

HONG KONG / JUDGMENT

LKYS v. CCW

[2020] HKFC 162

COURT

Family Court

DECIDED

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[2020] HKFC 162 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO 12075 OF 2017 BETWEEN LKYS Petitioner and CCW Respondent Coram: His Honour Judge Herbert Au-Yeung in Chambers (Paper Disposal) Dates of Written Submissions: 25 June 2020, 3 July 2020 and 8 July 2020 Date of Judgment: 13 August 2020 D E C I S I O N (Maintenance pending suit, interim maintenance and litigation funding) THE APPLICATION This is an application made by the Petitioner Wife by summons filed on 23 April 2020 (the Summons) for maintenance pending suit () for herself (\$13,000 per month), interim maintenance (\$55,000 per month in total) for the children of the family who are now around 7 and 5 years old respectively (the Children) and for litigation funding (\$10,000 per month). With the consent of the parties, this application is disposed of on paper without an oral hearing. THE LEGAL PRINCIPLES ON MPS The legal principles applicable to an application for MPS are well established. They have been set out in HJFG v KCY [2012] 1 HKLRD 95 from paragraphs 33 to 38 thereof:

33. Jurisdiction to award maintenance pending suit to a spouse is statutory, being governed by the provisions of s.3 of the Matrimonial Proceedings and Property Ordinance, Cap.
192. By that section the court is given a discretion to make an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance as the court thinks reasonable , subject to the condition that the duration of any such order is limited to the period of what may broadly be called the divorce litigation. By definition, therefore, maintenance pending suit is restricted to payments which constitute maintenance , which are reasonable in the circumstances and which will endure for no longer than it takes to determine the divorce litigation. Maintenance is a broad concept. I do not seek to define its exact meaning but it seems to me that it must be restricted to those payments necessary to meet the recurring costs of living at whatever standard of living is appropriate. That being the case, no matter how great the wealth of the parties and how unevenly distributed that wealth may be at the time an application for interim maintenance

is made, the court has no jurisdiction to make orders which for all practical purposes result in a form of pre-trial capital re-balancing. In the present case, the Judge recognised the long-established approach of looking to the immediate and reasonable needs of the wife and son. As to the amount of maintenance pending suit that may be paid, the Ordinance provides only that it must be reasonable, that is, having regard to the circumstances of the case, that it must be fair. An important factor in determining fairness is a consideration of the marital standard of living. In this regard, each case must be considered according to its own circumstances. It is not simply to be assumed that great wealth equates to great extravagance. Some married couples who enjoy great wealth spend with comparative modesty and with a discipline born of discretion, others enjoy consumption on a grand scale. The principles that have emerged over time to guide judges in matters of interim maintenance have been fashioned in the main to ensure fairness. This is well illustrated in the judgment of Nicholas Mostyn QC, sitting then as a deputy High Court judge, in *TL ML and Others (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263, at 1289, in which, having looked at earlier authorities, he derived the following principles that speak specifically to fairness or are based on the need to ensure it. For present purposes, it is sufficient to cite the relevant principles without citing the judge's reference to the source of those principles:

- i. The sole criterion to be applied in determining the application is reasonableness, which is synonymous with fairness.
 - ii. A very important factor in determining fairness is the marital standard of living. This is not to say that the exercise is merely to replicate that standard.
 - iii. In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long-term expenditure, more aptly to be considered on a final hearing. That budget should be examined critically in every case to exclude forensic exaggeration.
 - iv. Where the affidavit or form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee. Finally, it is to be noted that in applications for interim maintenance, when the amount to be paid is for a limited period only and not all of the evidence is necessarily before the court, it is not appropriate, nor indeed in most cases possible, for the court to conduct a detailed investigation into the finances of the parties. While, in order to determine what is or is not reasonable, some analysis is always required, that analysis can be conducted on a broad brush basis. It is also trite that in the event it is found, after a full ancillary relief trial, that there has been any overpayment or underpayment caused by the MPS order, the matter can be rectified in the final ancillary relief order made after trial.
- ADMISSIBLE EVIDENCE**
- Before I turn to consider the substantive merits of the application, in light of the manner the parties herein have put in their evidence, it is necessary for me to say a few words on the evidence admissible in an interlocutory application. Hearsay evidence In the Petitioner's 2nd Affirmation, she on several occasions referred to information which allegedly had been provided to her by the Respondent's friends. In paragraph 23 thereof, she said: The

