

HONG KONG / JUDGMENT

S v. S

COURT

Family Court

DECIDED

14 March 2005

CASE / FILE NUMBER

FCMC6574/2003

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bjbj FCMC 6574/2003 THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 6574 OF 2003

BETWEEN Petitioner And Respondent

Coram: Deputy Judge C.K. Chan in Chambers Dates of Hearing : 21-25 February 2005 Date of
Judgment : 14 March 2005

J U D G M E N T

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1. This is a trial originally fixed for the hearing of the issues of custody and ancillary relief.
 2. At the beginning of the trial, it has become clear that custody is no longer a live issue and after some further negotiation between the parties, the issue of access was also agreed. According to the parties agreement, joint custody of the only child of the family, C, will be granted to both the petitioner wife and the respondent husband (hereinafter called the wife and the husband respectively) with care and control to the wife. As to access, the parties agreed that the husband shall have generous access to the child. Their agreement on custody and access was embodied in a consent summons of which I have granted an order in terms. Therefore, the matters of custody and access are no longer the subjects of this trial.
 3. The wife is also content with a nominal maintenance for herself and so what really remain for the court s adjudication are the maintenance for C and the division of the capital assets between the parties.

Background

The parties are Swedish nationals aged 32 (wife) and 43 (husband) respectively. The parties met in 1997 when the wife had just completed her university education and started working in Stockholm as an analyst in a stock broking firm. At that time, the husband had just finalized his divorce with his former wife. In about March 1999, the husband sold his apartment and moved in to live with the wife at the apartment which was purchased by her sometime earlier.

5. The husband was and still is a senior executive of a well known company in Sweden (hereinafter called the Company). Shortly after cohabitation, the husband was offered by the Company to work as the Finance Manager in the Far East, which means that he has to come to station in Hong Kong.
6. The appointment was accepted by the parties and they got married on 14 August 1999. They were relocated to Hong Kong in September 1999 as a family.
7. As an expatriate staff, the husband was offered rather attractive terms of remuneration. The salary he received can not be described as astronomical, but the perks went with the job were rather generous. The last salary he received before leaving Hong Kong in September 2004 was about HK\$60,000. However, he was given free housing of a flat of 2,500 sq. ft. in size in Repulse Bay, full payment of all household utilities by the Company, full reimbursement of school fees, free return tickets for the whole family for holidays in Sweden each year and a monthly sum of about HK\$6,000 in traveling allowance. The rental payment for the Repulse Bay flat by the company was HK\$80,000 a month. So the total monthly remuneration package for the husband amounted to something more than HK\$160,000.
8. As far as the wife is concerned, she initially did not look for employment in Hong Kong. She was quite content just to do some voluntary work for the Swedish community here. On 16, January 2001, C was born. A domestic helper was hired so that C could have the full attention of the wife.
10. Things started to turn sour for the parties after C s birth for reasons which I think are not material to this trial. It suffices to say that things came to a stage in 2003 that the parties were convinced that the marriage could no longer be maintained and they separated in the summer of 2003.
11. As far as the employment of the husband was concerned, the initial arrangement was for him to work in Hong Kong for 2 years. In 2001, his employment in Hong Kong was extended on a yearly basis. By June 2003, the continuation of the husband s employment was in doubt because overseas secondment was not supposed to be on a permanent basis and the company was considering to transfer the husband back to Sweden. Despite the separation, the parties thought it might be better for C to continue her living and education in Hong Kong and so it was decided that the husband would try to ask for further extension of his contract here. There is dispute on the exact contents of the agreement reached at that time. On one hand, the wife said both parties simply agreed that they would stay and if further

extension of the contract was not possible, the husband would seek alternative local employment so that the whole family could stay. The wife said the husband had breached the agreement in that he had not tried his best endeavours to find local employment after his application for further extension was turned down by the Company. On the other hand, the husband said the agreement being that he would try to arrange an extension of his employment in Hong Kong but in the event that it was not possible and he had to return to the Company's employment in Sweden, all of them would go because it would be best for C to have the whole family kept in one place. He equally alleged that the wife to have reneged her promise to go back to Sweden in a family. After the wife and C had moved out of the matrimonial home at Repulse Bay, she moved to a flat in Pokfulam and they stayed there with the domestic helper since then.

