000 Total: \$582,817 Standard of living of the Father Another matter related to the financial resources of the Father is the standard of living, which I will also consider. It is the Mother's case that the Father maintains high standard of living, which should have a bearing on (a) his financial resources; and (b) the reasonable amount to be awarded as maintenance to N. About the alleged high standard of living of the Father, Mr. Leung submitted the following:- First, the Father lives in the House in Pokfulam, which can be described as a luxurious detached 3 storied house, measuring 3,500 square feet

with 4 bedrooms, 2 living rooms and 3 bathrooms. It is also equipped with a swimming pool. In addition to the House, the Father also has 2 properties in the UK, ie. the M Square Property and the B Drive Property, which the Father rented out to pay for the expenses for his Elder Son and Elder Daughter. As shown in the Father's Form E, he spent luxuriously on himself, with \$53,040 as monthly general expenses, HK\$159,516 on monthly personal expenses (in which over HK\$65,000 per month in meals out of home). Comparing to the Father's Elder Son and Elder Daughter, which are N's half-siblings, as shown in Form E in 2022, the Father voluntarily pays periodical payments to them in the monthly sum of HK\$64,455 for the Elder Son and HK\$82,451 for the Elder Daughter. Even when they are now aged 25 and 24 respectively and have completed full time education, the Father is still supporting them financially (as shown in the table above). The Father denied such high standard of living as alleged by the Mother. He explained that as he has earned much less and he has hardly any brief since last year, he has lowered his expenses to a great extent. I agree that the standard of living of the Father has to be looked into, as stated by Hale J. in *J v C (child: financial provision)* [1983] 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. But I have much reservation as to the submissions of Mr. Leung about how the standard of living of the Father supports the Mother's Vary Upwards Applications. I have considered especially the following :- The Father has always been living at the House, with 2 UK properties. Even there are comments that the Father has not produced supporting documents about his financial resources adequately and in a timely manner, the Mother criticize to the extent of the Father not disclosing fully, but not suspecting that the Father has other newly acquired assets or suspecting that the Father has increase in his income. The emphasis is more on the Father's financial resources to pay. There is no suggestion of increase of standard of living of the Father. It is upon that standard of living that the parties agree on the amount of maintenance for N in the Order. It is not appropriate and unfair to compare what or how much the Father has provided for his Elder Son and Elder Daughter to N directly. When the Father provided much for his Elder Son and Elder Daughter, it was at a time when the Father earned much professionally, of more than HK\$ 4 million a year. But the fact that the Father is still providing financially for his adult Elder Son and Elder Daughter monthly may have a bearing on the Father's confidence of his finance, which may reflect his ability to pay. Regarding the Father's ability to pay, I will further consider below. The standard of living of the Father should not be one of the reasons to support the Mother's application for the Vary Upwards Applications, but it will remain one of the consideration when I consider the reasonable amount to be awarded for the maintenance of N. Regarding the Father's financial resources, I have the following observations:- The criticisms of the insufficient financial disclosure is not so much to the extent of criticising the integrity or honesty of the Father. But the lack of sufficient and timely financial disclosure (including not answering to the questionnaire asked) do form the basis of the court to draw adverse inference. To what extent the adverse inference will be draw, I will further consider below. Further, it may be a matter of costs with the way the Father conducted the case in not providing sufficient and timely financial disclosure. At the time the Order was granted, the Father should have anticipated that at certain point in time, as he is aging and not unexpectedly with possible health issues as he ages, he may be receiving less brief. If the Father applies to vary

