

HONG KONG / JUDGMENT

LC v. YM

[2024] HKFC 146**COURT**

Family Court

DECIDED

31 July 2024

CASE / FILE NUMBER

FCMC8974/2022

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bjbj FCMC 8974/2022

**[2024] HKFC 146 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 8974 OF 2022**

BETWEEN LC Petitioner and YM Respondent

Coram: Deputy District Judge W.Y. Ho in Chambers (Not open to Public) Dates of Hearing: 27
March 2023, 11 December 2023. Date of Handing Down Judgment: 31 July 2024.

DECISION (Maintenance Pending Suit & Interim Periodical Payments)

This is the Respondent s application (the Respondent s MPS application) for the following orders: Maintenance pending suit in the sum of RMB 10,000 per month; Interim periodical payments for the children of the family in the total sum of RMB 50,000 per month A sum of RMB 360,000 as outstanding maintenance from August 2022 to January 2023. Unless otherwise specified, all monetary figures are in Hong Kong Dollars.

BACKGROUND

As at the date of this Decision, the Petitioner (husband) is 43 years old and the Respondent (wife) is 34 years old. They have two sons, currently the ages of 13 and 11. I summarize the salient events in chronological order as below: The parties were married in Hong Kong on 3 October 2011. The divorce petition was filed on 22 September 2022. The eldest son (the Eldest Son) was born on 27 September 2010 and youngest son (the Youngest Son) was born on 26 February 2012. On or about 18 August 2022, the Respondent and sons relocated to Mainland China without the

consent of the Petitioner. On 22 September 2022, the Petitioner took out an ex-parte summons for the return of the sons. Subsequently an inter-partes summons was taken out for the return of the sons on 28 October 2022. On 26 January 2023, the Respondent filed a summons asking for various relief including the present MPS application (the Respondent s Summons). On 31 January 2023, by reason the parties various undertakings and by the parties consensus that status quo should be preserved for the time being, I ordered that the Respondent be granted leave to temporarily remove the Sons to Hunan, China, until further order. On 20 February 2023, the Youngest Son refused to return to Mainland China and has remained in Hong Kong with the Petitioner since that date. The hearing of the Respondent s MPS application was fixed for 27 March 2023. On the day of the hearing (27 March 2023), I raised a number of questions with the Respondent s counsel on whether the Respondent had made false or, at the very least, inaccurate representations to relevant government authorities in her application for housing subsidy. I shall elaborate on this further in the Discussion section below. Due to counsel s need to take extensive instructions, the hearing was adjourned part-heard to 11 December 2023. On 11 December 2023, counsel for the Respondent informed the court that the Respondent will continue to pursue her application for interim maintenance and maintenance pending suit. After hearing all submissions from parties, I reserved my decision to be handed down no later than 12 June 2024. Due to unforeseen circumstances, the date was subsequently further extended to 31 July 2024. By reason of the parties consent, I ordered the following on 11 December 2023 (the Interim Interim Maintenance Order): The Petitioner pay the Respondent a sum of RMB 8,000 per month as the Respondent s interim maintenance pending suit. The Petitioner pay the Respondent a sum of RMB 22,000 as interim interim maintenance for the Eldest Son. THE LAW AND ISSUES I do not intend to repeat the trite principles to be considered in an application for maintenance pending suit and/ or interim periodical payments. Suffice to say, I am aware of and have considered the general principles laid out in the case of HJFG v KCY [2012] 1 HKLRD 95. The 2 main issues in this application are as follows: The reasonable financial needs of the Respondent and the Eldest Son Whether the Respondent has exaggerated her and the Eldest Son s financial expenditure. Whether the Respondent has exaggerated the family s previous marital living standard. Whether the Petitioner should pay for maintenance of one or both sons. Whether the Petitioner has means to pay for any interim maintenance or maintenance pending suit to be ordered. I note the following salient matters are not disputed by the parties: Although the Respondent is currently living in Mainland China with the Eldest Son, the Petitioner does not dispute that any interim maintenance to be awarded should be calculated based on the living standard in Hong Kong. The Petitioner concedes that the Respondent s reasonable expenditure is \$53,000 per month (inclusive of expenses relating to both sons) or \$34,589 (if only calculating the expenses of the Respondent and the Eldest Son). However, it is the Petitioner s case that he only earns a salary of RMB 25,000 and therefore he has no means to pay the Respondent s reasonable expenses. I do not intend to repeat each and every submission made by the parties in this decision. Suffice to say, I have considered parties submissions in reaching my decision, and where appropriate, I shall deal with those salient submissions in this decision. DISCUSSION The Respondent and the children s reasonable financial needs Having considered the submissions of both counsel, I accept the Petitioner should pay maintenance for the Respondent and Eldest Son only, as the

Youngest Son is now living with the Petitioner. I am of the view if any interim maintenance is to be ordered, it must be ordered on the assumption that the present status quo will not be disturbed unless and until there is a custody, care and control order. Hence, when I consider the Respondent's application for children maintenance, I will only consider the financial needs of the Eldest Son and not the Youngest Son. I set out the latest figures claimed by the Respondent (as set out in her latest affirmation and her counsel's submissions) and the Petitioner's position on the same in the table below.

