

HONG KONG / JUDGMENT

L v. H

COURT

Court of First Instance

DECIDED

27 November 2007

CASE / FILE NUMBER

HCMP2213/2007

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bjbj HCMP 2213/2007 in the high court of the hong kong special administrative region court of appeal MISCELLANEOUS PROCEEDINGS no. 2213 of 2007 (ON AN INTENDED APPEAL from fcmc NO. 1895 of 2007) BETWEEN L Petitioner Respondent Before: Hon Rogers VP and Le Pichon JA in Court Date of Hearing: 21 November 2007 Date of Judgment: 21 November 2007 Date of Handing Down Reasons for Judgment: 27 November 2007 REASONS FOR JUDGMENT Hon Rogers VP: This was a renewed application for leave to appeal the judgment of HH Judge Bruno Chan given on 12 September 2007 whereby the judge refused the application made by the respondent, the husband, to stay the wife s divorce petition and ancillary proceedings on the basis that Hong Kong was not the most appropriate forum to determine the suit. At the conclusion of the hearing of this application, leave to appeal was refused with reasons to be given in writing.

Background

The parties were married in Germany on 2 December 1994, seemingly whilst the husband was in custody. The husband was German and the wife was Taiwanese. They had met in Bali. After the husband been released from custody the parties signed a marriage contract on 27 February 1995. That provided two things which are relevant to this application. In the first place it provided that the marriage would be governed by German law. As the judge recorded, in the second place there were financial provisions in the event of the dissolution that included a waiver of post-marital alimony if payments were to exceed DM 3000 and that the duration of post-marital claims to maintenance payments would be limited to half the number of years of the marriage. That would limit the number of payments to about 6 years in this case. The elder daughter of the marriage was born on 2 November 1996. In 1998 the family moved to Hong Kong and a son was born in July

2001. Since moving to Hong Kong the wife has been a full-time housewife and mother and the husband has been the sole breadwinner of the family, running his own textile business through companies incorporated Hong Kong. The husband left the matrimonial home in February

2005. That was a house in Sai Kung which had been purchased in the name of Great World Consultants Limited. Since leaving the matrimonial home the husband has continued to pay maintenance to the wife and the children s school fees. The husband now lives with a new partner in mid-levels. In November 2005 the husband filed for divorce in Germany. It would appear that those proceedings have not progressed very far, partly because of difficulties of serving the wife with them in Hong Kong. These proceedings in Hong Kong were commenced by the wife on 13 February 2007. It would appear that both parties intend to remain in Hong Kong. The judge recorded that the wife had no intention to return to Taiwan or Germany and that she considered Hong Kong as her home and that the children were well settled here. As regards the husband, Mr Harris SC, who appeared on behalf of the husband on this application, confirmed what the judge said at 35 that the husband did not intend to leave Hong Kong or move back to Germany. His business was here and he sourced the textiles for it in Asia. The judge considered the various factors, including the evidence which had been filed from German lawyers, but came to the conclusion that Hong Kong was clearly the most appropriate forum for the resolution of the outstanding matters between the parties and that the husband could not even show that Germany was an equally appropriate forum, let alone that it was clearly and distinctly the more appropriate forum for the matrimonial proceedings. There were a number of very strong reasons that pointed the judge in the direction to which he came. Not least were considerations relating to issues concerning the children both as to access and maintenance. As regards other matters relating to the financial arrangements, it was clearly more efficient and effective for investigations relating to the husband s companies to be done in Hong Kong. The judge also took into consideration the difficulties that would be entailed in the parties, who were resident in Hong Kong, conducting litigation in Germany. Clearly when the matter came before Mr Justice Tang VP he had no difficulty in coming to the conclusion that leave to appeal should be refused. With that I would wholeheartedly agree. Indeed it would appear from the submissions made by Mr Harris that one of the matters which has heavily influenced the husband to apply for a stay of these proceedings in Hong Kong has been his wish to rely upon the marriage contract made in 1995. The terms of that document only have to be considered for it to be realised that if the terms were adhered to to any significant extent a grave injustice would be likely to be done to the wife. The period of maintenance, the amount of maintenance and the absence of any capital provision, let alone housing, are stark. I have no compunction in saying that I do not consider that if leave to appeal were granted any appeal would have any reasonable chance of success. Mr Harris indicated that, even if that were the conclusion that this court came to, leave to appeal should still be granted so that the court could pronounce on the effect of marriage contracts. No doubt the marriage contract will be considered in the course of these proceedings but I cannot envisage that given the change in circumstances from the time when it was executed, that document would have any effect on the outcome. Hon Le Pichon JA: I agree. (Anthony Rogers) Vice-President (Doreen Le Pichon) Justice of Appeal Mr Paul Harris SC & Mr Robin Egerton, instructed by Messrs Haldanes, for the Respondent/Applicant PAGE - A B C D E F G H I J K L M N O P Q R S T U V

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