14. As far as financial support was concerned, the parties agreed that the husband would pay a sum of HK\$30,000 per month which represented roughly about half of his monthly net income at that time. The wife managed to find some part time work and eventually she was able to secure a full time job in Hong Kong. Her present salary is HK\$21,500 per month. For the husband, he was able to secure an extension of his contract in Hong Kong for another year from September 2003. However, further extension beyond 2004 was impossible because he had already been transferred to Hong Kong for 5 years and it was company policy that someone else should be given the chance to work overseas. He also failed to find alternative local employment and so he had to return to Sweden, which he did in September 2004. It was from here that the matter turned from bad to worse. The first major problem was the physical separation of the husband from C. When the husband was still working in Hong Kong, although he was separated from the wife, he was able to exercise very generous access to C. But now the parties are living in different continents, the access to C is necessarily very restricted. This has prompted the husband to take out an application to have the care and control of C so that she could live with him in Sweden. That application is of course no longer pursued now as the parties have finally agreed on the question of custody, care and control and access. The second problem is the financial support for C. As the wife has now obtained full time employment in Hong Kong, she does not need any financial support from the husband. But for C, the financial support from the husband has to continue as the income of the wife alone can not support both of them to live in Hong Kong. However, the financial position of the husband has changed dramatically after his return to Sweden. He is no longer serving on expatriate terms. Worse still, the rate for income tax is significantly higher in Sweden than in Hong Kong. There is evidence (and I think there is no dispute from the wife on this) that the income tax rate in Sweden is about 46% as far as the husband is concerned. There is evidence (and again I think there is no dispute on this by the wife either) that the net take home income of the husband is now SEK 30,685 (Swedish Currency) per month which is equivalent to about HK\$33,753 if we adopt an exchange rate of SEK 1 : HK\$1.1. It is simply impossible for the husband to continue the kind of financial support that he has been giving to C when he was still working in Hong Kong. One of the issues now is how much he should pay for C's support in view of his much

lowered income. As far as capital assets are concerned, the parties have kept a number of individual and joint bank accounts during their marriage. In addition, the husband is also entitled to 5 pensions, including state and private pensions at his retirement. The parties can not agree on their division and so an order from this court is also needed. Maintenance for the Child, C I will deal with the financial support for C first. The Law on Financial Support for Children In considering financial provision for children, the court has to take into account S.7 (2) of the Matrimonial Proceedings and Property Ordinance, Cap. 192 which is as follows:

- (2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 5, 6 or 6A in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-
 - (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (e) the manner in which he was being and in which the parties to the marriage expected him to be educated; and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.
- Financial Needs The latest information on C s direct monthly expenses can be seen in the 6th Affirmation of the wife (Trial Document Bundle p.471-472), which amount to a sum of HK\$10,083. However, as the wife has to pay rent for a flat in Pokfulam in the sum of HK\$20,000 per month and that a domestic helper has to be employed to assist in the care of C which has cost the wife a further sum of HK\$4,000 per month, the wife feels that it would be appropriate to attribute half of those costs to the expenses of C, i.e. a further sum of HK\$12,000. Therefore, the total expenses for C would be at least HK\$22,083 per month.
22. Throughout the trial, there has never been any challenge to the reasonableness of that figure as C s monthly expenses in Hong Kong. As a matter of fact, counsel for the husband has even conceded that the figure might be an underestimation. Therefore, for the purposes of this trial, I am prepared to accept that the reasonable monthly expenses of C amount to a sum of HK\$22,083. Financial Resources of the Child The next consideration is the income, earning capacity, property and other financial resources of the child. C is now aged 4 attending kindergarten. Income and earning capacity are certainly out of the consideration. However, from the evidence of the husband, it has come to light that the parties have in fact been setting aside a sum of money as C s savings since her birth. There is no evidence on

the amount of this saving but I assume that it would not be a big sum in view of the fact that the husband has only been setting aside a monthly sum of HK\$1,000 as C's savings. I do not think that the existence of this saving for C will have any significant effect on the husband's responsibility towards C.

Physical or Mental Disability I am given to understand that C is a gorgeous and happy child. She is not under any form of disability.

Standard of Living Previously Enjoyed Before the breakdown of the marriage in 2003, the family has been enjoying a rather comfortable life. The husband was working on generous expatriate terms in Hong Kong. C was the only child and the family was residing in a spacious flat in Repulse Bay at that time. She was taken care of by the wife with the assistance of the domestic helper. She attended a kindergarten at the Peak with a monthly school fee of HK\$8,000 and attended regular ballet classes. The family was able to afford annual summer trips to Sweden. The Child's Education C is only 4 years of age and has started her pre-school education not for long. She is now able to talk in fluent English and Swedish and the wife is planning to arrange Putonghua classes for her as well. It is the wife's intention to continue to stay in Hong Kong with C although the husband would wish C to live and be educated in Sweden. Despite the said wish of the husband, the parties have reached an agreement to give the care and control of C to the wife. It is a fact that C will remain and be educated in Hong Kong in the future.

