

HONG KONG / JUDGMENT

LM v. FW**[2024] HKFC 41****COURT**

Family Court

DECIDED

22 March 2024

CASE / FILE NUMBER

FCMC7076/2022

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bjbj FCMC 7076/2022

**[2024] HKFC 41 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO.7076 OF 2022**

BETWEEN LM Petitioner and FW Respondent

Coram: Deputy District Judge W.Y. Ho in Chambers (Not Open to public) Date of Hearing: 22
September 2023 Date of Decision: 22 March 2024

DECISION (Maintenance Pending Suit & Legal Costs Provision)

This is the Petitioner s application for the following orders: Maintenance pending suit (for herself) and interim periodical payments (for the child) in the total sum of HK\$1,204,000 per month; and Provision for legal costs at HK\$7,220,000 to cover litigation funds up to the Financial Dispute Resolution hearing. Unless otherwise specified, all monetary sums referred to in this decision refer to Hong Kong Dollars.

BACKGROUND

I set out the brief background facts and chronology of the present case as follows: As at the date of the hearing, the Petitioner is 35 years old and the Respondent is 41 years old. Both parties were born in Mainland China. They received their tertiary education overseas. They met in 2014 and started co-habiting in or around March 2019. In contemplation of marriage, parties signed a pre-nuptial agreement on 14 June 2019 (the Pre-Nuptial Agreement). The parties were married on 12 July 2019 and the child of the family was born on 21 November 2019 (the Child). According to the

Petitioner, she quit full time employment in June 2019. The Respondent does not dispute the Petitioner quit her job after marriage. However, the Respondent has not specifically stated whether he agrees she quit in June 2019. Prior to marriage, the Petitioner was a private banker and the president of a financial company. The Petitioner acted as a part-time consultant at a financial company during the time the parties were living in Shanghai but such arrangements ceased since August 2022. The Respondent was and is at all material times the founder of his own private equity fund house. On 4 August 2022, the Petitioner petitioned for divorce. On 10 October 2022, the Petitioner issued a summons asking for maintenance pending suit, interim periodical payments for the Child and litigation funding (the Petitioner s MPS application). On 5 December 2022, the Respondent filed a summons (Crossley Application) for the purposes of enforcing the Pre-Nuptial Agreement. As at the date of this Decision, the Crossley Application is yet to be determined. The Petitioner s MPS application was heard on 22 September 2023. It is not disputed the parties are wealthy and have accumulated vast wealth from their respective careers. According to their Form Es, the Petitioner s net value is at least \$77,082,969 (with other sums still undetermined) and the Respondent s net value is at \$75,083,620.07. On their Form Es alone, the matrimonial assets are potentially well over \$150 million. The parties respective net worth and their financial resources are strongly contested. As with most matrimonial cases, each party claims the other party has not provided full and frank disclosure of their true financial position.

THE ISSUES The Respondent concedes he has the ability to pay any sum of maintenance the court may order. Hence, there is no issue on the Respondent s ability to pay. The Respondent agrees to pay a reasonable sum towards the maintenance of the Child. The only dispute the Respondent has in respect of the Child s interim periodical payments is the reasonableness of the quantum claimed by the Petitioner. I am of the view the main issues of the Petitioner s MPS application are as follows: Whether this court should take into account the Pre-Nuptial Agreement when considering the appropriate maintenance pending suit order to be made. If so, what weight should be placed on the Pre-Nuptial Agreement when considering the proper order to be made. What are the reasonable needs of the Petitioner and the Child. Whether the Petitioner has sufficient financial means and/or resources such that maintenance pending suit and litigation funding should not be granted. I am aware of and have considered the general principles to be considered in an application for maintenance pending suit and/ or interim periodical payments as set out in the case of *HJFG v KCY* [2012] 1 HKLRD 95. I will not repeat the same. I have also considered the well-known principles relating to legal costs provision as set out in the case of *Currey v Currey (No 2)* [2007] 1 FLR 946. I shall not repeat the same. I do not intend to repeat every submission made by the parties. Suffice to say, I have considered parties submissions in reaching my decision and I shall deal with those salient submissions in this Decision where appropriate.

