

HONG KONG / JUDGMENT

LSHH v. MTKK

COURT

Family Court

DECIDED

7 February 2007

CASE / FILE NUMBER

FCMC12642/2005

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bjbj FCMC 12642 / 2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 12642 OF 2005

BETWEEN LSHH Petitioner and MTKK Respondent

Coram : Deputy District Judge K. Levy in Chambers (Not open to public) Date of hearing : 6
February 2007 Date of handing down of Judgment : 7 February 2007

J U D G M E N T

Background Facts

1. The summons before me is an interlocutory application by the Petitioner wife () for inspection of documents against the Respondent husband () before the trial of her ancillary relief application, which application is to be heard in early April 2007.
2. For the purpose of this application, I do not think it is necessary to deal with the background of the marriage. Suffice it to say that the Petition was filed in November 2005 and the Decree Nisi was pronounced in August 2006. Since the Petition, W has obtained a large number of discovery against H by way of questionnaires, requests for further and better particulars as well as writs of subpoena against a number of banks for production of documents in relation to H s bank accounts.
3. This application is pursuant to r.77 (4) (Rule 77(4)) of the Matrimonial Causes Rules, Cap.179A. H objects to the application. In the application, W seeks inspection in the following manner : to inspect and to take copies if necessary all books and account together with supporting documents, including but not limited to general ledgers and any other subsidiary ledger such as cash book, monthly profit and loss account and balance sheet,

bank statements (other than those already produced), credit card statements (if any), invoices and receipts, payments and receipt vouchers, cheque stubs etc. of KM & associated Ltd. (the HK company) and XXX Nwm tter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the court for directions.

5. This provision clearly gives this court a wide discretion in respect of discovery and any direction relating thereto. In considering the appropriate direction to be given, I shall be guided by the principle of relevance as required by Rule 77(4). Grounds of the application
6. It is common ground that the Shanghai Company is a subsidiary of the HK Company and the shareholders are the parties themselves and that H is in sole control of these companies. Hence, Miss Hung, solicitor for W, submits that these two companies are H s alter ego and he is therefore in a position to provide inspection of the documents sought. There is no issue of a third party interest or H being unable to arrange inspection if those documents exist. I should therefore proceed on the basis of whether sufficient grounds have been made out for the inspection sought.
7. During the process of discovery, H has already produced audited reports of the HK Company for the years ending on 31st July 2004 and 31st July 2005 and of the Shanghai Company for the years ending on 31st December 2004 and 31st December 2005. As to the latest reports ending in the accounting year of 2006, H is required to produce them towards the end of February 2007.
8. Miss Hung said that the available reports as well as the reports to be available would not be sufficient to fully reflect the financial position of the companies from both of which companies substantial part of H s income derives. W in her supporting affirmation sets out two specific reasons for requiring what Miss Hung described as the raw materials of the companies.
9. The first reason is based upon the undisputed close relationship between the HK Company and the Shanghai Company. W has been advised by her accountant that it is necessary to inspect the relevant documents so as to find out if there are any related party transactions between these two companies, which transactions should have been reported in their books.
10. Secondly, W wishes to discover the relevant documents for verifying the value of Work-in-Progress () of both companies. Her accountant has further advised W that WIP reflects the profitability of a company and it is necessary to discover the requested documents for the purpose of ascertaining the basis of the value of WIP set out in the audited reports of the HK Company. As there is no WIP reported in the audited reports of the Shanghai Company, the requested documents are therefore necessary to determine the value of the Shanghai Company.

11. In further support of her application, W alleged H of having failed to make full and frank disclosure on a number of occasions. Miss Hung further submits that H has been shown to have a tendency of resorting to the attitude of catch me if you can during W's disclosure demands in the past.
12. H opposes the application on the ground that all the relevant documents have been produced and any inspection exercise is superfluous. He further submits that should inspection be allowed, it will escalate costs and waste time. He further informed me at the hearing that the requested documents of the Shanghai Company are contained in a carton box measuring approximately 3 cubic feet and kept in the Shenzhen office. As to the documents relating to the HK Company, they are kept in the Hong Kong office and H is unable to state the amount of the documents involved. Discussion and ruling
13. The nature of the documents requested in this application concerns with audited reports of companies which H is a shareholder. Disclosure of audited reports of the companies controlled by H, coupled with full disclosure of all his personal financial records, should, in normal circumstances, be sufficient. That said however, however, I should also have regard to the much wider power of discovery under Rule 77(4), which empowers the court to give a so-called fishing discovery - which discovery would otherwise be disallowed under Order 24 of the Rules of the High Court.
14. In this case, there have been extensive discovery made by H and I am not at this stage in a position to form any view as to whether H has failed to make full and frank disclosure as alleged. In the circumstances, I am not inclined to go behind company accounts and order inspection of all company books and documents unless there is evidence before me from the accountants or other experts that the produced audit reports cannot be relied on. According to W, there are two specific concerns raised by her accountant and I will therefore limit discovery in respect of those matters referred to in her affirmation in support.
15. As the latest valuation reports of the HK Company and the Shanghai Company will be available very shortly, I am of the view that it would be premature to allow inspection at this stage. Concerning the audited reports already produced, I am only inclined to allow inspection and discovery in respect of the followings : The related party transactions
16. In one of the audited reports of the HK Company already produced, there is indeed one reported related transaction. According to the Financial Statements for the year ended 31st July 2005 of the HK Company, it is reported that subcontracting charges of HK\$326,226 was paid to a related company, the Shanghai Company. It is further reported that the charges are determined by reference to the extent of services provided in the Mainland China which is computed on the basis of ninety five percent fees received for those respective projects. The directors consider that such percentage of fee reflects reasonably the economic reality of transactions and being appropriate of the basis of computation of the subcontracting charges .