Financial Resources and Needs of the Wife Apart from the above considerations, the court is also obliged to consider the respective means and needs of the parties before it reaches a decision on the financial provision for the child. The wife is now working in an administrative post in Hong Kong with a monthly income of HK\$21,500. She is also engaged in the business of a company called T Limited. She owns one third of the shares in the company which is mainly engaged in the export of children clothing and jewelry to Sweden. Although the company is not making any money for the moment, the wife is quite optimistic in its future and she is hopeful that one day she could really depend on the profits of this company to support her living in Hong Kong. As far as this company is concerned, the fact remains that its business is still at a trial period. Despite the optimism expressed by the wife on its future, I think it is too early to judge on whether it can provide a reliable source of income for her or C in the near future. For the wife's expenses, they are also listed out at P.471-472 of the Trial Bundle of Documents. She said she has to spend a total sum of HK\$45,413 per month to support her and as well as C's living in Hong Kong. In other words, this sum of HK\$45,413 is inclusive of the child's expenses of HK\$22,083 in paragraph 21 above. I do not intend to go into detail of her expenses because their reasonableness are not being seriously challenged by the husband. As said earlier in this judgment, the husband's position is that the wife has actually underestimated their expenses in Hong Kong. Therefore, I accept both the wife and the C's expenses are reasonable. It is common ground that the husband is presently paying only a monthly sum of HK\$2,500 as maintenance for C. One would immediately realize that with the present level of the wife's salary and the maintenance by the husband, the figures just do not add up. In order to make ends meet, the wife is actually relying on the support of her parents who have been very supportive to her both financially and emotionally. I am told that the parents are quite well off in Sweden.

Financial Resources and Needs of the Husband As the income

and expenses of both the wife and the child are not seriously challenged by the husband, I think the real issue concerning the child's maintenance is how much the husband can afford to pay. Therefore, it is necessary to look into the husband's finances in more detail.

35. As far as the husband's income is concerned, it is not disputed by the wife that his monthly disposable income after his return to Swedish employment since October 2004 has substantially been reduced to SEK 30,685. Adopting an exchange rate of SEK 1 : HK\$1.1, that would mean a monthly disposable income of HK\$33,754. What was hotly debated at the trial was not so much the husband's income but his expenses. Those expenses are listed out at p.581-582 of the Trial Document Bundle which are now reproduced as follows: Item Amount SEK Amount HK\$

1. Rent 11,000
2. Utilities (electricity, & water etc) 1,330
3. Telephone (land line, to be connected) 125
4. Broad Band service (to be connected) 419
5. Lunches (at the office) 860
6. Food (on average) 2,000
7. Household expenses (on average) 1,500
8. Meals out of Home (on average) 500 Car (provided by the Company if I pay a 4,000 monthly sum)
10. Clothing/Shoes (on average) 500
11. Personal grooming on average) 200
12. Entertainment/presents (on average) 500
13. Dental (on average) 100
14. Insurance premia 536
15. Maintenance for C 2,500
16. Contribution to Private Pension 1,000
17. Monthly savings for C 1,000
18. Legal Costs (on average) 30,000 Air fares to Hong Kong to visit C 4,000 (on average) *based on providing C with 1 set of air tickets Hong Kong/Sweden and I traveling to Hong Kong to visit C 4 times
20. Miscellaneous expenses 1,000 26,370 29,007 36,700 Total: 65,707

