

HONG KONG / JUDGMENT

S v. Y

COURT

Family Court

DECIDED

21 June 2007

CASE / FILE NUMBER

FCMC8775/1998

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bjbj i*I FCMC 8775 / 1998 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 8775 OF 1998

BETWEEN S Petitioner and Y Respondent

Coram : Deputy Judge K. Levy in Chambers Date of Hearing : 18 April, 19 April & 24 April 2007
Date of the Parties Last Written Submissions: 16 May 2007 Date of Judgment : 21 June 2007

J U D G M E N T

The Application

1. The marriage between the parties was dissolved some years ago. For convenience, I shall continue to refer them as the Husband and Wife. By a notice of application dated 13th February 2007 (the Application), the Husband (Petitioner) applied to vary downwards the amounts of periodical payments ordered to be paid to the Wife as maintenance for herself and the child of the family, B, pursuant to a consent order dated 20th November 1999 (the Original Order).
2. Under the Original Order apart from a payment by the Husband of a lump sum of \$2,975,000 (the Lump Sum) to the Wife the Husband agreed to pay the Wife periodical payments of \$12,000 and \$13,000 as maintenance for the Wife and B respectively. The ending date of the Wife s maintenance is upon her remarriage whilst that of B until her reaching the age of 18 or completion of full time education, which expressly includes university education. The Husband now seeks to vary each of the said payments downwards to \$1,000 each month.
3. The Wife opposed the Application. The Applicable Principles

4. The Application was brought under section 11(7) of the Matrimonial Proceedings and Property Ordinance, Cap.192 (MPPO). The provisions are so frequently referred to that I do not find it necessary to repeat them herein save that I shall state that the court in the Application is required to have regard to all the circumstances of the case.
5. The parties, in principle, have no quarrel with the general principles underlying section 11(7) of the MPPO. According to the principles derived from the authorities the parties have submitted, I summarize below the applicable guidelines :
 - (1) The court is to have regard to all circumstances of the case, including a regard to the circumstances de novo;
 - (2) A duty to make full and frank disclosure, a breach of which duty by a party may lead to an adverse inference being drawn by the court;
 - (3) A financially dependent wife should be reasonably expected to find a means to be self-sufficient in order to achieve financial independence;
 - (4) When a husband has remarried, a court in considering the financial circumstances of this husband is required to take into account the circumstances of his new family, including the financial resources of the new spouse as well as his obligation to such a family. A court should not threaten a husband with an excessive order in exchange for his agreement to continue maintaining a former spouse;
 - (5) There is no room for defaulting husbands for using a financial hardship induced by them as a change of circumstances; and
 - (6) The exercise of a court s power is wide and unrestricted including a power to terminate periodical payments as well as to back-date an order of variation and, the overall objective is to achieve a fair outcome.
6. With these principles in mind, I will now deal with the Application. The Grounds of the Application
7. One of the grounds of the Application is the Husband s claim of his change of circumstances since the Original Order. One of the material changes of circumstances according to the Husband is his deteriorating financial circumstances, and another change being his remarriage in 2000.
8. The said changes of circumstances are now discussed below :
 - (1) The deteriorating financial circumstances
9. In support of the Application, the Husband filed three affirmations two before the Application and one during the hearing. The Husband stated that at the time of the Original Order, he was able to derive reasonable income from his company called U Limited (the Company). According to the audited financial statements of the Company exhibited by the Husband, in 1999 - the year the Original Order was made - the turnover of the Company was

HK\$25 million and net profit was HK\$1.4 million. However in 2006, the Company has suffered a loss of HK\$300,000, and the accumulated losses were about HK\$1.5 million. He said that as a result of the financial downturn experienced by the Company, he could only withdraw \$10,000 per month - which has been his only income - from the Company as remuneration of being the Company's director. The Husband started to default in making periodical payments since September 2006. The Husband's remarriage