downwards the maintenance, he bears the burden of proof to convince the court with reasons and with supporting documents. Even if it is not disputed that the Father's income professionally has decreased, the Father still has much financial resources, which can be arranged to support N financially. The financial resources of the Mother According to the Mother, since the birth of N, she has been taking care of N, and it is very difficult for her to work. There was a short period of time that the Mother worked as an insurance agent, earning about HK\$8,000 to HK\$10,000 per month. According to the Mother, after working for about a year, she has given up the job, as N needs her attention to take care of her, not only about the daily life but also about her emotional needs. During cross-examination, the Mother was asked about her income and earning capacity. She was put to answer especially about she appearing in an advertisement for a beauty company and was asked about the remuneration. The Mother explained that she has was not paid for being the model / spokesperson for that beauty company. Instead, she was provided with some beauty treatment free of charge in return. According to the Mother's Form Es file in 2022 and 2023, she has no landed property. Her main assets include a Toyota car estimated to be worth about HK\$35,000 (which she has recently changed to a Tesla car, bought with the government subsidies on tax with payment by instalments) and some bank balance of about HK\$80,000. The Father is of the view that the Mother has much financial resources, including (a) her mother and her family; and (b) her boyfriend. It is the Father's case that, other than living at the current South Horizon flat, the Mother also lives with N partly at her parents large family home in Ting Kau, where there are permanent rooms for the Mother and N. The Mother denied her mother being her financial resources, but she confirms that she visits her mother often and her family lent money to her. The Mother denied that her boyfriend is her financial sources and she said she does not know how much money or wealth her boyfriend has. During cross examination, it was put to the Mother that she has spent her own expenses by using the amount of maintenance paid by the Father for N and she expected the Father to pay for her expenses as well. The Mother denied. About the financial needs, obligations and responsibilities, the Mother explained the expenses in 4.1 to 4.3 of her Form E. In the 2022 Form E, her total monthly expenses are HK\$113,175 (comprising of HK\$61,255 general expenses, HK\$18,181 personal expenses and HK\$33,739 expenses for N). In her 2023 Form E, she had adjusted her monthly maintenance to be HK\$133,562. She also disclosed her total liabilities amounted to about HK\$190,000 (which comprises of HK\$100,000 lent from her sister, HK\$30,000 lent from her mother and some cash advance and credit card amounts). It is not in dispute that the Mother has the qualification as an insurance agent. She could resume her work, but for the need, according to the Mother, to take care of N. The Mother also has resources to obtain free beauty treatment in exchange for her being the model / spokesperson of a beauty company. The Mother is legally aided. Her assets and income must be within the range as specified in the Legal Aid Ordinance. In view of the evidence, with the Mother's background being a song writer and singer, together with her experience and licence being an insurance agent, I accept that the Mother does have some earning capacity. As this is not one of the issues in dispute, I do not have to rule on how much or to what extent the Mother can earn. But it is worth noting that in view of the Mother's evidence, if she has no work and has been earning very little for a limited period of time as alleged, given the amount of expenses for general expenses, personal expenses and the expenses for N, it is very

difficult, if not impossible, to consider how the Mother manages her finance all these years. The possible reasons could only be: The Mother has exaggerated the expenses; The Mother has non-disclosed work and income; The Mother is confident in her earning capacity and the ability to support at least herself financially; or The Mother's family, in particular her mother and her elder sister, is her financial resources. Even if not supporting her financially unconditionally, the loans lent to the Mother all these years can possibly be regarded as soft loans. I am of the view that the Mother has the financial resources to support herself and if the amount awarded to N does not meet the Mother's expectation, the Mother has the ability to pay for some of the expenses for N, to provide better for N's needs that the Mother expects. What are the reasonable needs of N? In the Order, parties reached agreement that, other than the amounts to be paid via undertakings by the Father, a sum of HK\$80,000 per month is to be paid by the Father for the benefit of N. As agreement was reached without a trial and there was no breakdown for the items of expenses for N, each item of expense has to be considered afresh. At the closing submissions, Mr. Leung summarised the items of monthly expenses claimed for N, having considered the Mother's evidence at trial, as follows :- Rental (including car parking space) of HK\$55,000 Utilities of HK\$4,500 Car expenses of HK\$6,600 Domestic helper of HK\$6,106 Household food of HK\$11,500 Meals out of home of HK\$3,870 Household items of HK\$3,467 Holiday (overseas) of HK\$10,000 Mother's allowance of HK\$15,000 (with a sub-total of the above general expenses of HK\$116,043) School fees (to be paid directly by the Father) N's allowance / pocket money of HK\$2,000 Clothing and shoes of HK\$2,000 Extra tuition of HK\$10,520 ECA of HK\$2,900 Transportation (school bus) of HK\$1,675 if not paid directly by the Father Holiday (usual) of HK\$1,549 Transportation (others) of HK\$2,050 Medical (spot interdisciplinary children's therapy centre) of HK\$6,200 (with a sub-total of the above expenses of N of HK\$27,219 with school fees and school bus fees to be paid by the Father direct) Total: HK\$143,362 (ie. HK\$116,043 + HK\$27,219) (excluding school fees and school bus fees) It is the Father's case that the Mother has exaggerated the expenses for N and some of the items are not justified. The Father is of the view that the Mother has included her own expenses as if they are expenses for N. Mr. Westbrook also pointed out that the Mother has failed to provide sufficient supporting documents to claim for the amounts of maintenance for N and to support her application for varying upwards the maintenance for N. I have considered the case *WGL v ASB* [2013] HKFLR 391 at 431, para. 199 about the importance of keeping relatively detailed accounts of the expenses :- 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. With the Mother asking to vary upwards the maintenance, while the Father asking to vary downwards the maintenance, I am of the view the keeping of the relatively detailed accounts could assist, if not highly relevant to the determination of the amount to be ruled in this case. I notice that there was court order asking the Mother to provide supporting documents, which she had filed an affidavit (refer to paragraph 20 above). I also understand the difficulty the Court may face if sufficient supporting documents are not provided. In this respect, I have the following observations on evidence before going into the evaluation of the evidence for each of the items in dispute for the periodical payments. About the lack of all and sufficient supporting

documents, while acknowledging that the Mother has to prove her case for the items she claims 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 the 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 the Mother has proved her case based on the evidence, and to rule accordingly what is reasonable and fair in the circumstances. Both counsel confirm, which I agree, that a broad brush approach should be adopted in considering the reasonable needs of N, with some analysis on each item of expense to be made. I will now turn to each of the disputed items, with reference to the items claimed by the Mother as summarised in paragraph 78 above.