37. Attacks were made by the wife on a number of items saying that they are either unreasonable or being exaggerated. Rent
38. One of the major complaints of the wife is about the current rent paid by the husband. According to the husband, after his removal back to Sweden in October 2004, he has rented a house from a colleague who is now currently working in Hong Kong. The size of the house is 140 sq. m. (this is net area as opposed to gross area in Hong Kong) and is located in Taby, a suburb of Stockholm. The house has a total of 3 bedrooms. The husband said he chose this house because it is located in a nice neighbourhood and the municipal tax is one of the lowest in Sweden. The husband is currently paying a monthly rent of SEK 11,000.
39. The wife said it is totally unnecessary for the husband to rent such a house in Taby. The place is not particularly near to the husband's office which means he has to drive at least 50 km one way to work each day. For most of the year, the husband will reside alone and so there is no need for such a big house. The rent paid at the moment is also unreasonably high even by Taby standard. The so called tax advantage as claimed by the husband is also not true as statistics shows that Taby's municipal tax is in fact one of the highest compared to nearby areas. The wife has produced some information from the internet to support her view that a reasonable figure to be allowed for the husband's rent should be about SEK 7,000.
40. I must say I have to agree with the wife in respect of this item. In view of the very tight family budget, I am of the view that it is totally unnecessary for the husband to rent such a big house. Of course, I always bear in mind that Sweden is a much larger place than Hong Kong and it would be wrong if we should judge the husband's accommodation by Hong Kong standard. But I am also aware of the fact that before the parties moved to Hong Kong in 1999, both of them were residing in an apartment half the size of the house in which the husband is presently residing. I think much can be saved in terms of rent for the benefit of the child. That can be achieved by the husband by either moving to a smaller place or to a cheaper area or both.
41. From the internet information produced by the wife (Exhibit P4), it can be clearly seen that there are at least five 3-room apartments on offer in Taby with the rent ranging from SEK 6,000-7,000 a month. The rent for a semi-detached house in Taby with a size of 97 sq. m. is only SEK 7,283 per month. I agree that all these information come from the internet and there has never been any inspection of the properties and their conditions are therefore unknown. However, I am satisfied that they are clear indications on the level of rent that can be saved with the child's welfare in mind. I am satisfied that a reasonable amount for rent for the husband is SEK 7,000 per month. Utilities The husband said his average monthly utilities bill amount to SEK 1,330. The wife said the actual bills submitted only support an average sum of SEK 1,025. I am minded to say that the figure put forward by the husband is necessarily an estimated average and I do not find the estimated sum to be unreasonable. Food and Meals out of Home I will deal with the items of food and meals out of home together. I do not think a combined sum of SEK 2,500 is unreasonable. Household Expenses and Miscellaneous Expenses Again, as these 2 are general items without detailed

specifications, I will deal with them together. I think SEK 2,500 on household and miscellaneous expenses a month for a single person may be on the high side. However, I am aware that there is no provision in the schedule to provide for some additional expenses which will associate with C during her 5 weeks stay with the husband in the summer. I do not think this combined sum of SEK 2,500 is in any way unreasonable. Company Car The husband is currently paying a monthly sum of SEK 4,000 to the company for his use of a company car. He said he is using a brand new Audi A4 which is a middle size car. He chose this car because it is reliable and safe. He said the company has provided lower models for him to choose from, e.g. Audi A3 but he does not know how much he could save by choosing those lower models. In this regard, I agree with the wife's contention that at least some expenses can be saved by the husband if he should change to a lower model. There is no immediately available figure on the monthly payment for an Audi A3 but I think a reduction of SEK 500 per month would be reasonable. Private Pensions

47. The husband is currently saving a sum of SEK 1,000 per month into his private pension account which is in addition to his 4 other pensions. I think it is indisputable that one has to prepare for his own future and there is nothing wrong in principle in saving as much as one possibly can when there is extra cash available. But the situation is entirely different when one has to balance the needs for the husband's financial security in the future, which may be 20 years from now and the present day to day needs of his infant daughter. The welfare of C has to come first. Besides, I think the husband's future is quite secured as he has 4 pensions of not insubstantial amounts already in place. It is my view that the husband could make better use of this sum of money for the financial support of C. Savings for the Child
48. I am told that the parties have opened an account for C and the husband is currently putting SEK 1,000 per month into that account. The same rationale applies. Saving for the future is good but if one's present well being is at stake, surely one has to take care of his present need first. Therefore, I think the monthly saving should be paid over to contribute to the child's monthly expenditures. Legal Costs The husband said he is setting aside an average monthly sum of HK\$30,000 to provide for his legal costs incurred in these proceedings. Obviously, this is not a recurrent item and so this should not be counted as part of his monthly expenses. In any event, I was told that the husband has already paid his legal fees before the beginning of the trial. Therefore, the item of legal costs here should be ignored. Airfares The husband estimated that he has to spend an average monthly sum of HK\$4,000 on airfares if he is going to exercise the agreed access. As he is now residing in Sweden and the wife and the child are residing in Hong Kong, he has to travel to Hong Kong at least 4 to 5 times a year. The wife said the present airfares the husband is paying is too high. She has produced some information from the internet indicating that if the husband is prepared to choose another airline instead, the average monthly expenditure on airfare can be reduced to HK\$3,000 per month. Counsel for the husband has pointed out the calculation put forward by the wife is on air tickets only. If one has to take into account airport taxes both in Hong Kong and Sweden, the figures have to go up at least for a couple of hundred dollars. More importantly, the alternative route as proposed by the wife means that the husband has

to take a 22 hours flight instead of the present 14 hours. It is just reasonable for the husband to continue with the present route in view of the fact that the husband has to make good use of every minute of his available holidays in order to maximize his access time to the child. I think the husband's argument is not unreasonable. Furthermore, the husband has again not included in his table the extra costs that he has to incur when he exercises his rights of access in Hong Kong. I think an average monthly sum of HK\$4,000 on airfares and associated expenses is reasonable. The Husband's Reasonable Expenses