following information/evidence were provided to me by H's friends only after I filed my 1st Affirmation. Under advice and subject to this Honourable Court's decision, I understand this Honourable Court may choose not to take them into considerations for the reason of fairness as H does not have a chance to reply. However, for completeness, I will discuss and present the information I received for this Honourable Court's kind consideration. In paragraph 24 thereof, the Petitioner continued: s friends recently informed me that In paragraph 27, the Petitioner also said that: 36, H denied he owned any properties/car parks. However, according to his friends information, H had actually owned one car park with This being an interlocutory application, in principle, hearsay evidence is admissible, for Order 41 rule 5(2) of the Rules of the High Court provides that: An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof. However, an important condition for the admissibility of such hearsay evidence is that the deponent has to state the source of information or belief. To say that certain information has been provided by the Respondent's friends without stating clearly who those friends are is not, in my view, adequate in satisfying such a condition. I will therefore disregard those pieces of evidence in respect of which the aforesaid condition stipulated under Order 41 rule 5(2) has not been complied with.

Evidence from the Bar table It can be seen from paragraph 23 of the Petitioner's 2nd Affirmation as quoted above that she has adduced evidence therein which she said was not available when she prepared her 1st Affirmation in support. As a result, she could only refer to those pieces of additional evidence in her affirmation in reply. As appreciated by the Petitioner, adducing such further evidence in her affirmation in reply may not be fair to the Respondent, since he would not be able to respond to those new matters in his affirmation in opposition which has already been filed and served pursuant to the court's usual directions. Faced with such a situation, a respondent has two choices. He may elect not to respond to those new pieces of evidence if, for example, he takes the view that such evidence would not assist the petitioner's application anyway. However, if he thinks he ought to reply, he should liaise with the petitioner and see whether it is agreeable to the petitioner for leave to be granted for him to file and serve further affirmation in opposition, so that he may address those new matters properly. Of course, this would be subject to the petitioner's right to have the last word by filing and serving a further affirmation in reply. If no agreement can be reached, the respondent should take out an application before the court as soon as possible for further directions. What such a respondent should not do is to adduce evidence in answer to the aforesaid new evidence by virtue of his submissions. Regrettably, this is what the Respondent's solicitor 0FO9h c:y& then included what he/she had been instructed by the Respondent in answer to the Petitioner's new allegations. This is what is commonly called giving evidence from the Bar table . Evidence adduced in this way will be disregarded as being inadmissible. I now turn to consider the substantive merits of the application.

REASONABLE NEEDS OF THE PETITIONER AND THE CHILDREN The first question that this court has to ask is what the reasonable expenses of the Petitioner and the Children are. The Petitioner has set out her expenses and the Children's expenses in her Form E affirmed on 11 April 2019, which was relied on in her 1st Affirmation filed on 23 April

2020. It is noted that the Petitioner's counsel has provided this court with an Appendix 1 which has set out the most updated expenses of the Petitioner and the Children. These most updated figures will only be taken into account insofar as they are less than the amounts claimed in the Petitioner's Form E or supporting affirmations filed for the purpose of this MPS application, as I will treat them as concessions made for and on behalf of the Petitioner. However, for those expenses which have been adjusted upwards or introduced for the first time, I am afraid it is inappropriate for them to be considered, because, as I have discussed above, it is not up to counsel to give evidence for his client by way of submissions. I will therefore disregard those increased figures. On the other hand, the Respondent has not addressed this court (neither in his Affirmation filed in opposition nor in his solicitor's written submissions) on the reasonableness of the expenses claimed by the Petitioner. He only stated that it was agreed between the parties during the marriage that he would pay the Petitioner \$25,000 every month to maintain the family. While the Respondent did not launch any attack against any individual item of expenses, I am of the view that the Petitioner still has the burden in satisfying this court that the amounts claimed are reasonable. Of course, this court may take the (lack of) stance on the part of the Respondent into account when deciding on the reasonableness of such expenses. With the above in mind, I turn to consider the expenses claimed.