- (i) Accommodation and rental expenses The Mother and N have been living at a rented flat in South Horizon since 2017, which is a 788 sq. ft flat with 3 bedrooms with a carpark, with a monthly rental of HK\$25,000. The Mother asks for rental of HK\$55,000 for N as there is the need to move home to a larger flat. The Mother proposes to rent an apartment measuring around 1,300 sq ft with a carpark, which is right next to N's school within walking distance, with rental ranges from HK\$54,000 to HK\$59,000 per month. It is the Mother's case that if the Court is with her on moving to a bigger flat, she will also require moving costs, including 2 months deposit, first month's rent and some small renovations and purchase of furniture amounting to HK\$286,350. The Mother's reasons for moving home are mainly as follows :- N's room is only 54 sq ft and she can only sleep in the top bunk of a bunk bed. Her room is so small that it cannot fit a wardrobe for herself. Besides, the flat in South Horizon is really old and there is frequent stoppage of water supply and the lift is really inconvenient. According to the Social Investigation Report obtained earlier, N expressed to the social welfare officer that she wanted a bigger room with more space. Comparing to N's current living situation with when she had access at the Father's residence, where she not only has a large room to herself but also a play/game room as well. The Mother wants N to have the same living standard as her half siblings. The Mother is of the view that by moving to the proposed 1,366 sq ft flat is still pales in comparison to the Father's House. The Father opposes and does not accept that the Mother needs to be accommodated at a similar level to the Father's ex-wife and their two children (now moved from Jardine's Lookout to Tai Hang area), with the Father's ex-wife receiving maintenance of HK\$30,000 per month with one child living with her. The Father submitted that the present 788 sq ft in South Horizons is adequate for N's reasonable needs. Besides, the Mother has not explained why N's room is allegedly only 54 sq ft out of the 788 sq ft of the flat. I have to consider 2 sub-issues: first, whether N's accommodation needs include the expenses of moving home; and second, the reasonable sum for rental. For the first sub-issue, I have to consider the standard of living of the Father, especially with the legal principle as stated in *J v C* (child: financial provision). I have considered the standard of living of the Father in paragraphs 59 to 65 above. I am not

convinced by the Mother's reasons to move home. With the Mother and N, together with a domestic worker, living in a rented flat with 3 bedrooms, of the size of 788 sq ft, I am of the view that it is reasonable accommodation for N. There is no immediate or non-recurring needs to move home with the circumstances of this case. Next, I have to consider the reasonable rental expenses. As I have refused the application for moving home and also the related expenses, I have to consider about the parties' different stance in the amount of rental expenses. The rental of the flat in South Horizon is HK\$25,000. The parties do not seek to challenge the reasonableness of the rental, the only issue for my determination is the amount to be awarded as the reasonable expenses for N. The Mother is asking for the Father's financial support for the entire rent, but the Father is of the view that the Mother could have rented a place with rental of HK\$15,000 and offered to pay for HK\$10,000 for the monthly rental for N. I see no reasons why the Mother and N should not share the monthly rental equally. I therefore allow N's share of the rental to be HK\$12,500. (ii) Utilities The Mother asks for HK\$4,500 to be N's share of utilities, which the Father opposes and proposes HK\$1,000. Mr. Leung admits that the Mother has not provided any utility bills for the Court's consideration, but the Mother has said in her evidence she can provide them if given the time. Mr. Leung further submits that electricity alone during the summer months will be over HK\$1,000 per month, let alone accounting for gas and water charges for a household of 3, including the domestic worker. With reference to the utilities expenses of the Father and the accommodation of N, I am of the view that HK\$4,500 for utilities for the household of 3 is reasonable. With the share of the utilities of the domestic helper to be equally shared between the Mother and N, I allow HK\$2,250 for N under this item. (iii) Car expenses For car expenses, the Mother claims for HK\$6,600 under this item. She explains that she is currently driving a Tesla Model 3 that she bought on hire purchase for the monthly repayment of HK\$6,283. For this car, there are also charging expenses, licensing and insurance fees. She further explains that the car is mainly used for driving N to her various tuition classes and ECA, and also weekend play dates and to visit N's maternal grandmother at her home in Ting Kau. The Father opposes to any amount to be allowed under this item, for the following main reasons :- As the Mother claims for school bus, which will be paid by the Father direct, and other transportation of HK\$2,050 for N, the car expenses in addition to these are excessive. The Mother has not demonstrated a need for the Mother to run a car with all its associated expense for N's benefit, rather than it is a luxury, mostly for the Mother's own benefit and convenience. Mr. Westbrook cited the case *SKM v SKL*, where the father in that case is described as an extremely wealthy man. Nevertheless the judge allowed nothing for the mother's car expenses, noting that the father had agreed to pay for the child's school bus and other transport up to \$1,000 per month. According to the Mother's evidence at trial, when she was working, the maid would take N to her ECA by MTR or by taxi. Regarding the case relied on by Mr. Westbrook, I have to point out that each case should rule on its own facts. I am not convinced that car expenses should not be awarded, for the following reasons :- Both parties have car expenses. In the Order, when the parties agree on the amount of maintenance of HK\$80,000, it is specified in Preamble C therein that the amount is inclusive of the mother's allowance, rental for accommodation and a car