54. Based on the above calculations, I will allow the following reasonable expenses of the husband: Item Amount SEK Amount HK\$

1. Rent 7,000
2. Utilities (electricity, & water etc) 1,330
3. Telephone (land line, to be connected) 125
4. Broad Band service (to be connected) 419
5. Lunches (at the office) 860
6. Food (on average) 2,000
7. Household expenses (on average) 1,500
8. Meals out of Home (on average) 500 Car (provided by the Company if I pay a 3,500 monthly sum)
10. Clothing/Shoes (on average) 500
11. Personal grooming on average) 200
12. Entertainment/presents (on average) 500
13. Dental (on average) 100
14. Insurance premia 536
15. Maintenance for C 2,500
16. Contribution to Private Pension 0
17. Monthly savings for C 0
18. Legal Costs (on average) 0 Air fares to Hong Kong to visit C 4,000 (on average) *based on providing C with 1 set of air tickets Hong Kong/Sweden and I traveling to Hong Kong to visit C 4 times
20. Miscellaneous expenses 1,000 19,870 21,857 6,700 Total: 28,557 Periodical Payments for the Child It is not in dispute that the husband has a net disposal income of SEK 30,685 (HK\$ 33,754 @ 1.1) per month, I am of the view that the husband is in a position to afford a monthly sum of HK\$7,697 (33754 28,557 + 2,500 (the current sum of maintenance) = 7,697).

For convenience, I shall round up this figure to HK\$7,500 and this is the sum of monthly periodical payments that I shall order the husband to pay for the child's maintenance. The payment of this sum will also be dated back to 1 October 2004 when the husband unilaterally reduced the maintenance to HK\$ 2,500. Nominal Periodical Payment for the Wife As to whether the wife should have nominal periodical payment from the husband, I think the husband has already agreed to this under cross-examination. However, counsel for the husband has somehow raised this again in his final submission but I think it was too late for the husband to change his position on that. Apart from the husband's prior agreement under cross-examination, I think it would not be unjust to allow the wife to reserve her right by granting her nominal periodical payment in view of the fact that she will have the child to look after in the coming 15 to 20 years. Family Assets I shall now turn to the issue of capital division between the parties. The first task is to ascertain the present value of the total family assets. A convenient starting point is the schedule prepared by the wife as contained in p.101 to 106 of the Correspondence Bundle. The schedule is divided into three parts. The first part concerns with the wife's sole assets. The second part concerns with the assets under the sole name of the husband while the third part deals with assets currently under the parties joint names. I think there is no dispute on the figures as appeared under the first and third parts of the schedule. Therefore, I am prepared to accept that the net assets that are currently under the wife's sole name amount to HK\$528,598 (p. 102 of the Correspondence Bundle) and the assets under their joint names amount to HK\$1,064,534 (p. 105 of the Correspondence Bundle). What are in issue are the assets of the husband. The Husband's Assets The assets of the husband are listed out by the wife's solicitors in p.103 to 104 of the Correspondence Bundle which are repeated as follows: THE RESPONDENT ASSETS HK\$ HK\$ Banks Accounts

- (a) HSBC Powervantage Account (as at 28th August 2004) 323,297
- (b) Nordea Current Account (as at 13th February 2005 SEK 240,267.74 264,304 Swedish Bank Account ? 587,601 Pension Swedish State Pension (as at September 2004 SEK 686,282) 754,910 Swedish State Pension (as at September 2004 SEK 36,761) 40,437 Swedish Private Pension provided by employer (estimated at a contribution of HK\$4,100 per month x 104 months as at 3rd February 2005) 426,400 Swedish Private Pension provided by ex-employer (as at September 2004) 6,244 Swedish Private Pension provided by Respondent 72,363 1,300,354 Other Assets
- (a) Jaguar ?
- (b) Porsche (SEK 90,000) 99,000 99,000 1,986,955 LIABILITIES Credit cards Visa Card (as at 15th January 2005) 472.50 American Express 13,278.00 (as at 26th January 2005) Visa Card 18,944.00 (as at 13th February 2005, SEK 17,222) 32,695.00 Business Trip Expenses to be repaid to employer 60,000.00 TOTAL LIABILITIES 92,695.00 Respondent's total net assets: HK\$ 1,986,955 HK\$92,695.00 = HK\$1,894,260 When giving evidence, the husband testified to the fact that the HSBC Powervantage Account balance is now zero and the Nordea Current Account balance has been reduced to about HK\$165,000. He explained that the reason for