General expenses The monthly general expenses claimed are as follows: Items Rent 15,000 Utilities (electricity, gas, rates, telephone & water) 2,500 Food 15,000 Household expenses 2,500 Car expenses 9,760 Domestic helper 4,480 TOTAL: 49,240 Subject to the following items, this court accepts that the above figures are generally reasonable.

Rent It appears that the Petitioner is not claiming for the sum of \$15,000, as she had put down the following words excluding the HK\$15,000 rental payable to my mother in the calculation of her claim in paragraph 2 of her 1st Affirmation. The said sum of \$15,000 will therefore not be taken into account herein.

Food The Petitioner claims \$15,000 as expenses on food for herself, the Children and their domestic helper. This amounts to around \$500 per day, which, in my view, is unreasonably high. I will adopt \$10,000 per month as a reasonable figure.

Car expenses The updated figure provided by the Petitioner's 2nd Affirmation and Appendix 1 of her counsel's written submissions is \$6,300. This amount will be adopted as a reasonable amount.

Domestic helper The amount claimed in the Petitioner's Form E will be adopted, although it seems that the Petitioner is currently asking for a total of \$4,800 in Appendix 1 of her counsel's written submissions. I have explained above that I am not prepared to accept evidence given from the Bar table.

Management fees For the same reason given in the preceding paragraph, I will not take into account the claim of management fees which only appeared for the first time in Appendix 1 of the Petitioner's written submissions. The general expenses which will be taken into account are therefore as follows: Items Rent Utilities (electricity, gas, rates, telephone & water) 2,500 Food 10,000 Household expenses 2,500 Car expenses 6,300 Domestic helper 4,480 TOTAL: 25,780 I will round the figure up to \$25,800. Hence, I assess the reasonable general expenses of the Petitioner and the Children at \$8,600 each.

The Petitioner's personal expenses The Petitioner's personal expenses claimed in her Form E are as follows: Items Meals out of home 2,000 Transport 1,000 Clothing / Shoes 2,500 Personal grooming (including haircut and

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would withdraw \$20,000 to \$30,000 on a monthly basis. The Respondent did not say that he had any objection against this. So, was there really a cap of \$25,000? If there was indeed any agreement of \$25,000 as alleged, there should not have been such discrepancy. The Respondent said he was furious when he found out that the Petitioner had withdrawn \$200,000 odd from his account in the period between 2015 and 2017. Let's take his case to the highest, that the Petitioner had withdrawn \$299,999 in the period between December 2015 and January 2017 (14 months in total). Even in such a case, the Petitioner had only withdrawn \$21,428 on average out of those 14 months, which is still lower than the \$25,000 limit. It is thus difficult to understand what the Respondent was furious about. Either he had exaggerated his case, or, as alleged by the Petitioner, the Respondent in fact had given her cash from time to time to spend. In any event, even if it is accepted that there was indeed such an agreement as alleged by the Respondent, I do not think it would assist the Respondent. This is because any such agreement (which was said to have been reached during the marriage) must have been reached some years ago, when the Children were still very small. The reasonable needs of the family would change when time passes by. It is inappropriate to consider what the family's needs currently should be by reference to what the parties had agreed in the past when the situation was different.

THE RESPONDENT'S ABILITY TO PAY This is the main battle ground between the parties as far as this application is concerned. By virtue of a court order dated 22 April 2020, the Respondent has been ordered to pay interim maintenance to the Petitioner in the monthly sum of \$20,000. The Respondent maintained that this is the maximum amount which he can afford. The Respondent is the sole proprietor of a car repairing company (the Company). According to his Form E which was affirmed on 4 May 2019, he is receiving a monthly salary of \$33,000, and his monthly personal expenses are as follows: Items Meals out of home 4,000 Transport 2,000 Clothing Personal grooming Entertainment Holiday Medical / Dental Interim maintenance 15,000 Contribution to parents 10,000 TOTAL: 32,400 The amounts of expenses claimed under the above heads are generally reasonable, except contribution to parents. I am of the view that, as a matter of principle, when a party is faced with the obligations to raise his/her family and to contribute to the living expenses of his/her own parents, such a party should put his/her family as first priority. That is the reason why contribution to parents would normally be disregarded in considering the payer's ability to pay in an application for MPS. However, in the present case, this court is aware that the Respondent has not put down any figure as his general expenses and that, according to his Affirmation, the amount of \$10,000 is payable by reason of his having moved back to live with his parents. I would therefore allow \$5,000 as his share of expenses on food, utilities and other miscellaneous items at home. Hence, the reasonable personal expenses which should be allowed for the Respondent (excluding interim maintenance) should be \$12,400. Therefore, if the Respondent is earning \$33,000 every month, he should be able to afford \$20,600 for MPS and interim maintenance. But the question is: should \$33,000 be taken as the Respondent's monthly income? I do not think so. It is true that the Respondent has reported in his Form E that his monthly salary is \$33,000. It is also noted that this figure is consistent with the Salary proprietor entry under Operating Expenses in the profit and loss account for