parking spacing, and all other expenses for the Child and the Applicant as the carer of the Child. Obviously, the provision of a car for the care and use for N has always been contemplated. It is not disputed that N's maternal grandparents live in Ting Kau. With the Mother taking N to visit them, it is reasonable for the Mother to drive N there. It is not disputed that the Mother has registered for ECA and tuition classes for N, which the Father did not agree and therefore did not pay for. I accept that the Mother takes N to these classes by driving her there. I accept it is reasonable to have car expenses for N. Regarding the amount to be awarded, with the evidence in this case, I accept that other than driving N, the Mother also uses the car herself. Therefore, I am of the view the Mother and N should share the car expenses. I allow HK\$3,300 for N. (iv) Domestic helper The Mother claims for HK\$6,106 under this item. It is the Mother's case that although she is mainly taking care of N, she requires a helper to clean, tidy and cook. The Father accepts that such a helper is useful for the Mother, as she undertakes many of the chores, which would otherwise fall on the Mother. But as the helper is employed for the benefit of both the Mother and N, the Father is of the view that a half share would be reasonable. I agree with the Father's view and allow HK\$3,060 under this item.

- (v) Household food and (vi) meals out of home These 2 items will be considered together. The Mother claims a total of HK\$15,370 for these 2 items, which the Father opposes and proposes a total of HK\$5,000 for these 2 items. The Mother is of the view that the sum offered by the Father is grossly insufficient. Mr. Leung explains in the closing submissions that HK\$11,500 per month is only HK\$410 per day, and Friday night and weekends is when the Mother and N usually eat out and these meals tend to cost more than during the weekdays. Further, the Mother mainly shops from Park Shop and Great for organic and healthy food products for N. Mr Westbrook submitted that the Mother has produced a bunch of receipts for food. However, many pages are illegible, and no effort has been made to sort them or distinguish between the Mother and N, and the Mother admits during cross-examination that the records are incomplete. No breakdown for the sum of HK\$11,500 per month was provided, nor could the Mother explain how this sum was arrived at in the witness box, other than confirming the amount claimed was for both the Mother and N for household food. The Father proposes HK\$2,500. For the meals out of home, Mr Westbrook submits that again this item is unable to explain how that sum was calculated. The Father proposes HK\$2,500. I have expressed my concern about the lack of supporting documents at all or lack of sufficient supporting documents in the above paragraphs. Food is one of the examples that it will be very difficult and impracticable, if not impossible, to provide all the receipts for the amount claimed, clearly distinguishing how much is used on N. By adopting a sensible approach, and with reference to the same item with reference to the Father's evidence (including his Form E and also his evidence in court that with the reduced income, his expenses have been cut down), I am of the view that spending about \$350 per day x 22 days (HK\$7,700) for meals eating at home, together with about HK\$800 for other items of household food for N is reasonable, and I allow HK\$8,500 under this item. For meals out of home, with a practical approach, and with reference to the same item with reference to the

Father's evidence (including his Form E and also his evidence in court that with the reduced income, his expenses has been cut down), I am of the view that spending about \$500 per meal out of home x 8 times a month is reasonable, and I allow HK\$4,000 under this item.

(vii) Household items The Mother claims for HK\$3,467 under this item. The Father opposes, as the Mother confirms that she is no longer paying the rent of the mini warehouse of HK\$18,900, which alone would reduce the claim to around HK\$2,000 per month, and the Father proposes a sum of HK\$1,000 for this item. I accept that N requires shampoos, body wash, detergent, cream and other general household items which every family needs, including in this case the expenses of N's 2 kittens. By taking a practical approach, I am of the view that HK\$1,500 is reasonable under this item.