WHETHER THE PRE-NUPTIAL AGREEMENT SHOULD BE CONSIDERED IN THE PETITIONER S APPLICATION FOR MAINTENANCE PENDING SUIT

Counsel for the Respondent, Mr. Scott SC, submitted that the court should adhere to, as closely as possible if not entirely, to the terms of the Pre-Nuptial Agreement. A number of cases including *SPH v SA* [2014] 3 HKLRD 497 were cited in support of his proposition. In particular, the Respondent asks this court to consider the Petitioner s assets as specified in the Pre-Nuptial Agreement and to refuse her application on the basis that she has sufficient financial resources to

meet her reasonable financial needs. Counsel for the Petitioner, Ms. Rattigan SC, distinguished the cases cited. Ms. Rattigan SC submitted the present case is peculiar on its own facts in that the court has evidence from the Petitioner on the reasons why the Pre-Nuptial Agreement should be vitiated. Moreover, there is an impending Crossley Application hearing, which will determine the validity and enforceability of the Pre-Nuptial Agreement. In such circumstances, this court should ignore the terms of the Pre-Nuptial Agreement and proceed to assess the maintenance pending suit application in accordance with the Petitioner's reasonable needs. In order to understand the effect of the Pre-Nuptial Agreement on the Petitioner's MPS application, I set out the salient provisions of the agreement as follows (names have been obliterated):

DEFINITIONS. . . . IV. Permanent Breakdown of the Marriage means the first to occur of any of the following events: the separation of the parties in circumstances which they both agree to be permanent; or the commencement of proceedings for dissolution or annulment of the Marriage or for judicial separation or its equivalent; or the date on which one of the parties informs the other in writing or by e-mail that he or she regards the Marriage to have broken down irretrievably. . . .

WHEREAS . . . (E) Mr. [XX] and Ms. [XX] want to keep things as simple and as straight forward as is possible in this Deed as both hope and expect their marriage to last. They wish to enter into this Deed to record their wishes and intentions regarding their respective financial rights and obligations in respect of their respective Separate Property. They intend to ensure by entering into this Deed that they do not have to engage in any dispute or litigation in relation to any matter about which they have reached agreement as recorded in this Deed. Both parties acknowledge that they have each been informed that under the laws of Hong Kong, it is currently not possible to exclude the jurisdiction of the court to make orders pursuant to the Matrimonial Proceedings and Property Ordinance and pre-nuptial agreements may not be binding under the laws of Hong Kong. Nonetheless, Mr. [XX] and Ms. [XX] agree that they both intend that this Deed shall be legally binding upon them and their heirs and personal representatives. . . . (I) Mr. [XX] and Ms. [XX] agree that:

- (i) the intention and purpose of this Deed is to define and limit the extent of the rights and claims which each has or may have against the other including, but not limited to, the rights which they each may have on the Permanent Breakdown of the Marriage; . . . (N) In the event of the Permanent Breakdown of the Marriage, both parties intend and agree that their respective financial rights and obligations in respect of their respective Separate Property will be solely governed by this Deed, which is to be respected and enforced in all and any jurisdictions in the world. To this end, whilst they acknowledge that in certain jurisdictions, including Hong Kong, it is or may not be possible to oust the court's powers to override the terms of this Deed, they both intend and agree that this Deed shall be treated as binding on each of them (and upon their respective heirs, receivers, trustees and personal representatives) throughout the world and wherever they reside and the parties further agree to implement its terms and provisions and, if the jurisdiction so permits, to make its terms and provisions (to the extent possible) into an order of the court. . . . (Q) Mr. [XX] and Ms. [XX] acknowledge and confirm to each other that save as herein provided, each of them shall retain their respective Separate Property, in the unfortunate event of the breakdown of

their marriage. (R) Mr. [XX] and Ms. [XX] hereby expressly acknowledge, accept and agree that they respectively:

- (i) have carefully read each provision of this Deed (including the Schedules) prior to its execution and are entering into it after considering all the facts, circumstances and implications of it; (ii) have been advised separately and independently by their respective legal advisors as to the contents of this Deed and as to the actual and potential effect of this Deed prior to entering into this Deed; (iii) have had adequate time to reflect on the legal advice they have each received; (iv) are informed as to:
 - (a) the facts relating to the subject matter of this Deed,
 - (b) the assets, Property, and financial obligations of each party, and
 - (c) the rights and obligations of both of them;
- (v) have been provided with disclosure of the Property and financial obligations of the other party to his/her mutual satisfaction; and (vi) fully and completely understand each provision of this Deed both as to the nature, subject matter and legal effect and are aware of the respective legal rights that each of them may be releasing pursuant to the terms of this Deed. . . . AGREEMENT . . . 5.2 Mr. [XX] and Ms. [XX] agree that on the Permanent Breakdown of the Marriage, each party shall retain his or her Separate Property. They will not now or in the future acquire or claim to have acquired any beneficial interest in the other party's Separate Property or have any right to claim an interest in or payment from any trust or settlement forming part of the other party's Separate Property, of which the other party is a beneficiary or a member of a class of beneficiaries. The parties' respective Separate Property shall not form part of the matrimonial assets to be subject to the court's ancillary relief orders and shall be free from any claim by the other party, on the Permanent Breakdown of the Marriage. Each party shall not make any claim to the other's Separate Property or any of them whether during the Marriage or in the event of the Permanent Breakdown of the Marriage. Each party agrees to release all rights and/or not to pursue claims in respect of any rights which he/she may acquire by reason of the Marriage over the other's Separate Property or any of them. . . . 5.4 If either Mr. [XX] or Ms. [XX] were, notwithstanding the terms of this Deed, to make any application to a court for any financial provision (save in respect of any Children), Mr. [XX] and Ms. [XX] agree that the court should take fully into account the terms of this Deed. . . . SCHEDULE A On the Permanent Breakdown of the Marriage:
 - 1. Mr. [XX] and Ms. [XX] shall each retain his or her Separate Property.
 - 2. The parties' Matrimonial Property shall be divided equally.
 - 3. Mr. [XX] and Ms. [XX] undertake that they will maintain all Children to the best of their ability and means. Mr. [XX] and Ms. [XX] further agree that each of them will abide by any Order of a Court of competent jurisdiction setting out the level of their respective obligations in respect of any Children that might be made following the Permanent Breakdown of the