the year ended 31 March 2019 of the Company. However, to analyse the situation, the following features of the Respondent's case must be borne in mind: As aforesaid, the Respondent is a self-employed sole proprietor of a car repairing company. In other words, his source of income comes not only from the stated salary but also the profit of his company. In the Respondent's assertion that he was receiving \$33,000 as his monthly salary, there was not a single entry in the aforesaid bank accounts which was in the sum of \$33,000. Therefore, it is my view that the so called monthly salary does not reflect the real income received by the Respondent, for it has not taken the profit earned by his solely owned unlimited company into account. This finding is also supported by the Respondent's own evidence. It may be recalled that he stated in paragraph 30 of his (WZZ NCSCQ g6eeQ per month). Indeed, according to the Respondent, he only increased his own salary to \$33,000 per month in 2019. In other words, by saying that \$25,000 (which is higher than the stated salary of \$20,000) was a majority of his monthly income, he had indirectly admitted that he did not only earn the salary as stated in the Company's account. What should then be considered as the profit earned by the Company? According to the profit and loss account for the year ended 31 March 2018 of the Company, the repair services income was stated to be \$1,826,483, and the profit was calculated to be \$18,859. According to the Company's profit and loss account for the year ended 31 March 2019 (which is the most up-to-date account placed before the court), the repair services income was \$1,815,713, and there was only a profit of \$8,848 for the year. However, according to the Petitioner's calculation which was done by reference to the bank statements provided by the Respondent, the total amount of money deposited into the bank accounts of the Respondent and the Company in the period between April 2017 and March 2018 was \$2,837,920, and \$2,613,673 between April 2018 and March 2019. These figures are not disputed by the Respondent or his solicitors. There is thus a question as to why there was such a large discrepancy in the amounts of deposit and figures reported as the repair services income of the Company. The Respondent had, by virtue of the Petitioner's questionnaire filed on 21 June 2019, been specifically asked whether he had any investment, he only claimed that the Petitioner's mother was owing him a total of \$145,000. He did not include any name of his friend(s) as his debtor(s). The Petitioner had also referred to such a discrepancy in her Affirmation filed in support of this application. However, the Respondent has not given any reply on this matter at all in his affirmation in opposition. By reason of the above, I am of the view that this court is entitled to draw adverse inference against the Respondent, and to make a robust assumption that the Company was earning much more than what it had reported in its profit and loss accounts. It can be seen above that there was around \$1 million which was not accounted for in relation to the year ended 31 March 2018, whereas the corresponding figure for the year ended 31 March 2019 was around \$800,000. In other words, the unaccounted amounts of deposit for those years would on average be around \$83,000 and \$66,000 respectively per month. I would assume that at least 80% of the unaccounted amounts is profit earned by the Company. Hence, even if 80% of the lower figure of \$66,000 (\$52,800) is adopted, taking into account the amount of \$20,600 which this court has found above that the Respondent is able