(viii) and (xvi) Holiday I'll consider this item of holiday (overseas) together with holiday (usual) together. The Mother claims HK\$10,000 for holiday (overseas) and HK\$1,549 for holiday (usual). Mr. Leung submits in the closing submissions that the Mother and N have not been on a proper holiday in 11 years due to the Father's refusal to consent for N to travel and also to pay for her holidays. They had gone away to the UK in 2020 when the COVID pandemic hit Hong Kong. Even recently, when the Mother sought the Father's consent to take N to Canada and Japan the previous summer holiday, he refused without any good reasons. The Mother's case is that before her separation with the Father, the parties had gone on several holidays to the UK and to Southeast Asia. It is natural for the Mother to want to take N overseas during her school holidays. Most importantly, during cross examination, the Father seemingly agreed that holidays to Japan (once or twice a year) and to the UK is acceptable. The Father's opposition seems to stem from the fact that he has not been able to take N abroad himself. The Father opposes to the Mother's suggestion of the amount claimed. Mr. Westbrook relied on a case *CHY v SKL*, in which case even for the extremely wealthy father, the holidays allowance granted was just HK\$2,000 per month. Mr. Westbrook also submitted in the closing submissions that apart from one visit to England some years ago, the Mother has never travelled overseas with N, apparently because the Mother and the Father could never agree on holiday arrangements. I have considered the case Mr Westbrook relied on. Each case must rule on its own facts. In this case, considering (a) the sour relationship between the parties, which is possibly one of the reasons why parties cannot let N going for holidays overseas in the past; (b) the evidence from the Father of the expenses spent and the number of times going for holiday (including evidence in his Form E and during oral evidence), I am of the view that allowing a long haul trip to the UK, and also 1 or 2 short trips per year is reasonable, and I allow HK\$5,000 per month under this item.

(ix) Mother's allowance The Mother asks for mother's allowance of HK\$15,000, which is disagreed and the Father proposes HK\$10,000. 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 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 hereinabove). It is not disputed that mother's allowance is to be allowed. In fact, in Preamble C of the order, when the parties agree on the monthly payment of HK\$80,000 for N, it was stated therein that HK\$80,000 (Maintenance) to the Applicant [Mother] for the benefit of the Child (inclusive of the mother's allowance) . Besides, in Preamble F, it is stated therein that the Respondent [Father] expressly agreeing and acknowledging that he enters into the terms herein on the understanding that the Applicant may join the work force or may resume work as she chooses . It is only a matter of quantum for my ruling. There is no hard and fast rule as to how to determine the amount of mother's allowance. I have considered especially the following :- Regarding the background of the case, with all the disputes between the parties and with the Mother commencing these proceedings in 2015, when N was just 2 years ago, I accept that N needs the Mother as the carer, to be supported by the domestic helped employed in chores. Regarding the growing emotional needs of N, the attention of the Mother is accepted, which will affect the time and duration the Mother can work. Concerning the financial resources of the parties and the circumstances of this case, I am of the view that HK\$15,000 be allowed as mother's allowance.

- (x) School fees It is agreed by the parties that the Father shall undertake to pay for the school fees to the school direct. The amount of school fees to be paid, as included in the closing submissions of the Father which is not disputed by the Mother, is HK\$173,900 per year (ie. HK\$14,492 per month). (xi) N's allowance (pocket money) The mother claims for HK\$2,000 under this item, with the Father proposing HK\$400. In view of the age of N, and having started her term in a new school, with reference to the circumstances of this case, I am of the view that buying snacks, stationery, gifts for herself and her friends etc in the monthly sum of HK\$2,000 is reasonable. (xii) Clothing and shoes The mother claims for HK\$2,000 under this item, with the Father proposing HK\$1,000. Similar to the above item for pocket money, I have considered the age of N, and having started her term in a new school, with particular reference to the circumstances of this case and the amount spent by the Father for the same item, I accept that a sum of HK\$2,000 per month is reasonable. (xiii) Extra tuition and (xiv) ECA I will consider these 2 items together. The Mother claims for HK\$10,520 for tuition and HK\$2,900 for ECA. The Father is of the view that no amount should be allowed under these items, as the Father agrees to provide undertaking to pay for these direct. When considering these 2 items, I have to consider the background and circumstances of this case, and I refer especially to the preamble paragraphs of the Order (see paragraph 17 above). With the undertakings as in the Order, no agreement could be reached and it ended up with the Mother cannot get agreement from the Father as to most, if not all, the tuition class and ECA. The Mother therefore claims for lump sum repayment for ECA and tuition class. It should be noted that as it is clearly stated in the Preamble, the Father only undertakes to pay for those that are agreed. Without agreement, I do not see the basis for the Mother claiming for the lump sum repayment, and the relevant paragraph of