10. The Husband, in December 2000, married the Company's employee and now has a daughter, J, who is now 2 and 1/2 years old. The arrival of a young daughter as asserted by the Husband has substantially increased his financial burden.
- (3) The Wife should be expected to strive for financial independence
11. Balanced against the Husband's said change of financial circumstances and the new financial obligation he has towards his new family is the requirement as asserted by the Husband - of the Wife to be more self-reliant. The Husband submitted that as the Wife had duly been paid the Lump Sum to enable her to purchase a property for herself and B, she should be reasonably required to reduce the extent of her financial dependence on him. As it transpired that the Wife had not purchased any property with the Lump Sum payment she had received, the Husband said that - whilst accepting that the Wife was free to decide how she had wished to spend the Lump Sum - it would not be fair to make him continue to maintain the Wife at the same level when she could have substantially reduced her reasonable needs had she gone ahead to buy a property as originally intended by the Lump Sum payment. The Wife's Opposition
12. The grounds of the Wife's objections are in the main the Husband's failure in making full and frank disclosure and her unchanged financial needs.
- (1) The Husband has failed to make full and frank disclosure
13. The Wife contended that the Husband has failed to demonstrate with credible evidence that his financial circumstances have deteriorated, and that the Husband has shifted most of the Company's business to a company called M Ltd. (a company on the face of it belongs to the Husband's new wife to conceal his real financial situation).
14. In order to discredit the Husband's evidence, the Wife during the hearing, produced a number of documents, which documents - as contended by the Wife together with the bank accounts of the Husband and the Company as well as the financial statements of the Company tend to show that the Husband has been most economical with the truth.
15. The Wife does not accept that the Husband has fully disclosed his financial true picture and believes that he has the means to continue to maintain her and B, who would be finishing her full-time study in around June 2007 by which time the Husband's periodical maintenance obligation shall cease.
- (2) The needs of the Wife and B have not changed

16. Apart from disputing the Husband's claim of his alleged lack of means, the Wife said that - in view of her age and health - she had a real financial need. The Wife is now 54 years of age. Since the Original Order, the Wife said, regardless of the effort having been made to obtain employment by, for example, attending the government retraining programme in accounting, the Wife has not been able to find work and been relying on the Husband's periodical payments to support.
17. B, now 22, has already finished her undergraduate studies in UK and is now studying full-time for a Master degree course in Oxford. She will be graduating in summer. Hence, B's financial dependence on the Husband is coming to an end soon and the Husband by that time would be freed from one of the financial burdens. The Issues
18. From the contentions of the parties outlined above, I should set out below the issues that fall for my determination in the Application:
 - (1) Whether the Husband's financial circumstances have deteriorated to an extent that he is no longer able to pay the existing amounts of periodical payments under the Original Order;
 - (2) Whether the Husband's financial obligation has in fact been increased as a result of his new family;
 - (3) Whether the Wife (and including B in the short term) need to continue to depend on the Husband's support and;
 - (4) Whether it is just having regard to all the circumstances of the case to vary the existing periodical payments downwards to the amounts requested by the Husband or to such amounts as deemed fair by this court.
19. Before making any finding on the issues above, I should consider and analyze the parties evidence. The Husband's Evidence The financial circumstances of the Husband
20. In order to track the changes of the Husband's financial circumstances as he alleged, I should start from the time when the Company was first set up. Briefly stated, the Husband was a mining engineer by training. In or about 1989 when the parties were still married, the Husband set up the Company to run a business in the field of innovative products, power devices and power related products. The Husband held 90% of the shares of the Company and the Wife, 10%. Before the marriage started to run into difficulties in 1993, both parties who in their capacity as directors of the Company - could be regarded as joint partners in the running of the Company, with the Wife based in Hong Kong and the Husband in Mainland China, handling production. In or around 1993, the Husband alleged that the Wife had cleared off all the money from the Company, tendered her resignation from the directorship of the Company and disappeared with B.