Expenses	Respondent's Claimed Sum (HKD)	Petitioner's proposed sum (HKD)
Rent	\$27,000	\$19,000
Utilities	\$3,200	\$1,500
Food	\$20,000 (inclusive of children)	\$13,500
Insurance	\$3,187	\$3,187 but disputes whether the Petitioner should pay for the same
Domestic helper	\$5,500	\$5,000
Transport	\$1,200 (including the 2 children)	\$900 (for the Respondent and 2 children)
Clothing and shoes	\$2,000 (including the 2 children)	\$833
Entertainment and presents	\$2,000 (including the 2 children)	\$500
Holiday	\$6,000 (including the 2 children)	\$500
Travelling expenses	\$3,000	Extra-curricular activities and extra tuition \$13,000
Lunches and pocket money	\$4,000	\$200
School books and stationery	\$1,000	\$500
School hosted Extra-curricular activities	\$600	Uniform \$1,000
Snacks	\$2,000	Fruits \$2,000 (durian, melon etc.)
Swimming entrance fee at clubhouse	\$800	\$200
TOTAL	\$97,487	\$53,087

(The Petitioner calculates the Respondent and Eldest Son's share to be \$34,589) I am of the view the Petitioner has grossly exaggerated most of her expenses. For example, the expenses of food, snacks and fruit are overlapping in nature and are exaggerated in quantum. Furthermore, I do not accept the family's previous standard of living warranted expenditure in the sums claimed by the Respondent. In so far as the other items of expenditure are concerned, I set out my findings below: Utilities, Food, Insurance, Books and Stationery, Uniform, and School hosted ECA expenses: I accept the Petitioner's proposed sum on the same as being the more reasonable sum. However, in respect of the utilities expenses, I am of the view that the sum proposed by the Petitioner should not be divided by 3. The reasonable sum should be \$1,500 for both the Respondent and Eldest Son. Transport: I accept the Respondent's claimed sum of \$1,200 for the transport expenses of the two children and the Respondent. However, I am of the view this should include all travelling and transport related expenses. I therefore disallow the separate travelling expenses claimed by the Respondent. Children's lunch and pocket money: I am of the view that \$200 per child would be the reasonable sum. Holiday: I am of the view that \$2,000 per month for the Respondent and Eldest Son is the more reasonable sum. Even if the holidays are spent in Macau, the proposed sum of \$500 per month for three persons is grossly insufficient. Clothing expenses: I am of the view the more reasonable sum is \$1000 for the Respondent and \$500 for the Eldest Son. Entertainment: I am of the view the more reasonable sum would be \$500 per person. Swimming fees: I am of the view the more reasonable sum would be \$200 per person. Rent: I accept the Petitioner's proposed sum as being reasonable. However, I do not accept that 1/3 of such sum should be deducted to reflect the Youngest Son's share. Even if the Youngest Son is now living with the Petitioner, he is entitled to stay at the Respondent's home on access days. Therefore, I shall attribute half of the rental as the Respondent's expenses and the other half to be the Eldest Son's expenses. In so far as the Respondent is receiving rental subsidy (in the sum of \$3,050) from the government, I shall deduct from the allowance from the reasonable rental sum. I find that the reasonable rental sum for the Respondent and the Eldest Son to be \$15,950.

Domestic helper: I accept the Petitioner s proposed sum and I consider the whole of this sum should be counted as the Respondent and the Eldest Son s expenses. I therefore set out my findings on the reasonable sums of each expenditure now claimed Expenses Sum (HKD)

Respondent s	Respective share	Eldest Son s	respective share
Rent	\$15,950	\$7,975	\$7,975
Utilities	\$1,500 (for the Respondent and 2 children)	\$750	\$750
Food	\$13,500 (for the Respondent and 2 children)	\$4,500	\$4,500
Insurance	\$3,187		
Domestic helper	\$5,000	\$2,500	\$2,500
Transport	\$1,200 (for the Respondent and 2 children)	\$400	\$400
Clothing and shoes	\$1,500 (\$1000 for the Respondent and \$500 for the Eldest Son)	\$1,000	\$500
Entertainment and presents	\$1,000 (for the Respondent and Eldest Son)	\$500	\$500
Holiday	\$2,000 (for the Respondent and Eldest Son)	\$1,000	\$1,000
Travelling expenses			
Extra-curricular activities and extra tuition	\$7,067 (for the 2 children)	\$3,533.50	
Lunches and pocket money	\$400 (for the 2 children)	\$200	
School books and stationary	\$500 (for the 2 children)	\$250	
School hosted Extra-curricular activities			
Uniform	\$200 (for the 2 children)	\$100	
Snacks			
Fruits			
Swimming entrance fee at clubhouse	\$400 (for the Respondent and Eldest Son)	\$200	\$200
TOTAL	\$22,012	\$22,408.50	