the Summons must fail. It is with these circumstances that the tuition class and ECA for N has to be considered in context. While it is appreciated that the Father undertakes to pay for the tuition class and ECA, which according to the Father, the new school has provided much and sufficiently and there is no need to resort to other tuition class, I have to consider:- (a) whether these are to be covered by way of undertaking as proposed by the Father; or to award a sum; (b) if to award a sum, how much. It should be pointed out that if the undertaking of the Father is accepted and no additional amount is to be awarded, given the background of the case that the parties can hardly reach any agreement, it is likely to result in either (a) the Mother don t have a say at all in which ECA or tuition class for N to attend, as they could all be decided by the Father, presumably having consulted N; or (b) no ECA outside school may be provided. As it is a new term for N in a new school, whether all the ECA and tuition provided by the New School could cover the reasonable needs of N is uncertain. I am of the view that a sum to be awarded with the ECA and tuition fees to be paid by the Mother, instead of by way of undertaking from the Father, suits better the needs of N. Nonetheless, the court expects the parties to continue communicating and discussing with each other, and to continue consulting the academic director of the New School for the extra tuition and/or extra-curricular activities for N whenever necessary, so as to understand better the needs of N in her best interest, and to arrange for classes and activities, so that the reasonable access of the Father can be accommodated with N s schedule. According to the Mother s evidence, N has been taking Chinese, English and Maths tuition, as well as water painting, taekwondo, art loop and piano lesson. N is now enrolled in (a) computer tutor; (b) taekwondo; (c) pottery; and (d) swimming club. Some of these can be provided by the New School. The Mother further explains that N requires additional English, Maths and Chinese tuitions. Having considered the evidence before me, by adopting a broad brush and practical approach, I am of the view that a total of HK\$12,000 is reasonable. (xv)

Transportation (school bus) It is agreed by the parties that the Father shall undertake to pay for the transportation of school bus direct. The amount of school fees to be paid, as included in the closing submissions of the Father, which is not disputed by the Mother, is about HK\$1,675 per month. (xvii) Transportation (others) The Mother claims HK\$2,050 under this item, which the Father proposes HK\$1,000. I accept that N travels to attend ECA and other tuition class outside school, which she shall either be accompanied by the maid or driven there by the Mother. I am of the view that a sum of HK\$1,500 is reasonable. (xviii) Medical The Mother claims for HK\$6,200 under this item, which the Father disagrees. The Mother explains that N had one counselling session at a centre and she produced the invoice receipts, which provided counselling sessions. The Mother was challenged that she did not produce any expert evidence for the psychological condition of N. I have considered the explanation of the Mother. She explained that teachers from the previous school have informed her about the situation of N which has cause some concern. The Mother also explained that the teacher at T institution has also suggested that the Mother take N to a psychologist or psychology therapy centre. The Father commented that there is no such need for N to see psychologist at all and the Mother has not produced any medical expert report regarding the condition of N. Having considered the background of the case,

including all the difficulties the parties have encountered in the past, regarding the access of N, and also the inability to agree on the holiday overseas, I accept that some expenses spent on N for counselling sessions, is reasonable, in order to assist her. But failing the provision of proof that there is the need to spend HK\$6,200 per month on counselling, I am of the view that the amount is excessive. Further, as parties cannot agree on how the medical expenses for N is to be dealt with (with the Father offering undertaking to pay direct with no additional amount to be paid to the Mother direct, which the Mother disagrees), I am of the view that a reasonable sum be ruled is more appropriate to avoid unnecessary disputes in future. On a broad brush approach, having considered the circumstances of this case and the evidence before me, I am of the view that HK\$5,000 be allowed for this item, including all medical and dental expenses, and psychological sessions for N. Based on a broad brush approach, the total monthly sum to be awarded by adding up the above, which I round up, is HK\$80,000. With my analysis above, in relation to accommodation, I am not convinced that the accommodation needs justify moving home and the request for a lump sum for moving home. The request for such a lump sum payment as in the Mother's Vary Upwards Applications be dismissed. In relation to the request for lump sum payment of ECA, with the evidence of this case, parties are unable to reach agreement as to the ECA for N in the past. With my analysis above, it is exactly in this scenario that a review of the undertaking has to be made at this stage, while parties are taking out application for variation of the monthly maintenance to be paid. Further analysis about the undertakings involved will be made below. With my ruling, the request for lump sum repayment for previous ECA and tuition class by the Mother be dismissed. Whether the Father has the ability to pay Regarding the Father's financial resources, I refer to paragraphs 47 to 58 above. Mr. Westbrook submitted that with reference to the Father's current monthly income of HK\$165,000 per month (see paragraph 56 above) and the current monthly expenditure of HK\$582,817 (see paragraph 58 above), the Father is currently running a massive deficit of expenses over income to the tune of well over HK\$400,000 per month (or HK\$5million per year), which is clearly unsustainable in the long run. In the short run, the Father has been covering this deficit by raising mortgage loans on the House and the M Square Property to the tune of HK\$15 million and HK\$8 million respectively. The Father also uses the margin facility on his bank account to pay for the monthly outgoings. The Mother disagrees and Mr. Leung submitted that the Father has the ability to pay, with regards to the Father's financial resources, which he submits as follows :- His income, which the Father has not provided with sufficient documentary evidence. Therefore, his alleged monthly of about HK\$165,000 only is not to be believed. The amounts previously paid to the Elder Son and the Elder Daughter can be utilised for N. The current 300,000 shares in HSBC that are worth over HK\$20 million and his continued ability to borrow substantial amounts. His 2 UK properties including the M Square Property worth over GBP3 million, which is a conservative estimate by the Father, and his B Drive Property worth well over GBP400,000. Even if the court is to deduct the \$6 million mortgage loan owing on these properties, the Father has over GBP2.8 million, ie. over HK\$28 million in net assets. The House worth over HK\$70,000,000, with a mortgage of HK\$15,000,000. Its net value is over HK\$55,000,000. Mr. Leung stressed that most