17. From the above statement, it seems that H, the director of the HK Company, had a sole discretion in determining the value of the subcontracting charges. In the absence of any information regarding the basis upon which H had reportedly chosen 95% of fees received to compute the value of the charges, I am of the view that it is necessary to allow W to inspect the necessary documents so as to clarify the related party transactions.
18. Apart from the related party transactions mentioned above, there is no evidence confirming the existence of any other related party transactions either in the HK Company or the Shanghai Company. I should therefore only allow inspection in respect of all accounting documents relating to the subcontracting charges paid to the Shanghai Company by the HK Company from 1st January 2003 to 31st July 2005 but further direct H to confirm by way of affirmation if there are, apart from the one reported in the audited report ending on 31st July 2005 of the HK Company, any other related party transactions. WIP
19. W, based upon her accountant s advice, believes that the value of WIP is important in assessing the profitability of a company and she therefore wishes to inspect the contracts of the relevant projects in connection with WIP projects. From the audited reports of the HK Company, the total value of the WIP is shown to have made up 30% or more of the total assets of the HK Company. The value of WIP is therefore highly relevant to the total value of the company. I will therefore allow inspection of all the books and documents relating to the WIP of the HK Company.
20. Regarding the Shanghai Company, W observes that there is no WIP reported in the produced audited reports. Hence, there is no evidence showing that there are any documents relating to WIP. The existence of such documents is not established. I am not inclined to allow inspection at this stage. I will instead order H to provide by way of affirmation a detailed list of contracts of the projects undertaken by the Shanghai Company, its costs ledgers and accounts submitted to the government authority in connection with these projects from 1st January 2003 to 31st December 2005. Direction
21. In view of the matters aforesaid, in respect of W s summons, I give the following directions:
 - (1) The Respondent do within 14 days allow the Petitioner, her legal representatives and accountants to inspect and take copies if necessary all documents and books relating to:
 - (i) The subcontracting charges paid to the Shanghai Company by the HK Company from 1st January 2003 to 31st July 2005; (ii) The WIP (including contracts of the project undertaken) of the HK Company from 1st January 2003 to 31st July 2005.
 - (2) The Respondent do within 14 days file and serve an affirmation to set out :

- (i) Apart from those reported in the audited report ending on 31st July 2005 of the HK Company, all the related party transactions and their total value of the HK Company and the Shanghai Company from 1st January 2003 to 31st December 2005; (ii) A detailed list of contracts of the projects undertaken by the Shanghai Company, its costs ledgers and accounts submitted to the government authority in connection with these projects from 1st January 2003 to 31st December 2005. Costs
22. I give the parties liberty to apply for the implementation of the directions above. I further make a costs order nisi that costs to follow the event of W's ancillary relief application. The said costs order nisi is to be made absolute within 14 days of this order if no application is made to vary the same during the said period. (K. Levy) Deputy District Judge Miss Barbara Hung of Messrs. Chaine Chow & Barbara Hung for the Petitioner The Respondent appeared in person PAGE - PAGE - sesesese[&`#\$~!P] j% Td ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$\$ 1 #' :L- E{k' XW(\$ s ` ()H/0 -3*\$ 43*\$ c7*+ :p . ;ef1 {^2\ (\$p2\$ 4g3\$ 4QQ4 4lp4 0b50p M|;\$ wzO?p= H#@\$ 3i@\$ nSDH lEFE 5)GTd kxL\$ /eNH S\$O\$ vuWOTd c;R\$ Y CR G%9UT RW!W C:~W x% X\$ x8Y\$ L}YH (Yq[*n\T #b2^\$ Q^f Y6xc\$ e>tD ?Dep= ZJg\$ hx;r N)/h vCip= T{sk TCn\ "hsTd gsTu\$ 4xv\$ xDs\ *y\$ Yay~_ __z4w {H@.J | >\$> C? } R\$ ~\$ f!\$- C:~W N)/h E{k' 4QQ4 lEFE C? } wzO? gsTu x% X (\$p2 0kJ\$ #b2^ Y6xc R\$ ~ he~" G%9U (Yq[:p . s ` (vuWO c7*+ Y CR T{sk 1 #' RW! W ;ef1 @\\Hc-oa-ws-656\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \\Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \\Hc-oa-ws-656\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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