

HONG KONG / JUDGMENT

MPY v. WYC

[2024] HKCA 1132**COURT**

Court of Appeal

DECIDED

11 December 2024

CASE / FILE NUMBER

CAMP289/2023

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CAMP 289/2023, [2024] HKCA 1132 On an intended appeal from [2023] HKFC 107 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO 289 OF 2023 (ON AN INTENDED APPEAL FROM FCMC 3297/2022)

BETWEEN MPY Petitioner and WYC Respondent

Before: Hon Poon CJHC and Barma JA in Court Dates of Written Submissions: 18 August and 1 September 2023 Date of Judgment: 11 December 2024

J U D G M E N T

The Court: By a decision handed down on 16 June 2023, Deputy District Judge J Chow refused the Husband's application for transferring the matrimonial proceedings to the Court of First Instance under rules 32(1) and 80 of the Matrimonial Causes Rules. The Judge also dismissed the Husband's application for leave to appeal. He now renews the leave application before this Court. Having considered the parties' submissions, we are of the view that the application can be properly dealt with on papers without an oral hearing. We now hand down our decision.

Background

The Husband and Wife are in their 60s and late 50s respectively. They were married in 1983 and their children are all over 18 years old. After marriage, they started a family business of trading in fabric materials, which later expanded to property developments. The business was a huge success. In May 2022, the Husband petitioned for divorce on the ground of unreasonable

behaviour. A decree nisi was granted on 12 October 2022. The only issue outstanding is ancillary relief. As observed by the Judge, it is a big money case, involving matrimonial assets with value over hundreds of millions of RMB. It would appear that ancillary relief is going to be a hard-fought battle between the parties. It is the Wife's case that the Husband had misappropriated RMB535 million ("the Sum"), the sales proceeds of a piece of land in the Mainland concluded in July 2019, which the Husband deposited into a bank account of a family company, HTSP, by selling and transferring its shares to third parties. She contends that the Sum should form part of the matrimonial assets. In December 2022, the Husband applied for a transfer of the proceedings to the Court of First Instance. One of the grounds was that whether the Sum should fall within the matrimonial pot raised three complex issues engaging company law principles, including reflective loss. The Wife argued that those issues were unrelated to the ancillary relief proceedings. The Judge said: "I share the same view with the [Wife]. Although the [Husband] has raised the issues broadly from company perspective, I am not aware there is litigation pending in the Court of First Instance. The best case the husband is putting forward here is only an anticipated scenario which might be happening in the future. At this stage, the [Husband's] evidence does not justify a transfer. This ground has no merit." Present application Mr Bernard Man SC for the Husband submits that the Judge erred in holding that the Wife's case does not engage the three issues arising from company law principles as identified. He also argues that it is in the interest of justice to grant leave to appeal. Discussion Leave to appeal can be granted only if the Court is satisfied that the appeal has a reasonable prospect of success; or there is some other reason in the interests of justice why the appeal should be heard: section 14AA(4) of the High Court Ordinance. We first consider the limb on reasonable prospect of success. Refusing to order a transfer of proceedings is eminently a case management decision in the exercise of the unfettered discretion of the Judge. In this connection, what this Court (differently constituted) said in *Wong Kar Gee Mimi v Severn Villa Ltd* [2012] 1 HKLRD 887 is instructive: "Case management decisions are only subject to appeal in rare circumstances. The appellant faces a 'very high hurdle' and must show that the [judge] 'has gone clearly wrong and made orders which will clearly involve an injustice or an inability for the trial court to carry out its tasks', or if the [judge] 'erred in principle or the order was irrational having regard to the issues that had to be resolved'. It need hardly be emphasized that generally, an appellate court will not interfere with a judge's exercise of discretion unless the [judge] has misunderstood the law or the evidence or the exercise of his discretion was plainly wrong such that it was outside the generous ambit within which a reasonable disagreement is possible." Applying these principles, we are satisfied that there is no ground for this Court to interfere with the Judge's discretion in refusing to order a transfer. First, there is no complaint that the Judge had erred in law in having regard to the principles on transfer, which are in fact well established. Second, the main thrust of Mr Man's submissions is that the Judge had made various erroneous holdings on the company law principles raised by the Husband. Although the Judge said she "shared" the Wife's view, what she meant must be understood in context. Contrary to Mr Man's submissions, she had not made any holdings as such. She left open the engagement of those issues for future consideration, if they did arise. Third, when the Judge's decision is properly understood, it does not rule out the possibility of the Family Court transferring the proceedings in the future. What the Judge

emphasized is that having regard to the prevailing state of affairs, it is inappropriate to do so now. Fourth, the Family Court is already engaged in the process of ascertaining the size of the matrimonial assets. Various interlocutory applications are afoot and the Court is actively managing the case. A transfer to the Court of First Instance at this stage will only unduly disrupt the proceedings. In sum, the intended appeal is bound to fail on merits. Turning to the limb on interest of justice, Mr Man submits that the Family Court often encounters ancillary relief claims involving matrimonial assets held through corporate structures. Proper appreciation of the operation of company law principles in this context is therefore critical in the future of this case and indeed in other cases raising similar issues in the future. Appellate guidance would be beneficial. With respect, we disagree. As accepted by Mr Man, our family judges deal with matrimonial assets held through corporate structures almost on daily basis. They are specialized judges well-versed in handling any issues arising therefrom. Moreover, any such issues are necessarily fact-sensitive. Whether any appellate consideration on the issues identified in this case may provide guidance to other cases remains to be seen. In short, there exists no sufficient reason why it is in the interest of justice to grant leave to appeal against the Judge's order of refusing to transfer the proceedings to the Court of First Instance. In consequence, the Husband fails on both limbs of section 14AA(4).

Conclusion

For the above reasons, we dismiss the Husband's leave application with costs, summarily assessed at HK\$72,000. As the Husband's application is wholly without merit, we make an order under Order 59, rule 2A(8) of the Rules of the High Court that no party may request our determination to be reconsidered at an oral hearing inter partes. (Jeremy Poon) (Aarif Barma) Chief Judge of the High Court Justice of Appeal Mr Bernard Man SC and Mr Cristian Tsang, instructed by Haldanes, for the petitioner Ms Lily Yu, instructed by Withers, for the respondent

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