the drop in the balances was due to the fact he had to withdraw money to pay for his legal fees. I accept that legal costs are actually paid to the husband's solicitors and there is no evidence to suggest that the figures are not genuine. I trust that the wife must also have at certain stages drawn on the accounts to cover her legal fees. I see no reason why the husband should not be allowed to do so provided those costs are reasonable. Therefore, I will treat those 2 accounts to have the remaining balances at HK\$ 165,000 only. The husband also testified that the Swedish Bank Account (1(c) of the schedule in paragraph 60) is in fact linked to one of his visa card account and so there is no credit balance as far as that account is concerned. I do not think that is disputed by the wife.

63. As to the 5 pension funds of the husband, whether those amounts should be included as the husband's assets was hotly debated at the trial. The wife's argument is that they should be included because they are benefits which the husband will be in a position to enjoy in the future. On the contrary, as the wife has lost her chance to accumulate a pension of this magnitude because she has come to Hong Kong to set up a family with the husband and later has to look after the child of the family, she said she should be allowed to have some interest in those pension funds. She also argued that if those pensions should not be included in the total family assets because they are not immediately realizable, she would ask for a larger share of up to 70% of the total family assets to reflect her entitlement in those pensions.
64. On the other hand, the husband argued that he is now 43 and he will only be entitled to receive those pensions at the normal retirement age of 65, i.e. 22 years from now. Furthermore, the pension to be paid out would be in the form of monthly periodical payments and the values as quoted in the schedule are only indicative of the amount of pension saved so far but not as lump sums that he would get at his retirement. He said those quoted sums are not immediately realizable and therefore they are just not there for the purpose of capital division.
65. To a certain extent, I agree with the husband's argument. Taken into account that this is only a 4-year marriage (married in 1999 and separated in 2003) and those pensions would not be payable for another 22 years, I think it is just not right to include all of these pensions into the calculation. After all, if the husband should pass away in the meantime, he would not be in a position to enjoy the fruits of all his years of hard work. This is a possibility that we can never discount. Having said that, I think it is equally inappropriate to exclude all those pensions completely because the fact remains that there is going to be a not insubstantial monthly pension to be paid over to the husband at his retirement and which the wife would not be in a position to enjoy. The approach that I am going to take is to include only a nominal % of the present value of those pensions into the calculation. I think 10% of those values is about right. Therefore, for the purpose of calculating the family assets, I will include a sum of HK\$130,035 to represent the current value of the husband's 5 pension funds. The husband owns a Jaguar motor vehicle. He said it is an old car with almost no resale value in Hong Kong. He is thinking of shipping the car back to Sweden and hope that

he could sell it there for some money. Before the conclusion of the trial, the parties have come to an agreement that the husband shall proceed with his plan of shipping the car to Sweden. He undertakes to the court that he would sell it at a reasonable price and after deducting all the necessary expenses, he would divide the proceeds of sale with the wife in equal shares. In view of the parties agreement on the subject, I will accept the husband's undertaking and will not include the value of the Jaguar in the calculation. Another item of the wife's concern is about the sale proceeds of another vehicle owned by the husband. It was a second hand Porsche. The husband said he had sold it for SEK 90,000 (HK\$99,000 @ 1.1) through a friend. Counsel for the husband submitted that this sum of money must have been absorbed into one of the accounts of the husband. Unfortunately, the evidence is not that clear. In view of the self-admitted non-disclosure of at least one other account of the husband (which will be discussed in more detail in paragraph 68 below), I do not think the husband can give a satisfactory account of the whereabouts of this sum. Under the circumstances, I shall infer that he is still in possession of this sum and so it has to go into the equation. Under cross-examination, it has become apparent that there is bank account in Sweden that the husband has failed to disclose. This account came to light when the husband failed to account for 2 sums of money (HK\$50,000 x 2 = HK\$100,000) when his accounts were examined in detail at the trial. He said it was an old account opened before he started the present employment. He said the account is so old that he has forgotten completely about it. I am afraid it is not a satisfactory explanation. First of all, this amount of HK\$100,000 is not insubstantial and was only transferred to that non-disclosed account in October 2004. More importantly, according to the husband, he has operated on this account to settle some of his lawyers bills just before the trial. His explanation of forgetting about this account is just unbelievable. Without any information on this account, the court is not in a position to have a complete picture of the finances of the husband. Not only that I have to include this sum of HK\$100,000 into the equation, I am afraid I also have to bear this in mind when I come to the parties conduct and other circumstances in deciding on the proper division of the parties assets. By way of summary, the husband's gross assets are valued at HK\$ 494,035 (165,000 + 130,035 + 99,000 + 100,000 = 494,035). After deducting the liabilities of the husband at HK\$92,695 which I think is not disputed by the wife, the net assets of the husband has come to a figure of HK\$401,340 (494,035 - 92,695 = 401,340). Value of the Total Family Assets Based on the above figures, I am prepared to accept the value of the total family assets at HK\$1,994,472 (528,598 + 401,340 + 1,064,534 = 1,994,472). The Law on the Division of Family Assets Before the court can decide on the proper division of the family assets, it is necessary to refer to S.7(1) of the Matrimonial Proceedings and Property Ordinance, Cap.192 again:

7. Matters to which court is to have regard in deciding what orders to make under section 4, 5 and 6

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say- the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage; the age of each party to the marriage and the duration of the marriage; any physical or mental disability of either of the parties to the marriage; the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.
72. I will now deal with the above items in turn. Earning Capacity and Financial Resources The net income of the husband is about HK\$33,754 per month. This drastic drop in disposable income is largely due to the fact that he has moved back to Sweden which levies very high taxes on her subjects and the loss of expatriate terms by the husband. He is now occupying a top management position in the Company and there is nothing in the evidence to suggest that his position in the company is anything other than secured.
74. Furthermore, I also bear in mind that there are 5 pensions established in favour of the husband and with the continued contributions to be made by the company in the coming 22 years, I think the husband is also quite secured as far as his future retirement is concerned.
75. As for the wife, her present income is HK\$21,500 per month. As far as the wife's future is concerned, even with the increased maintenance to be paid by the husband, I think she is still in red in her monthly balance sheet. She has placed high hopes on her business venture in T Limited but whether that company can really yield any profits is rather uncertain. If the company can not work out, the wife said she would look for a better paid employment in Hong Kong or that she may have to continue to rely on her parents financial support in order to make ends meet.
76. The wife has received education up to university level. She said she has established some good contacts during her employment with the current company. She is still relatively young and with the improving economy in Hong Kong, I think it may not be too difficult for her to find a better employment here. Having said that, if there has to be a comparison between the future career prospects between the parties, I am of the view that the husband's career future would certainly be much more secured than the wife. Financial Needs and Responsibilities The present income of the husband is certainly higher than the wife but that has to be seen in the light of his future maintenance payment to be made to support the living of C. After taking that factor into account, one would see that there will be nothing left for the husband for the purpose of savings. C is now aged 4. I think both parties would like

the child to be educated up to the highest possible level. If C is to attain university education, that would mean that the husband's commitment will continue for at least another 18 years. The wife's situation is similar to the husband or even worse. There is no doubt that her monthly budget will continue to be in red at least for the near future and she either has to dig into her own capital or else she has to rely on the continued support of her parents. There is no evidence on the financial well being of her parents except that they are quite well off by Swedish standard. However, how long that source of financial support will continue is unknown. If further support from the parents is not forthcoming, I think the wife will be put in a very precarious position. Standard of Living Previously Enjoyed

79. The husband was employed under expatriate terms in Hong Kong for almost the entire marriage period of 4 years. They used to live in a spacious flat in Repulse Bay with all the utilities paid for by the company. The husband had sufficient income to allow the wife to spend all or most of her time on the family and C. The family was able to hire a domestic helper to assist in household chores and to look after C. They were able to enjoy annual trips to Sweden. All these indicate that the family had led a rather comfortable life before the breakdown of the marriage. Age and Duration of Marriage
80. The wife is now aged 32 and husband aged 43. The marriage was about 4 years which can not be regarded as a long marriage. Physical or Mental Disabilities There is no evidence that either is suffering from any form of disability. Contributions to the Welfare of the Family Before the parties cohabitation in about March 1999, the husband was in possession of a small apartment in Stockholm. That was sold and he moved into the wife's apartment. After they got married, the wife's apartment was also sold before they came to Hong Kong. It is not in dispute that part of that proceeds was used to purchase some shares in a Swedish company (the Conflux shares). It is also not in dispute that during the marriage, the husband had inherited some money from his father and that money had gone into the family assets as well. I also accept the fact that since only the husband had full time employment during the marriage, as far as monetary contributions to the family is concerned, it was the husband who had contributed a much bigger share. However, under the relevant section, the court has to consider the parties contribution to the welfare of the family which is not limited to financial contributions. That would include the contribution by the wife in the form of being the main carer of the family and C while the husband could concentrate on his employment in Hong Kong. Therefore, I would hold that both parties had contributed equally to the welfare of the family during the marriage. Loss of Benefit due to the Dissolution Before the dissolution of the marriage, the employer of the husband had provided a pension to the wife as a dependent of the husband. The employer's contribution to the fund had already stopped because of the dissolution of the marriage. The value of that pension was about HK\$ 69,984 as on 1 Jan 2004. That sum is expected to continue to grow at a normal investment return rate only but additional monthly contribution to the fund will not be available. Conduct and All the Circumstances