Whether the Petitioner has means to pay interim maintenance to the Respondent and the Eldest Son I have considered both counsel s submissions on the means of the parties. I do not accept the Respondent is of limited means. She is clearly has earning capacity and is earning an average monthly income of at least RMB 6,500 (equivalent to \$7,515.44) from her business in China. I am of the view that given her age and her earning capacity, she is able to support half of her own living expenses. Despite his submissions of having a monthly income of only RMB 23,000, I note the Petitioner consented to paying a total of RMB 30,000 to the Respondent as interim interim maintenance. This is equivalent to HK\$33,080.67 (at the exchanged rate of HK\$1: RMB 1.102689). The logical assumption arising from the Petitioner s consent to pay such sum must be: Despite the Petitioner claiming to have limited means, he has the means to pay interim interim maintenance in the sums set out in the Interim Interim Maintenance Order. The Petitioner has means to pay sums over and above RMB 23,000. In such circumstances, and in view of the fact my findings on the monthly reasonable financial needs of the Respondent and the Eldest Son are similar to the Interim Interim Maintenance Order, I am of the view the Petitioner has the means to pay the maintenance pending suit and interim maintenance order to be made. By reason of the matters set out above, I order the Petitioner to pay interim maintenance and maintenance pending suit in the sums as set out below (the sums set out in the table hereinabove at paragraph 13 have been rounded off): To the Respondent as maintenance pending suit: \$11,000 per month. To the Eldest Son as interim maintenance: \$23,000 per month

Pre-marital declarations There have been extensive submissions on whether this court should place weight on the pre-marital declarations signed by the parties regarding their right to any inheritance from the Petitioner s family. I am of the view that for the purposes of this application, these matters are not relevant. The Petitioner s parents have not passed away and therefore there is no inheritance property to be considered at this stage. Moreover, this application concerns interim maintenance and maintenance pending suit. The court is to consider how best to ensure the Respondent and the Eldest Son s immediate financial needs are currently met. The relevance and impact of the declarations should more properly be decided by the ancillary relief trial judge. Rental allowance from the government On the first day of hearing,

I specifically raised with the Respondent and her counsel the implications the present application would have on the Respondent's current housing subsidy received from the government. The Petitioner has produced evidence to show that the subsidy is only available to those families qualified to apply for public housing and have been waiting for public housing for 3 years. It is public information that to be eligible for public housing, one's household asset value must be within the Net Asset Limits as set out by the Housing Authority. Furthermore, one must declare property and/or asset ownership in and outside Hong Kong. The current Net Assets Limits as published by the Housing Authority on their website (effective from 1 April 2024) is \$590,000 for a family of four. According to the Respondent in her affirmation filed on 30 January 2023 at paragraph 32, she deposes the Petitioner has property/assets in excess of RMB 61,392,851. I agree with Ms. Lee (Counsel for the Petitioner) that if the Respondent is receiving such subsidy, the Respondent must genuinely accept the household income and/or assets are within the Housing Authority guidelines. If the Respondent does not accept the same, and claims the Petitioner has assets in the sums as claimed in her various affirmations, the only reasonable inference must be she has made inaccurate representations (at the very least) in her application for housing subsidy, and/or has continued to make inaccurate representations so as to enable her to continue to receive such subsidy. For the purposes of determining the present application, whether the Respondent made inaccurate representations to the Housing Authority is irrelevant. The only relevance of the housing subsidy to the present application is whether the said sum should be deducted from the sum claimed by Respondent for rental. I have already dealt with the same hereinabove and shall not repeat the same. At the hearing, I did indicate to the Respondent I would consider whether this matter should be further investigated by the Department of Justice and/or Housing Authority. If appropriate and/or necessary, parties will be notified in due course. Whether there should be a backdating of this maintenance order I exercise my discretion and decline to back date any payments of interim maintenance for the following reasons: For reasons already stated above, I am of the view the Respondent has exaggerated her expenses. I therefore do not accept her living expenses are as deposed in her affirmations. I note there is a factual dispute as to whether the Petitioner has in fact refused to make any payments of maintenance as alleged by the Respondent. Such factual disputes cannot be determined on affirmations alone. Hence, such dispute should more properly be resolved at the ancillary relief trial. As at the date of the last hearing, the Respondent and the Eldest Son continue to reside in Mainland China. By reason of the disparity in living standards between Mainland China and Hong Kong, I see no reason why the interim maintenance calculated based on Hong Kong living standards should be back dated to cover living standards in the Mainland China which are far below that of Hong Kong. I therefore do not order any back payments of interim maintenance or maintenance pending suit and refuse paragraph 4 of the Respondent's Summons. SUMMARY By reason of the matters set out above, I make the following orders: The Petitioner shall pay, until further order, the following sums to the Respondent on the 18th day of each successive month commencing from 18 August 2024: A sum of HK\$11,000 per month as maintenance pending suit for the Respondent; and A sum of HK\$23,000 per month as interim maintenance for the Eldest Son. The above sums shall be paid by way of bank transfer to the Respondent to the Bank of China bank account as set out in the order dated 11 December 2023, unless so otherwise designated by the

6 / 7

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