21. After the said unhappy event in 1993, the Husband said that it was fortunate that he managed to rebuild the Company's business with the assistance of the employee who later became his second wife. The 10% shares of the Company previously held by the Wife were then transferred to the second wife. Hence, in 1999 when the Original Order was made, the Husband said that he was doing exceptionally well and was therefore able to pay the Lump Sum to the Wife to enable her to buy a property for the accommodation of the Wife and B.
22. However, since 2002, the business of the Company - as submitted by the Husband - has suffered gradual economic downturn. In order to better understand the position of the Company since 2002, I set out below the accounts of the Company's turnover and profit and loss between the period of 2002 and 2006 : Year Total turnover (HK\$) Profit (denoted by)/ Loss (denoted by)(HK\$) 2002 5,000,000 (-) 600,000 2003 2,800,000 (-) 230,000 2004 2,200,000 (-) 180,000 2005 1,500,000 (-) 280,000 2006 1,600,000 (-) 320,000
23. The Husband said that the financial statements of the Company for the past 5 years clearly demonstrate a pattern of declining business and escalating loss of profits. As the Company being in the nature of a family business is his life-blood on which his livelihood depends, its poor financial situation has also badly affected his personal financial circumstances.
24. The Husband is presently residing with his new family in a property in New Territories. The said property was purchased in 1997 in the name of the Company at a consideration of \$4.3 million. The Husband said that the Company still had an outstanding mortgage loan in the sum of about \$500,000 and it was making monthly mortgage payment of \$6,000.
25. The Husband is currently being paid \$10,000 per month as director's remuneration and he agrees that most of his personal expenses are in fact being reimbursed by the Company. He has 3 personal bank accounts and 2 credit cards whilst the Company only has one bank account with Shanghai Commercial Bank Limited (SC Bank). The bank balances of the three personal accounts of the Husband at the time of his affirmation in February 2007 were in the total sum of about \$25,000 and the balance of the Company's bank account however showed an overdrawn amount of about \$400,000.
26. The Husband is presently living with the second wife, her mother and J in their matrimonial home with monthly expenses for the three adult family members in the sum of about \$20,000. Expenses for J are about \$2,700. However, the expenses for J are anticipated to increase by another \$1,500 when she starts receiving lessons in piano, dancing and drawing in September 2007 by which time J will be 3 years old.
27. Apart from the matrimonial home held by the Company, the Husband also owns a property in Dong Guan, Mainland China. The Chinese property was purchased in 1997 for a sum of about RMB \$315,000. Changes resulting from the new family
28. In the Husband's first two affirmations filed before the hearing, the Husband stated that the birth of a young daughter has brought new obligation an obligation to reasonably provide for J's living and proper education - towards her. He submitted that it was just fair that the

level of financial provisions to be made for J should at least be comparable to if not the same as the financial provisions having been made for B. He stressed that as he was already 55, it would not be reasonable to make him continue with the current level of maintenance, which would have the effect of crippling his ability to make reasonable financial provisions for J in the future.