to afford if he is earning \$33,000 per month, the Respondent should be able to spare at least \$73,400 per month for the Petitioner and the Children. This court has not lost sight of the Respondent's allegation that the Company had been badly hit by the recent social events in Hong Kong and the pandemic situation. However, it is evident that the amount of monies deposited into his personal account and the Company's account during the year ended 31 March 2020 was not too different from the corresponding figures in the previous two years. The total amount of deposit in 2019-2020 was \$2,773,515, which as a matter of fact represents around 6% increase when compared to the 2018-2019 figure referred to above. The Respondent's assertion that his ability to pay has been adversely affected by the situation of Hong Kong is therefore rejected. There are other allegations made by the Petitioner in respect of the Respondent's financial ability to pay MPS. For example, it was said that the Respondent had from time to time given her cash in the region of \$50,000 to \$70,000 to pay off family expenses. It was also alleged, among other things, that the Respondent had invested in numerous car parks and other properties and made great profits. These allegations are denied by the Respondent. Without cross-examination of the parties, this court cannot make any finding of facts only by reference to the affirmations filed. In any event, there is no need for the court to resolve these factual disputes on this occasion by reason of the inference drawn that the Company had understated its revenue and profits made.

THE PETITIONER'S EARNING CAPACITY It is the Respondent's case that the Petitioner had been earning around \$50,000 to \$60,000 monthly as a private tutor, but this is denied by the Petitioner. Again, this court cannot make any ruling on this factual dispute without cross-examination of the parties. However, it is undisputed that the Petitioner has been working as a private tutor. The Petitioner further admitted that her part time earning was usually spent on [her] own expenses including for facials, clothing and some other personal expenses. It is not entirely clear whether some other personal expenses means all other personal expenses. However, it is noted that the Petitioner's alleged monthly income was \$9,000, which is not too different from her current monthly personal expenses budget of \$9,400. In light of the above, I am of the view that it would only be reasonable and fair if the Petitioner continues to pay for her own personal expenses herself without resort to the Respondent's financial resources. I am aware the Petitioner asserts that: Most of my students are foreign students and I worked as their Chinese tutor. Unfortunately, as a result of the Covid-19 pandemic, most of them are either moving back to their own countries or prefer not to be visited for health safety reasons. Therefore, my part time salary is now reduced to around HK\$3,000 per month only. However, on the other hand, if one looks at the Petitioner's personal expenses budget, it can be appreciated that much of the expenses thereunder would be reduced if Hong Kong is still affected by the pandemic. I am therefore of the view that the Petitioner should be able to take care of her own personal expenses herself.

THE AMOUNT OF MPS AND INTERIM MAINTENANCE PAYABLE By reasons of the aforesaid, it is my view that the Respondent should pay the Petitioner MPS in the sum of \$8,600 per month (covering her general expenses only), and interim maintenance for the Children in the sum of \$45,800 per month (covering their general and personal expenses).

LITIGATION FUNDING On top of maintenance covering general and personal expenses, the

Petitioner also applies for an order for litigation funding in the monthly sum of \$10,000. The principles for granting litigation funding are trite, and have been referred to by the Court of Appeal recently in the case of *WW v LLN (No 2)* [2020] 2 HKLRD 487 as follows: In order to obtain litigation funding, the burden is on an applicant to demonstrate that she cannot reasonably procure legal representation by any other means. This includes showing that she cannot secure publicly funded legal help at a level of expertise apt to the proceedings. To the extent that she has assets, the applicant has to demonstrate that they cannot reasonably be deployed, either directly or as the means of raising a loan to fund legal services; The subject matter of the proceedings and the reasonableness of the applicant's stance in the proceedings will always be relevant. The period over which costs allowance is to be paid is also relevant. If the application was made before the FDR hearing, it may well be wise to order that the costs allowance should fund the applicant only up to that hearing. If the FDR fails, it would be for the new judge, on the basis of the materials properly before him, to determine whether a new allowance for legal costs should be granted and if so, in what amount. (at paragraph 20 thereof) In paragraph 21 of the same Judgment, the Court of Appeal also warned that: The court should be alert to the risk of injustice arising from irrecoverable and/or unmerited sums paid for litigation funding, which would call for extra caution in the balancing exercise. As stated by Thorpe LJ in *Moses-Taiga v Taiga* [2005] EWCA Civ 1013, at 20: the whole purpose of alimony pending suit is to sustain the petitioner pending the court's determination. There is manifestly a risk of unjustified and irrecoverable payments, but that has to be balanced against the risk of a denial of access to justice for the petitioner, if she has not the means to sustain herself and the litigation pending its determination. The Respondent opposes against providing litigation funding on the following grounds: The Petitioner may obtain funding by borrowing which may be secured by the property which is held by her and her mother jointly; The Petitioner may apply for legal aid; and The Respondent does not have financial ability to provide for such funding. As far as the property is concerned, it is noted that the Petitioner is self-employed with no proof of income, whereas her mother has already retired. It is therefore doubtful whether any bank would be willing to grant her any loan even on secured basis. Even if a loan may be obtained by making use of the property as security, given the Petitioner's reported income, it is doubtful whether she will be able to pay any monthly instalments. As pointed out by the Petitioner's counsel, since the Children are currently residing at the property, it would be most undesirable, and not in their best interest, if there is any risk that the property would be foreclosed by the bank by reason of any default of repayment on the part of the Petitioner. Hence, it is my view that the property is not an asset that can reasonably be deployed for legal costs. As to the Respondent's argument that the Petitioner should apply for legal aid, his attention should be drawn to what Hartmann JA said in the case of *HJFG v KCY* (supra) at paragraph 85: Wilson LJ spoke of a legal costs allowance being structured, especially as to its duration, so as to best encourage a spouse in receipt of the allowance to act reasonably, looking in good faith to try and reach settlement. In *KGL CKY* (page 219), this Court adopted the same fundamental reasoning albeit by reference to the spouse paying the allowance: There is no reason why public funds should be expended to