84. The main criticism raised by the wife on the conduct of the husband concerns with his failure to disclose all his bank accounts. During cross examination, it was found that he has kept a non-disclosed Nordea bank account into which he had transferred a sum of at least HK\$100,000. The husband tried to explain that it was an old account which was opened before he joined the present company. He said it was a dormant account and so he had completely forgotten about it. However, the husband failed to explain why the existence of this account should have escaped his mind when the transfer of HK\$100,000 into this account was only effected sometime in October 2004. It was also his evidence that just before he came to Hong Kong to attend the present trial, he has also operated on this account to pay part of his solicitors charges. I just do not find his evidence convincing. I am of the view that even if it is an old account (although there is no evidence on that except the husband's own words), the husband must be aware of its existence at least since October 2004 when he has reactivated this account. However, the husband chose not to mention this account in any of his supplemental affidavits. Even at the time when it was discovered during cross examination that there was yet another bank account opened in the child's name not previously mentioned, counsel for the wife has asked the husband again if he has disclosed all his accounts and he still maintained that was the position. The only reasonable conclusion that I can draw is that the husband has deliberately concealed this account from the wife and the court. I agree with counsel for the wife that not only that the HK\$100,000 which was transferred into this account has to be taken into consideration in determining the total family assets, the conduct of deliberate concealment must also be taken into account when the court decides on the proper division of the family assets. Capital Division
85. After taking everything into account, I think it is just and reasonable to give the wife a slightly bigger share of the family assets. I would divide the total family assets in the ratio of 60:40 in favour of the wife. That would give her a sum of HK\$1,450,243.80. The way to achieve this division is to allow the wife to keep all of her own assets which would give her a sum of HK\$528,598.00. In addition, the wife shall be entitled to have a sum of HK\$921,645.80 out of the SEB Securities Account which is currently under their joint names, which together with the wife's own assets would give her the sum of HK\$1,450,243.80 representing 60% of the total family assets.
86. As to the husband, he will have all the assets other than the wife's entitlement as mentioned in the preceding paragraph.

Orders

Therefore, upon the husband's undertaking that he would ship the Jaguar car back to Sweden for sale and he would split the sale proceeds after the deduction of all relevant costs with the wife, the orders that I am going to make on ancillary relief are as follows:

- (1) The husband shall make periodical payments to the wife as maintenance for the child at the rate of HK\$7,500 per month payable on the 1st day of every month starting on 1st April 2005; The husband shall pay a lump sum of HK\$30,000 to the wife representing the difference between the maintenance that he ought to have paid for the child's maintenance and the amount that he had in fact paid for the period from 1 October 2004 to 1 March 2005, such sum to be paid out directly from the SEB Securities Account to the wife;
- (3) The husband shall make nominal periodical payments of HK\$1.00 per annum to the wife;
- (4) The wife shall have 60% of the total family assets and in the following manner:
 - (i) the wife shall keep all of her own assets; and (ii) the wife shall have a sum of HK\$921,645.80 from the SEB Securities Account;
- (5) For the avoidance of doubt, the husband will be entitled to have all of the total family assets except the assets as listed in sub-paragraphs (2) and (4) above; Costs There will be no order as to costs for custody and access. For ancillary relief, I will grant an order nisi that the costs be to the wife with certificate for counsel and such order will be made absolute upon the expiry of 14 days from the handing down of this judgment. C.K. Chan Deputy Judge District Court Ms. F. Irving instructed by Messrs. Hampton, Winter & Glynn, for the Petitioner Mr. Neal Clough instructed by Messrs. Stevenson, Wong & Co., for the Respondent PAGE PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk &`#\$ &`#\$. !L {M#R. #J8. 94G8B 8t={r9 Abcl Y)uG F,rJ6 #\>V yZVF T!W& _8Z\$ r0o\ F@zrw 94G8 F,rJ={r9 #J8. Y)uG #\>V n,Pl v@~~ This is a trial of the Petitioner wife's application for ancillary relief against the Respondent husband Judiciary Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR This is a trial of the Petitioner wife's application for ancillary relief against the Respondent husband Title Microsoft Word Document MSWordDoc Word.Document.8

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