29. Under cross-examination by the Wife's counsel, Mr. Beel, the Husband admitted that although the second wife was not a full time housewife and was in effect running her own business of M, the second wife had only paid for some of the family expenses, but would not be willing to help him pay for maintenance for B and the Wife. The Wife's Evidence
30. The Wife's objections are clearly based on her continued needs for the Husband's financial support and her disbelief in the Husband's assertion of his lack of means. The Wife - currently unemployed - is living with her mother in a rented apartment in Tsim Sha Tsui. Her personal expenses, according to in her affirmation, were in the sum of \$17,000 per month. As from March 2007 according to the Wife the monthly rent has been increased from \$7,300 to \$8,500 and her monthly expenses on food for herself and her mother should be around \$5,000 instead of \$3,000 as stated in her affirmation. She neither has debts nor savings.
31. As for the expenses for B, the sum of \$24,000 per month has included her school fees and living expenses, which expenses the Wife has already paid. B will be finishing her full time studies in 2007.
32. Under cross-examination of the Wife by the Husband's counsel, Mrs. Irving, the Wife was vigorously questioned on how she had allegedly spent the Lump Sum of \$2.975 million. The Wife accepted that when the amount of Lump Sum was agreed, it was intended to be for her to purchase a property. However, the Wife claimed that she found that the Lump Sum was insufficient for her to buy a suitable property at the time due to the large amount of money she claimed she owed to both her sister and brother, which debt had been incurred when the Husband - between the period of 1993 to 1999 had not paid any maintenance to her and B. Out of the Lump Sum she had received, the Wife said that she had to repay her siblings a total sum of \$1.6 million and paid legal fees in the total sum of about \$180,000. After having made the said payments, the Wife was only left with about \$1.23 million, which was used to pay for the shortfalls of the Husband's financial provisions as the said provisions the Wife allegedly found to be insufficient to cover the expenses for herself and B. By 2006 as claimed by the Wife the entire amount of Lump Sum payment was already depleted.
33. Hence, the Wife said that without any financial support from the Husband, she simply could not make her ends meet as she has not been able to find a job. Her inability to find employment, coupled with some gynaecological problems which she claimed of having been suffering, and which require regular medical check-up on intervals of about 3 to 6 months, have prevented her from achieving financial independence. Evaluation of Evidence

34. During the course of trial which lasted for 3 days, the veracity of the parties evidence was vigorously contested. The challenge to the Husband s credibility led to a number of leave applications by the Wife to submit a number of documents as exhibits, the recalling of the Husband by Mrs. Irving and the filing of a third affirmation by the Husband to deal with fresh allegations raised by the Wife during the hearing.
35. Apart from the complaint against the Wife in respect of her applications at eleventh hour for leave to produce documents adverse to the Husband, Mrs. Irving also criticized the Wife s for having failed in making full and frank disclosure, particularly in respect of her having failed to produce any evidence tracing the alleged depletion of the Lump Sum.
36. Credibility, hence, becomes one of the essential issues of this case. According to one of the principles stated in paragraph 5 above, there is a duty of full and frank disclosure, which duty - having been given the fullest resonance by courts, underpins the cornerstone of a discovery process. Hence, should a party be found to have failed the said duty, it would be, according to the established principles, open to a court to reject a party s evidence and draw an inference adverse to that party. The court in this case - different to a civil proceeding, which is adversarial may, to a limited extent, exercise an inquisitorial power , the standard of proof remains that of a civil standard of being on a balance of probabilities. Thus the same standard of proof should be applied to this case.
37. After having carefully listened to the parties, observed their demeanor and considered all the evidence, I must say with regret that I am not impressed by any of the parties evidence. The Husband s evidence
38. The Husband, in support of the Application, had before the trial, filed two affirmations. However he only elaborated on the composition of the Company at the hearing. The Husband and the second wife are the only directors of the Company and its registered address is that of the matrimonial home. The secretary of the Company is a Mr. Sze who apart from having been working solely for the Company since 1993 - also acts as the representative of M. The Husband admitted that the business of both the Company and M could be said to be in direct competition with each other as they produced similar products.
39. The Husband according the Mr. Beel s written submissions was most reticent in discussing the financial position of either M or the second wife. Thus the Husband in his first two affirmations filed before the hearing had totally omitted from mentioning the financial situation of the new wife which omission I find to be deliberate. I observe that the Husband was only forced to divulge information (though still limited) on M after the Wife produced documents relating to M s incorporation and its company returns for the year 2005. Confronted with the handsome profits revealed in the said 2005 audit report of M, the Husband was at pain to distance himself or the Company from M by repeatedly emphasizing that M and the Company were two separate entities.