fund litigation when there are ample resources available within family funds. With proposals for more active juridical involvement in pre-trial proceedings to restrict the incidence of costs this is in line with the modern approach. The court can keep better control of litigation if its funding is at least in part within its purview. The party that controls the funds will be less willing to use them on unnecessary interlocutory procedures if he or she will have to provide funding for the other side. It is my finding above that the Respondent has the financial ability to provide the Petitioner with litigation funding. That being the case, there is no reason why the parties herein should resort to public funds. Furthermore, as explained by the Petitioner in paragraph 47 of her 1st Affirmation, she is not eligible for legal aid anyway because of the property held under her name. Given the aforesaid finding on the Respondent's financial ability, his argument that he is unable to provide litigation funding also falls away. In the present application, the Petitioner is only asking for a monthly sum of \$10,000. It is her evidence, which is undisputed, that she has so far incurred a total amount of legal cost of more than \$100,000, but her solicitors have not requested her to pay anything since April 2018. It is further estimated that the costs to be incurred up to FDR would be in the amount of \$85,000. Although the Petitioner has not placed before this court any breakdown of costs as such apart from referring to her Form H, I am of the view that given the modest amount claimed, and since this case is at a relatively early stage, the court should relax its evidential requirement in the present application. In paragraph 45 of the Judgment in *WW v LLN* (No 2) (supra), it was held that: In our judgment, there should be some flexibility in the evidential requirement on the quantum of costs in a litigation funding application which should be processed summarily. In a case where the claim is for a modest amount and the case is at a relatively early stage, it would be counter-productive to require a detailed breakdown for future costs as this may generate lengthy and costly but fruitless debates on such details. This would go against the summary nature of the exercise and the broad brush approach that the court should adopt in processing the same. Provided that a judge can be satisfied on the strength of a Form H that the ongoing costs are reasonable and the sums asked for are commensurate with a proportionate scale of the litigation, an award could still be made. The Respondent has never suggested that the Petitioner's incurred or estimated costs are unreasonable. In any event, I am satisfied that the costs put down in the Petitioner's Form E are commensurate with a proportionate scale of the litigation before this court. I will therefore allow the Petitioner's application.

BACKDATING The Petitioner asks that any order to be made herein should be backdated to the date of the Petition (i.e. 15 September 2017). I do not think that is appropriate to do so, because: According to the Petitioner's evidence, she had been withdrawing money from the Respondent's company account by making use of blank cheques signed by the Respondent up to March 2018; Parties had agreed on 6 September 2018 that the Respondent shall pay MPS for a monthly sum of \$15,000 from May 2018 until further order of the court. In my view, justice is not done if the order herein is backdated to the extent as prayed for by the Petitioner. On the other hand, I agree that justice requires that the order herein be backdated to around the date of the application. The Summons was filed on 23 April 2020. The obligation to pay the increased amount of MPS and interim maintenance together with

litigation funding should therefore be backdated to 1 May 2020.