Marriage. I agree with Ms. Rattigan SC that the cases cited by the Respondent are factually different from the present case in that none of those cases had a pending Crossley application yet to be determined. This court is now faced with the conundrum of how and whether weight should be given to the Pre-Nuptial Agreement when its validity and enforceability is in issue and not yet determined. Having considered counsels submissions, my view is that the approach to be taken is a half-way-house between Mr. Scott SC and Ms. Rattigan SC's suggested approach. The Pre-Nuptial Agreement is not to be cast aside and ignored entirely, but at the same time it is not to be adhered to religiously. The starting point for this court must be to accept the Pre-Nuptial Agreement as being, prima facie, valid and enforceable until the court declares otherwise. This would hold true especially in cases where the parties clearly have the mental capacity and intellect (such as the parties presently before me) to understand the terms of the document they have signed. I agree with the principle as set out by Mr. Justice Mostyn in paragraph 33 of his judgment in the case of *BN v MA* [2013] EWHC 4250, set out as follows:

33. In my judgment, when adjudicating a question of interim maintenance, where there has been a prenuptial agreement, the court should seek to apply the terms of the prenuptial agreement as closely and as practically as it can, unless the evidence of the wife in support of her application demonstrates, to a convincing standard, that she has a likely prospect of satisfying the court that this agreement should not be upheld. In the absence of any evidence of that nature from the wife, it is my judgment that it is appropriate for me to seek to apply the agreement to this case as closely as I can, provided that the wife is not left in any real predicament of need. . . . In general, the court should not avoid adhering to the terms of a nuptial agreement at the interim stage. The reasoning behind the proposition that courts should give effect to a nuptial agreement (as enunciated in the case law cited before me) is to respect the parties right and autonomy to organize their financial affairs. So long as the terms of the nuptial agreement are fair, and the application of the nuptial agreement does not result in a great disparity of wealth between the parties or in any capital redistribution, the courts should endeavour to give effect to the parties wishes as expressed in their agreement. In absence of unfairness or other injustices, it should not be the court's duty or role to reconfigure the parties financial distribution where the parties have expressly set out their wishes by way of a legal document. This must be true even when deciding interim maintenance applications. However, in instances such as the present case where there is a pending determination of the validity and enforceability of the nuptial agreement, the court must be mindful of this unresolved dispute and should not proceed blindly in adhering to the provisions of the nuptial agreement. I am of the opinion it is not proper or appropriate for this court to engage in any preliminary assessment on whether the impending Crossley Application is likely to be successful. I am of the opinion that this court, in this particular case, should treat the Pre-Nuptial Agreement as one of the factors to be considered in arriving at a decision on the proper order to be made in respect of maintenance pending suit. This court should consider all factors, as one would in other maintenance pending suit applications, and then consider whether the Pre-Nuptial Agreement can or should be given

any weight in all the circumstances. Fairness is, of course, an override principle when considering whether any weight should be attached to the Pre-Nuptial Agreement. This court's primary consideration would be to consider the reasonable needs of the parties, the payer's ability to pay, and the financial resources of the receiving party. Once this court has a preliminary view on whether the maintenance should be ordered and the sum to be ordered in absence of any nuptial agreement, this court should then consider the effect of the Pre-Nuptial Agreement on the ultimate maintenance pending suit order. If the application of the Pre-Nuptial Agreement results in a great disparity on what this court finds to be a reasonable maintenance order to be made, or results in injustice to the parties, this court should be slow to give weight to the agreement at the interim stage. Moreover, the court should bear in mind the parties' ability to meet any subsequent orders made at the ancillary relief trial regarding overpayments or underpayment. I am of the view that if the application or adherence to the Pre-Nuptial Agreement will cause an ultimate redistribution of assets such that the subsequent trial court's discretion on the proper distribution of marital assets is hindered or limited, this court should also be slow to give weight to the Pre-Nuptial Agreement at the interim stage. This is especially so in circumstances where there is a pending Crossley Application.

