

HONG KONG / JUDGMENT

L v. C

COURT

Court of Appeal

DECIDED

12 July 2007

CASE / FILE NUMBER

CACV169/2006

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bjbj cacv 169/2006 in the high court of the hong kong special administrative region court of appeal civil appeal no. 169 of 2006 (on appeal from hcmc NO. 5 of 2006) BETWEEN Petitioner and Respondent Before: Hon Stock JA, Yuen JA and Hartmann J in Court Date of Hearing: 12 July 2007 Date of Judgment: 12 July 2007 J U D G M E N T Hon Stock JA: By the judgment handed down in this case on 25 May 2007, we ordered the wife to pay the husband the sum of \$10,133,799 and set aside the order of the court below requiring the husband to transfer to the wife the property known as 4 Beacon Hill Road (the property). A summons has been issued by the wife by which she seeks an order: that execution of the order requiring payment of the specified sum be stayed until 25 August 2007; and that the wife shall vacate and deliver possession of the property to the husband on or before 25 November 2007. We are convened to hear that summons. Save as to the question of costs, it is no longer necessary for us to concern ourselves with the first order sought, since the sum has already been paid. In making this application the wife seeks an order supplemental to that made by this court on 25 May, in which original order the court did no more than set aside the order of the court below; we made no order that the wife vacate the premises, although the effect of the resulting position is that she will have to, because the property remains in the name of the husband. It was said on behalf of the husband that, given the absence of a specific date in the order for the wife to vacate the premises, she was bound to do so and we note that, in reflection of that stance, the solicitors acting for the husband wrote on 28 May 2007 to those acting for the wife requiring her to vacate within seven days. Not surprisingly, in my view, those acting for the wife thought this unreasonable and requested time, but the husband s solicitors responded on 30 May saying that a demolition order in respect of unauthorized building works to the property had been made by the Building Authority and the time for that demolition had only been extended by the Authority until determination of the appeal. It is said that the husband is under pressure to carry out the works as soon as possible and, accordingly, so the solicitors wrote, they were instructed to institute enforcement proceedings if the property was not delivered up on 1 June 2007, namely, two days later. It is also said today that the husband has for long been deprived of income from the property. In the written material before us there is some argument as to the test to be applied to this application. On the one hand, it is said for the husband that this is in effect an application to stay execution of an order, an application which should only be granted in exceptional circumstances; whereas it is said on behalf of the wife that

the application is made pursuant to the court s power in certain circumstances to make a supplemental order, in respect of which the discretion is wider. I do not think the rubric under which we are proceeding matters at all, for the result must be the same. In my judgment, the stance taken by the husband has been unreasonable, certainly until very recently. Of course the wife must have time to look for alternative suitable accommodation to purchase, a process that takes months, and to do whatever has to be done to such new property as she acquires. There is evidence that she has already viewed a number of properties. The effect of the judgment is to require the wife to move out of a home that she has occupied for many years and the husband has his own accommodation. The demand made of her to move out within seven days of that judgment was distasteful, as seems now to be conceded, though it is only right to say that the history of the conduct of both parties in this litigation is not edifying. It is now suggested by the husband that the wife should have three months rather than six months. I think that the six months from the date of our judgment which she seeks is reasonable in the circumstances. As far as concerns the attitude of the Building Authority, it seems clear enough to me from the history of the matter that the addition of a few months to a history that began, in this regard, in 1991, will be of no significance. Applications have already been made to the Building Authority by those acting for the husband for further extensions of time, to the latest of which applications there has as yet been no response. I would be most surprised if an order made in accordance with the wife s application would do other than persuade the Building Authority further to extend time to take account of it. But to preserve the husband s position in this regard, we should, I think, when making the order, grant liberty to apply. Accordingly, I propose an order in the terms of paragraph 2 of the summons, with a further provision granting both parties liberty to apply. Hon Yuen JA: I agree. Hon Hartmann J: I agree. [Submissions as to costs] Hon Stock JA: We have heard counsel as to costs. The husband should in my judgment have his costs of that part of the application that sought an order for deferral of the payment of the lump sum. It is self-evident that the wife did not need time to pay that sum. I would however grant the costs of the application concerning the property to the wife. Hon Yuen JA: I agree. Hon Hartmann J: I agree. (Frank Stock) Justice of Appeal (Maria Yuen) Justice of Appeal (M.J. Hartmann) Judge of the Court of First Instance Ms Anita Yip instructed by M 1udk C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk H; < ni? ,| QI jFen 6cq~ ,|QI & 6" Flora-template-ABC-Final (fair)1.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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