ORDERS

I therefore make the following orders: - The Respondent shall pay the Petitioner MPS in the sum of \$8,600 per month, such payment to be backdated to 1 May 2020 and thereafter to be paid on the 1st day of each succeeding month until further order of the court. The Respondent shall pay the Petitioner interim maintenance for the Children in the sum of HK\$45,800 per month, such payment to be backdated to 1 May 2020 and thereafter to be paid on the 1st day of each succeeding month until further order of the court. Credit shall be given to any amounts already paid for the months starting from May 2020 pursuant to the court's order dated 6 September 2018. The Respondent shall pay an additional sum of \$10,000 per month as litigation funding from 1 May 2020 until FDR or until further order of the court, whichever is earlier. All such payments shall be made directly to the solicitors for the Petitioner on account of the Petitioner's costs.

COSTS While I have not allowed the Petitioner's application in full, she is still regarded as the successful party in this application. I therefore make a costs order nisi that: the Respondent shall pay the Petitioner's costs of and incidental to the Summons, with certificate for counsel; such costs shall be assessed summarily on paper, pursuant to Order 62 rule 9A(1)(a) of the Rules of the District Court (Cap.336H); and the assessed costs shall be paid within 14 days after summary assessment. In the absence of any application made within 14 days to vary, the above cost order

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POSTSCRIPT CITATION OF AUTHORITIES While the Respondent's solicitor has cited 4 cases in his/her list of authorities, only one of them was referred to in the Respondent's written submissions. This is not an appropriate or fair way to

cite case authorities. Whenever a case is cited, the court and the other party are entitled to know what purpose such a case is cited for and the exact paragraph(s) which is/are relied on.

Depending on the individual circumstances and the need of the case, advocates may quote the relevant paragraph(s) in full in their written submissions, or at the very least refer to the relevant paragraph number(s) in such submissions, and explain why such paragraph(s) is/are useful in the court's deliberation of the application placed before the court. This is particularly important when the application is dealt with on paper, because there would be no oral hearing in which the advocates may be asked to clarify on such a matter. This in fact is not a new requirement. See paragraphs 8(5) and 9(5) of Practice Direction 5.4 which is made applicable to the District Court by virtue of paragraph 11 of Practice Direction 27. (Herbert Au-Yeung) District Judge Mr. Kung Kin Chung, instructed by Messrs. Tung, Ng, Tse & Lam, for the Petitioner Messrs. L & L Lawyers, for the Respondent The tables of expenses of the Petitioner's Form E have been exhibited to and relied on in the Petitioner's 1st Affirmation. Pages 396-397 of the hearing bundle Dated 6 May 2020, at page 164 of the hearing bundle Page 405 of the hearing bundle Answer 19e f of his Reply dated 6 May 2020 Excluding the internal transfers between the two accounts See footnote 6 Paragraph 32 thereof Paragraph 31 of the Respondent's Affirmation Paragraph 22 of the Petitioner's 1st Affirmation Paragraph 23 of the Petitioner's 1st Affirmation Paragraph 23 of the Respondent's Affirmation PAGE - PAGE 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 A B C D E F G H I J K L M N O P Q R S T U V qdqdq h?pm gd/=] gdH+A gd?vB zm`mzSF`m hc(> h?vB h?pm hMEs h,-' h,-' h,-' h,-' hN/' hN/' gd|d gd,-' gd/=] hc`e hE!- &`#\$ \$ #v \$ #v \$ #v \$ #v [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> 7qui\$&< ;'_9 H; < "_=Dc6k g|JW !%bav EpXj 7qu !%ba g|JW ;'_9 EpXj DCCJ643/2003 setup Normal.dotm Windows User Microsoft Office Word Judiciary Hong Kong SAR DCCJ643/2003 Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/bibliography" SelectedStyle="\APASixthEditionOfficeOnline.xsl" StyleName="APA" Version="6"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{98ED02F7-E3D4-4CFD-8C75-D385418BAFA3}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

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Prepared on 28 October 2026 · Esheria