REASONABLE NEEDS OF THE PETITIONER AND THE CHILD

There is no dispute as to the Respondent's financial ability to meet any maintenance order to be made by the court. The Respondent does not dispute he should pay for the Child's reasonable expenses. I further note this concession is consistent with the terms of the Pre-Nuptial Agreement. The main dispute regarding the application for the Child's interim maintenance is the quantum of the interim maintenance to be ordered. In respect of the Petitioner's share of general expenses and her own personal expenses, the Respondent disputes liability to pay. He argues the Petitioner has sufficient financial resources to meet her own financial needs, whatever they may be. The Respondent also argues the Petitioner has grossly exaggerated her expenses and the marital standard of living enjoyed by the parties. I shall deal with the items of expenses below. Mortgage payments for Unit 1901 One major item of the Petitioner's general expense is the mortgage repayments for her own property in Shanghai (Unit 1901). The main dispute regarding this expense is whether the Respondent should be responsible for the said repayments as part of the maintenance pending suit to be ordered. The Petitioner wholly owns Unit 1901, which has an outstanding mortgage of approximately RMB 16 million. The Petitioner's parents are currently residing in the said unit. The monthly mortgage repayments are equivalent to the sum of \$100,491. The Petitioner claims the Respondent had all along provided funds to the Petitioner to enable her to settle the repayments. Hence, the Respondent should continue to settle the said mortgage repayments. The Respondent does not dispute the sum of the mortgage repayments. As far as the Petitioner claims the Respondent had made such payments during marriage, I note the Respondent has not made an outright unambiguous denial of the same in his affirmations. The Respondent merely argues that Unit 1901 is not part of the matrimonial assets (as per the Pre-Nuptial Agreement). Since the Petitioner's parents have been paying the mortgage repayments and clearly have the means to continue making such payments, the Respondent should not be made to pay the same. Having considered the

submissions of senior counsel, I agree with Mr. Scott SC in that considering the appropriate quantum to order for maintenance pending suit, the Respondent should not be responsible for the payment of the said mortgage repayments. Firstly, there is no dispute the Petitioner's father has been assisting the Petitioner with the mortgage repayments of Unit 1901 since January 2021. Although the Petitioner claims the parents agreed to assist on a temporary basis only and cannot continue indefinitely to assist in making the said repayments, there is no further explanation from the Petitioner as to why the father cannot continue making such payments. I note the Petitioner describes the father as being a self-employed businessman who retired since 2014. No further description on the father's financial means were given in the evidence filed before me. However, upon reading the Petitioner's affirmations, it is clear the father is of substantial means. He was able to provide the Petitioner a seed money in the sum of USD\$1.012 million for her to use to gain investment experience. He has also been able to afford the mortgage repayments in the sum of \$100,000 per month for a period of more than 2 years as at the date of the hearing. In such circumstances and in absence of evidence to the contrary, I fail to see why the father cannot continue in his assistance with the mortgage repayments of Unit 1901. As stated by Ma CJ (as he then was) in the case of *KEWS v NCHC (Contribution by Third Parties)* [2013] HKFLR 180 at page 192:

39. Having ascertained the extent of the financial assistance provided by the third party and then finding on the evidence on a balance of probabilities that there is a likelihood of the continuation of such financial assistance in the foreseeable future, the court is then in a position in law first to take this into account in the identification of the financial resources of the parties and secondly, in determining the appropriate ancillary relief to be granted. This is an approach that is entirely consistent with the court's duty under s 7(1) of the MPPO. Needless to say, the outcome in any given case is inevitably fact-sensitive. Secondly, the Pre-Nuptial Agreement states that Unit 1901 is the Petitioner's Separate Property which is not subject to any division in the final ancillary relief settlement. To order the Respondent to make payments towards this property is in effect ordering the Respondent to redistribute part of the matrimonial assets to the Petitioner's own asset. Given this will be a matter that will be decided by the ancillary relief trial judge, and since the Petitioner's father can continue to assist in the mortgage repayments, I accept the Respondent's submission that these mortgage repayments should not be considered when assessing the proper sum to be ordered for maintenance pending suit. Food and meals out of home The Petitioner claims a total of \$150,000 for expenditure on food and meals out of home for the Child and herself. Ms. Rattigan SC concedes that the breakdown of the food expenses at Exhibit LMJ 4-4 is not supported by receipts (save and except the expenses of cordyceps). Ms. Rattigan SC explains the lack of documentary evidence is due to the Respondent's failure to provide proper disclosure of the Petitioner's supplementary credit card statements. Since the Respondent is the main credit card holder, he is in possession of the statements and not the Petitioner. The Petitioner should not be penalized for the failure of the Respondent to disclose the supplementary credit card statements. Although I am prepared to accept that food expenses