importantly, during cross-examination, the Father admitted that he has the ability to pay the reasonable amount to be awarded by the Court. According to the Father's evidence in court, he has the ability to pay up to HK\$100,000 per month. If it is more than HK\$100,000, he cannot afford to pay, which Mr. Leung disputes. Before concluding whether the Father has the ability to pay, I have to consider (a) whether there is full and frank disclosure of the Father's assets and financial resources; and (b) whether adverse inference should be drawn.

- (a) Whether there is full and frank disclosure of the Father's assets and financial resources Mr. Westbrook submitted that the Father had produced all sorts of documents to substantiate what he had to say about the financial situations, which he refers to the various exhibits produced at trial, with the consent from Mr. Leung. In addition, Mr. Westbrook refers to the 14th Affirmation of the Father where he explained his deteriorating financial position and produced a report from his accountant as an exhibit. In the 15th Affirmation, the Father exhibited an up-dated accountant's report as to the Father's financial situation. Mr. Westbrook submitted that it is hardly fair for the Mother to dismiss all these materials produced by the Father as non-disclosure or unsubstantiated. There must surely be a practical limit as to how much substantiation is needed to be produced, without engaging an army of forensic accountants to extract and pore over mountains of financial records for several years past. Further, Mr. Westbrook submitted that the Father did not understand his bona fides or integrity were being called into question and therefore did not call his accountant to testify and to support the report which explains the deteriorating financial position of the Father. The Mother disagreed. Mr. Leung submitted that it is always the Mother's case to challenge the financial resources and ability to pay of the Father. The burden to prove is on the Father. Mr. Leung further submitted that the Father initially took the million dollar man defence when it came to answer the Mother's questionnaire and refused to answer the questions asked and to produce the documents requested in May 2023. It was shortly afterwards in the Father's 14th Affirmation dated 30 October 2023 that the Father, for the first time, claimed that he had declining income, earning capacity, liabilities and assets. Putting aside whether the Father's sudden change was genuine or done to deliberately evade from his responsibility to N, it should have been clear to the Father that once he changed his stance to inability to pay, he should have provided all the documents and disclosure that were required of him to the Court and to the Mother. The disclosure of the Father is far from satisfactory. Mr. Leung further submitted that none of the basic disclosure required of the Form E was provided and none of the questions from the Mother's questionnaire were answered. When the Father finally decided to provide documents at the trial, it was in a piecemeal fashion, picking and choosing of what he felt was relevant to the issue of his change in financial circumstances without allow the Mother and the Court to verify his position, and to investigate whether his self-asserted diminished financial ability was self-catered by dissipating his assets or truly because of his diminished practice. It is trite that there should be full and frank disclosure of a party's finance. I am of the view that the Father's disclosure is far from satisfactory.

- (b) Whether adverse inference should be drawn As disclosure of the Father is unsatisfactory, I am of the view that adverse inference can be drawn. The next questions is, what adverse inference is to be drawn. Considering the evidence before me, I am of the view that even if the income from the Father s professional work has decreased drastically, the Father still has much financial resources to pay for the maintenance of N. This is especially supported by the evidence given by the Father during trial that he said he is able to pay for up to HK\$100,000 per month. Although the discovery from the Father is far from satisfactory, the Father s integrity had not been taken issues of. There are comments that the Father should have made full, complete and timely disclosure, failing which the court cannot be certain of his true financial situation. Even there are comments about the failure to produce the tax returns concerned and the fee notes to prove that his professional income has decreased drastically, there is no suggestion that the Father s income has not decreased. Considering the evidence as a whole, the circumstances of the case and all the submissions, the inference to be drawn is that the Father has the ability to pay for the amount to be awarded by the Court. About the undertakings In the Vary Downwards Application, the Father applied for the Order be varied and the undertaking of the Respondent under item C of the Order dated 20th June 2017 be adjusted accordingly . It is trite that an undertaking can be discharged, but cannot be adjusted or varied. 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. 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 though 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. My understanding of the Father s stance is that he is asking for varying the amount of HK\$80,000, which is one of the core issues for my determination for this trial. With my analysis above, the monthly amount of the reasonable needs of N is HK\$80,000, which will be by way of order. Other than the monthly maintenance to be paid, during trial, I have expressed my concern that, with the background of how the parties have reached agreement as reflected in the Order, in particular with the undertakings involved in the