of the Petitioner and the Child are of a substantial amount, I do not accept the current sums claimed and do not accept the food expenses of the family during marriage was in the sum of \$188,767 per month, as set out in the breakdown in Exhibit LMJ 4-4. I am of the view there is double counting of various heads of expenses set out in Exhibit LMJ 4-4. For example, according to Exhibit LMJ 4-4, the expenses for meat for the Child alone is RMB 2,650 per week. The family expenses on meat is another RMB 2,500. This means the Petitioner, the Child and Respondent spend RMB 5,150 per week on meat products alone. I find it hard to believe that this sum is reasonable even for a wealthy family of three. Moreover, I find it hard to believe that the Child could have consumed RMB 2,650 worth of meat per week at such a young age, on top of all the other alleged food products he would consume per week. Although I am prepared to accept the family had a regular habit of consuming tonic foods, this cannot possibly bring the general food expenses of the Petitioner and the Child to \$100,000 per month. Having considered the family's wealth and living standard, and the evidence before me, I find the sum of \$50,000 to be a reasonable sum for food expenses of the Petitioner and the Child. In addition to the general food expenses, the Petitioner claims a sum of \$50,000 per month for expenditure on meals out of home. This sum includes expenditure for herself and the Child. The Respondent complains this sum is grossly exaggerated. However, I note that in his Form E, the Respondent claims to spend over \$65,000 per month on meals out of home. Although he claims he incurs this sum due to the need to socialize for work and that his company reimburses the said sums, the Respondent does not say that the expenses are wholly company related. I am of the view that the Respondent's expenditure must also include his own private dining expenses as well. Furthermore, I am of the view that the Respondent's expenditure must be somewhat indicative of the family's pre-separation living standard. Having considered the submissions of senior counsel, I accept Ms. Rattigan SC's submission that the pre-separation lifestyle of the family was to dine in high-end restaurants frequently. I am of the view that \$40,000 per month is more than sufficient to cover the Petitioner and the Child's reasonable expenses for dining out of home. Other general expenses In so far as the Petitioner claims car expenses, the Respondent merely disputes the quantum of the expense. It is not disputed the family had drivers at their disposal prior to separation. I am satisfied the car expenses as claimed by the Petitioner are fully supported by documentary evidence and I accept the claimed sum of \$60,000 is a reasonable sum. Although the Respondent claims there is no evidence the Petitioner paid this sum, he does not provide any documentary evidence to support his proposed sum of \$40,000 as being the reasonable sum. In absence of any documentary evidence to support the Respondent's proposed figure, I am inclined to accept the Petitioner's figure as being the more accurate figure. As for household expenses, I accept the Respondent's submissions in that the Petitioner does not require a substantial sum under this head of expense. The Petitioner and Child are currently living in a luxury serviced apartment and the services provided will include cleaning as well as repairs. It is envisaged any household expense would only be related to miscellaneous items. I therefore accept the Respondent's proposed sum of \$15,000 as being the reasonable sum. The Respondent has already agreed to settle directly the utilities and management fee expenses

of the Former Matrimonial Home. As for the domestic helper's expenses, I find the sum exaggerated. The documentary proof provided for the Hong Kong domestic worker is for the sum of SGD2200 (which is equivalent to approximately \$12,500). I find the more reasonable sum to be \$15,000 (inclusive of a part-time helper in Shanghai). The rental expense of \$190,000 is not disputed and therefore I accept the same to be a reasonable sum. By reason of the above, I find the general expenses of the Petitioner and Child to be as follows:

Expenses Rent \$190,000 Mortgage instalments of Unit 1901 (not to be counted as family general expenses) Utilities and Management fees of the residence in Shanghai To be settled by the Respondent directly Food \$50,000 Household expenses \$15,000 Car expenses \$60,000 Domestic helper (and part-time helper in Shanghai) \$15,000 TOTAL \$330,000 + Utilities and Management fees of the residence in Shanghai to be settled by the Respondent directly The Child's expenses The Respondent has agreed to settle the school fees directly. Furthermore, the medical and dental expenses are covered by the Respondent's company insurance. The Respondent does not dispute the sum claimed by the Petitioner for child-minding fees and uniform. However, he does dispute the quantum of the remainder of expenses claimed as being over-inflated and exaggerated. Having perused the evidence available before me, I make the following findings in respect of the Child's claimed expenses:

Holiday and travelling: I accept that during the marriage, the family would travel via business class when travelling overseas. Assuming the Petitioner and Child travel on average 4 times a year (Christmas holidays, Easter Holidays, Summer Holidays and Chinese New Year holidays) I am of the view a reasonable sum for the Child's holiday expenses would be \$10,000. Lunch and pocket money expenses: the Child is only 3 years old as at the date of the hearing (coming onto 4 years old). I find it difficult to believe he requires any pocket money. As for lunch expenditure, I have not been provided with any kindergarten receipts for school lunches. If the said sum is meant to be inclusive of home cooked lunches then the same has already been considered under the general food expenses. I therefore do not accept the Petitioner's claim of \$2,000. Clothing and shoes: I find the Petitioner's claimed sum of \$20,000 per month to be grossly exaggerated and unnecessary. The Child is only 3 years old. No matter how extravagant a lifestyle the family may lead, I find it hard to believe a 3 year old requires \$240,000 per annum on clothing and shoes alone. I therefore accept the Respondent proposed figure of \$5,000 as being the reasonable sum for the said expense.

Extra-curricular activities: The receipts provided by the Petitioner do not support the claim of \$15,000 per month for the Child's extra-curricular activities. The documentary evidence before me supports the expenditure of \$8,000 per month. Entertainment and presents expenses: The Petitioner claims a sum of \$32,000 per month for the Child's entertainment and presents expenses. I have considered the documentary evidence before me. I note that the Child has an extravagant birthday party each year which costs on average \$300,000. On such basis, I find the sum of \$25,000 per month to be the reasonable sum for this item of expense. Insurance premia: I am satisfied these are supported by documentary evidence. I find the sum claimed by the Petitioner to be reasonable. School books and stationary: The Petitioner has not provided any documentary evidence in support of this expense to justify spending \$10,000 per month. Given the Child is only in kindergarten, I find the claimed sum

to be exaggerated. I accept the Respondent's proposed sum of \$2,000 to be a reasonable sum. By reason of the above, I accept the Child's reasonable monthly expenditure to be as follows: Expenses School fees, medical fees, and dental fees To be settled by the Respondent directly. School books and stationary 2,000 Extra-curricular activities 8,000 Entertainment and presents expenses 25,000 Holiday and travelling 10,000 Clothing and shoes 5,000 Insurance premia 6,410.10 Lunches and pocket money Child-minding fees 10,000 Uniform TOTAL 66,910.10 + school fees, medical fees and dental fees to be settled by the Respondent directly. The Child's expenses (including his share in the general expenses) amount to \$231,910.10. I shall round this figure up to \$232,000. The Petitioner's personal expenses I shall first set out my findings on the reasonable sum of the Petitioner's monthly personal expenditure and then proceed on to whether the said sum should be paid by the Respondent or the Petitioner herself. Having considered the evidence before me, I make the following findings on quantum of the Petitioner's personal expenses: Meals out of home: For reasons set out under the discussion relating to the general expenses, I find the reasonable sum for this item of expenditure to be \$40,000. Transport: I do not accept that the car expenses claimed under general expenses are incurred primarily for the Child. The receipt produced for car expenses clearly state the sum of \$60,000 per month is for a maximum coverage of 240 hours. This is equivalent to 8 hours per day. I do not accept the Child's own schedule can fully utilize a private chauffeur service for 8 hours a day. I am of the view the car expenses must be to cover both the Petitioner and the Child's transport needs. In such circumstances, any additional expenditure for transport must be minimal. I therefore find the reasonable sum for any additional transport expenses to be \$2,000. Clothing and shoes: The Petitioner claims she spends \$150,000 per month on this item of expenditure. Mr. Scott SC submitted the Petitioner has grossly exaggerated her expenditure and marital standard of living. He submitted an excel breakdown with extracted credit card statements and electronic payments to show the Petitioner spent approximately \$36,000 per month. Having perused the same, I agree with Ms. Rattigan SC in that the excel table submitted is artificial and erroneous in its calculation. It is clear the parties are accustomed to a luxurious lifestyle and often purchase luxury items (such as luxury handbags and high-end jewellery). This includes the spending habits of the Petitioner as shown in the documentary evidence. Having considered the evidence, I am of the view an average sum of \$100,000 per month is the Petitioner's reasonable expenditure on this item of expense. I also accept the Petitioner's substantial expenditure on clothing and shoes commensurate with her lifestyle during marriage. Personal grooming: I note the Petitioner's claim of \$50,000 is not entirely supported by the documentary evidence. Having considered the evidence available, I am of the view that the evidence supports a sum of approximately \$30,000 per month. Entertainment and presents: The Petitioner has provided breakdown of expenses she claims she has made to the various family and friends. Having perused the breakdown I am sceptical of the expenses claimed. I am only prepared to consider the sums of which are evidenced by receipts or invoices. The sum of approximately \$25,000 per month is supported by receipts and/or invoices. I shall round up the figure to \$30,000 to take into account for other miscellaneous expenses. Holiday and travelling: Although I accept the family would fly