preamble of the Order, and with the progress of this case and the parties stance, there is the need to review the undertakings in the preamble paragraphs of the Order, to consider whether some of them have to be discharged. I have invited parties to make further submissions in this regard in the closing submissions. Having considered the evidence of this case, and parties submissions and stance, I will exercise my discretion in the following regards :- For Preamble C, as I have ruled on the reasonable needs and the monthly sum to be paid for the benefit of N, the monthly maintenance should be by way of order, instead of covered in the preamble. Preamble C should therefore be discharged. For Preamble B, it contains 4 undertakings (1) to (4) (with details see paragraph 17 above):- For the undertaking in Preamble (B)(1), as both parties agree that the Father continue paying the school fees of N direct, this undertaking stays. For the undertaking in Preamble (B)(2), as analysed above, much dispute had been caused regarding the choice of ECA, and the fees and costs thereof, this undertaking will be discharged, and to be replaced by a sum to be awarded in the monthly maintenance (which I had considered and analysed above). For the undertaking in Preamble (B)(3), as both parties agree that the Father continues paying the insurance CEO plan, this undertaking stays. For the undertaking in Preamble (B)(4), as problems caused in relation to the agreement the parties may reach, I am of the view that this undertaking will be discharged, and to be replaced by a sum to be awarded in the monthly maintenance (which I had considered and analysed above). For Preamble D and E, I have the following observations :- With care and control of N granted to the Mother, the Mother is expected to properly maintain and take care of N and to provide for her properly in all aspects. Besides, with the monthly maintenance ordered to be paid by the Father to the Mother, she should be the one to decide how the maintenance is to be spent for the benefit of N. There is no need for an undertaking with the Applicant shall have the sole and absolute right to decide how the Maintenance is to be spent for the benefit of the Child without intervention or queries on the part of the Respondent whatsoever and the wording is not certain enough for enforcement for committal proceedings. The Mother is expected to keep proper accounts of the money spent and the receipts therefrom. These will be very useful in particular if there is any future applications for variation. Maintaining proper record of accounts on the use of maintenance and the keeping of receipts and invoices is expected, but with the background of the case, I am of the view that the wording is not certain enough to be by way of undertaking, with which committal proceedings can be invoked if there is non-compliance. The undertakings in Preamble D and E be discharged.

Orders

With the reasons aforesaid, I make the following orders: The Father's Vary Downwards Application be dismissed. The Mother's Vary Upwards Application be dismissed. The undertakings in Preamble B, C, D and E of the Order dated 20 June 2017 be discharged forthwith. The Father do pay the Mother monthly maintenance in the sum of HK\$80,000 for the benefit of N, on the 7th day of each month commencing on 7 December 2025, until N attains the age of 18 or ceases full time education, whichever is the later. There be liberty to apply for the

implementation of the orders herein. In addition the following undertaking is to be included in the preamble :- Upon the undertaking of the Father to the Court and to the Mother that, until N attains the age of 18 or ceases full time education, whichever is the later, he shall directly settle with the New School all school fees and school bus charges of N within 7 days upon the presentation of invoice(s) or payment demand note(s); and he shall directly settle with the service provider the monthly premium of an insurance plan purchased with AIA Group Limited known as the AIA CEO Medical Plan (Worldwide) 5 Policy No. B628642921. Costs Costs should generally follow the event. With reference to paragraph 10 above, which I had dismissed the Father s application for adjourning the trial and to adduce new evidence, costs of the application should be paid to the Mother. In view of my ruling for this trial, both the Father and the Mother has failed to make out their case in full. Both of them win some and lose some of the issues involved. But having considered the way the Father has conducted the case, especially about the unsatisfactory and late disclosure of documents, causing additional time incurred during trial, I am of the view that the Father should be responsible for some costs in that regard, especially in relation to the prolonged trial dates. I therefore order that (a) The Father do pay half of the costs of the 6-day trial, to be taxed if not agreed with counsel certificate; (b) Other than the costs of the 6-day trial, there be no order as to costs for the 3 Applications, including all costs reserved. (c) The Applicant s own costs be taxed in accordance with Legal Aid Regulations. This is costs order nisi which shall be made absolute within 14 days. (Rita So) Deputy District Judge Mr. Eric Leung, counsel, instructed by Alvin Cheng & Rosaline Choy for the Applicant Mr Simon Westbrook, senior counsel, instructed by Messrs. Tung, Ng, Tse & Lam for the Respondent

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