business class every time they travel and live in five star hotels, I do not accept the Petitioner's reasonable expenses for holidays would amount to an annual sum of \$420,000. On the assumption the Petitioner travels 4 times per year with the Child, this is equivalent to approximately \$105,000 per vacation. I find this sum exaggerated given that the documentary evidence shows that the Petitioner would vacation primarily in Asia. Even if the Petitioner may at times travel to Europe or make other long distance travels, the evidence does not show this to be a frequent occurrence. Having considered the documentary evidence provided, I am prepared to accept the sum of \$25,000 per month as being the reasonable figure for this expense. Medical and dental: Having considered the receipts provided by the Petitioner, I accept the sum claimed as being reasonable. Insurance premia: On the Petitioner's own evidence as set out in her affirmations, her insurance premiums amount to \$8,068 per month not \$9,000. I therefore accept the sum of \$8,068 as being the proper sum for this expense. Contribution to parents and charitable donations: I am satisfied that the Petitioner does make contributions to her parents in the sum as claimed. However, for reasons I have set out already, I am of the view the parents are of substantial wealth and do not require the Petitioner's contribution to meet their financial needs. In such circumstances, although I accept it may be the Petitioner's usual expense, this sum should not be awarded as part of the maintenance pending suit sum as it is not a sum that can be classified as necessary for meeting the immediate and reasonable needs of the Petitioner. The same will apply to the Petitioner's expenses for charitable donations. Again, although I accept the Petitioner may have had these expenses whilst she had the means, this sum is not necessary for meeting the immediate and reasonable needs of the Petitioner. Personal mobile phone expenses: The Petitioner has not separately allocated a sum for her personal mobile phone expenses. She has merely calculated this together with her expenditure on charitable donations. Although, there is no documentary proof of her mobile phone bills, I am prepared to make provision for a nominal sum of \$500 to cover her mobile phone expenses. By reason of the matters set out above, I accept the Petitioner's reasonable monthly expenses (excluding those sums which for reasons given should not be included in the calculation for maintenance pending suit) to be as follows: Expenses Meals out of home \$40,000 Transport \$2,000 Clothing and shoes \$100,000 Personal grooming \$30,000 Entertainment and presents \$30,000 Holiday and travelling \$25,000 Medical / dental \$5,000 Insurance premia \$8,068 Contribution to parents and charitable donations Personal mobile phone \$500 TOTAL \$240,568 WHETHER THE RESPONDENT SHOULD BE MADE TO PAY MAINTENANCE PENDING SUIT TO THE PETITIONER Mr. Scott SC submits the Petitioner and the Respondent should each be responsible for their own expenses due to the parties' own substantial wealth. In summary, Mr. Scott SC submits the parties have ring-fenced their own assets as set out in the Pre-Nuptial Agreement. The assets listed by the Petitioner in Schedule C of the Pre-Nuptial Agreement shows she has sufficient means to meet her own expenses and therefore the Respondent should not be ordered to make any maintenance pending suit payments. The Petitioner claims she now no longer owns the shares in Timebase, Sharp Edge and Surplus Creation. She also claims that despite the Register of Members of Timebase recording the shares in Timebase were transferred to the Petitioner's

father for a consideration in the sum of \$48,757,346, there was no such cash settlement. This is strongly contested by the Respondent. It is clear from the evidence before me and from counsel's submissions, the parties' respective financial means and the various allegations made by the parties in respect of their current financial position are strongly contested. It is trite to say that such issues of factual dispute cannot and should not be resolved at a maintenance pending suit application. In particular, the issue of whether the Petitioner is the beneficial owner of Timebase cannot be resolved at this interim stage. These substantial disputes of facts can only be resolved at trial. In such circumstances, this court can only consider the Petitioner's MPS application based on the evidence before it and can only err on the side of caution. Since the sale / transfer of the Petitioner's shares in Timebase is, on the face of it, properly executed, I am not prepared to accept otherwise when considering the Petitioner's MPS application. Having considered the evidence provided to me at this stage, I accept the Petitioner is currently unemployed and does not earn a regular income. As for the Respondent's argument that the Petitioner has more than sufficient financial resources to enable her to meet her own personal expenses and her share of the general expenses, I agree the Petitioner's Form E discloses her net worth to be over \$77million. However, I note the bulk of this sum relates to the Unit 1901 (worth approximately \$55million). Her liquid assets as disclosed in the Form E is cash in the sum of \$2,263,047. I am of the view that most of this cash will be used, if not already done so, on payment of her legal fees. As for the Petitioner's personal items in the value of over \$17million, those assets are not readily available for use as cash would be. Although, for reasons I will set out later, I am of the view these assets are financial resources for the purposes of considering litigation funding, these assets cannot be easily liquidated to meet immediate daily financial needs of the Petitioner. Furthermore, I note that during marriage, the Petitioner was financially dependent on the Respondent for her daily expenses. The Respondent agrees to the following in his 3rd Affirmation: The Petitioner quit her full-time job after marriage. He asked the Petitioner to sever all her connection[s] with MHG by disposing all MHG shares held by her, including but not limited to those held by Timebase. In other words, not only did the Petitioner quit her job during marriage, the Respondent had specifically requested the Petitioner to dispose of her shares in her most valuable company. I therefore find it difficult to accept Mr. Scott SC's submissions that the Petitioner is financially independent and is in possession of sufficient liquid financial resources to meet her own immediate financial needs. Until it is determined at the ancillary relief trial that the Petitioner has substantial assets to meet her own needs, this court should err in favour of the Petitioner to ensure her immediate financial needs are being met. In considering the effect of the Pre-Nuptial Agreement on the Petitioner's MPS application, I have considered the terms therein. I do not find payment of maintenance pending suit to be contrary to the terms of the Pre-Nuptial Agreement. It is clear that on a proper reading of the Pre-Nuptial Agreement, the parties were only protecting their pre-marital assets. The terms of the Pre-Nuptial Agreement do not pre-empt parties from making ancillary relief applications on matrimonial assets in general. As set out earlier in this Decision, I have taken into account the terms of the Pre-Nuptial Agreement when considering the Petitioner's claim for

maintenance provision on the mortgage repayments of Unit 1901. For reasons already given, having considered all factors, I have not allowed this item of expenditure when considering the proper amount of maintenance pending suit to be awarded. In so far as any maintenance pending suit order may result in the division of assets contrary to the terms of the Pre-Nuptial Agreement, I note it is always open to the trial judge to make the proper adjustments at the ancillary relief trial when considering the division of matrimonial assets. Given the Respondent's substantial wealth and his ability to meet any interim maintenance order I may make, I am of the view an order of interim maintenance will not prejudice the Respondent's position at the ancillary relief trial or at hearing of the Crossley Application. Hence, for reasons I have already set out above, I am of the view that the Respondent should be ordered to pay maintenance pending suit to the Petitioner. I have calculated the Petitioner's reasonable personal expenses to be \$240,568 per month and her share of general expenses to be \$165,000 (in addition to the expenses the Respondent is willing to settle and/or reimburse directly). I shall round this up to \$406,000. LITIGATION FUNDING Having considered the submissions of the counsel, I accept the Respondent's submission that the Petitioner is unable to satisfy the conditions set out in *Currey v Currey* so as to warrant an award of legal costs provision. For reasons set out above, I accept the Petitioner's parents are of considerable wealth. I am of the view the Petitioner's parents are a source of financial assistance of which the Petitioner has been utilizing. This must be taken into account when considering the Petitioner's financial resources. Although it is not to say the parents should be forced to fund the litigation, it does mean the Petitioner has available to her a source of funds which she can utilize to pay for her legal fees. In so far as the Petitioner claims Unit 1901 cannot be sold and cannot be utilized as collateral to raise further loans, I disagree. This is not a case where the parents rely on the Petitioner financially. The parents clearly have the means to support themselves and therefore are not required to live in Unit 1901 by necessity. There is nothing in the evidence thus far to show the parents cannot move out and find alternative accommodation. In such circumstances, the Petitioner's claim that Unit 1901 is not available for raising funds is not accepted. As disclosed in the Petitioner's own Form E, the Petitioner owns luxury handbags, art pieces, a wine collection, jewellery and watches worth around a total sum of \$17,580,000. Although the liquidation of such assets may take time, such items are capable of liquidation and cannot be discounted when considering the Petitioner's ability to raise funds for litigation. I am of the view that the Petitioner's personal assets as set out in her Form E are assets that can reasonably be deployed for the purposes of litigation funding. I therefore decline to make any award for legal costs provision. SUMMARY By reason of the matters set out above, I make the following orders: The Respondent shall pay, until further order, the following sums to the Petitioner on the 10th day of each successive month commencing from 10 October 2022: A sum of HK\$406,000 per month as maintenance pending suit for the Petitioner; and A sum of HK\$232,000 per month as interim maintenance for the Child. The Respondent shall pay, until further order, the following expenses by way of direct settlement and/or reimbursement to the Petitioner where appropriate: The utilities bills and management fees of the former matrimonial home in Shanghai at the address set out in the

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Prepared on 29 October 2026 · Esheria