40. Further, it was only when the Wife, bit by bit, produced more documents linking the Husband to M, did the Husband make further discovery. From the documents produced by the Wife at the hearing, the Husband was shown to have: (i) claimed to be a managing director of M; (ii) used the same factory of M in Dong Guan for manufacturing the Company's products; (iii) used the registered address of M for making a patent application of a waterproof flashlight he had designed; (iv) employed the same auditor of M for the Company and (v) set up a company -
- in Austria, using the address of a property registered in the Husband's name as the registered address of the said Austrian company.
41. These documents unearthed by the Wife were certainly unfavourable to the Husband. I had therefore acceded to the Husband's application to allow him to give further evidence to elaborate on the documents produced by the Wife. After having carefully considered the Husband's evidence, I am inclined to reject it. I find that the Husband's evidence is inherently improbable.
42. The attempt by the Husband to refute the accusation by the Wife of having concealed his true financial circumstances, in my view, is far from satisfactory. For instance, the explanation by the Husband for the reason of having used the registered address of M as the contact address for his patent application on the ground of convenience, in my view, does not appear to be logical. The Husband has been effectively the boss of the Company for many years. Hence, it would be more logical for him to use the address of the Company rather than the M's for his patent application.
43. Further, the explanation for his use of the abbreviated name of M as part of the name of his recently formed Austrian company allegedly for the purpose of taking advantage of the good image of M - does not appear to be convincing. I find the said evidence lacks credibility as the Company should be in view of its longer presence in the market more reputable than M.
44. The Husband's evidence regarding the registered address of his Austrian company - in spite of being granted leave to file a third affirmation to give an explanation - also looks suspect. Apart from a bare assertion in the third affirmation by the Husband's younger brother that the younger brother was the real beneficial owner of the said Austrian property, the Husband had wholly failed to give a satisfactory explanation as to why he was required to hold the said Austrian property on trust on behalf of his brother.
45. In the circumstances, from the above documents disclosed by the Wife, I am unable to believe in the Husband's evidence that his acts as referred to in the said documents were purely coincidental or innocent.
46. Further, the surrounding circumstances on the setting up of M and its composition, in my view, would further reinforce my disbelief of the Husband's evidence. According to the incorporation documents of M, it was incorporated in 1999 and has been represented by Mr. Sze since its incorporation. As Mr Sze has been an admittedly loyal and trusted employee of

the Husband for many years, it would be, in my view, extremely easy for the Husband to control M through Mr. Sze or to use him as a front man to conceal his true beneficial interest in M. I heard no evidence either from the second wife or Mr. Sze as to the working relationship of the two or the extent of trust the second wife had placed on the latter. In the absence of evidence, and in view of the similar types of business the two companies were operating, I am inclined to believe that the Husband and / or the Company have some interest in or are in de facto control of M.

47. Furthermore, the Husband's evidence concerning the Dong Guan factory - the manufacturing arm of the Company - is confusing at best and evasive at worst. There is no dispute that the said factory in Dong Guan was built on a piece of land with funds provided by the Company before the parties were divorced. However the evidence regarding the ownership of the factory and how it is operated, is in a complete muddle. The Husband said that both the Company and M had been using the factory to manufacture the Company's products by a loosely subcontracting system. In spite of the admitted expenditure having been spent on the factory by the Company, the Husband said that he and/or the Company did not have beneficial interest in the factory but an obligation to keep the factory running, for the purpose of preventing the factory from receiving outside orders, so he said. The said highly unusual arrangement, however, is totally uncorroborated by any evidence. In view of the funds admittedly having been provided by the Company and / or the Husband to build the factory as well as the close relationship between the Company and M, I am inclined to infer that the Husband likely has an interest in either the land on which the factory sits or the factory itself.
48. All in all, the totality of the evidence is so overwhelmingly pointing to the existence of an inseparable relationship between the Husband or the Company and M that I find it is likely that M is the alter ego of the Husband. This inference can be tested against the background of the second wife. The second wife is presently only about 36 years of age and it is not disputed that she started working for the Company only as a production worker at a very young age of 18. Fast she might have learnt, she was a woman without formal training or qualification in the field of power products. Whilst the Wife had also acknowledged that the second wife was reasonably competent when she started as a production worker in the Company's factory in Mainland China, it would be extremely unlikely, in my view, that the second wife's acquired business acumen is now said to have surpassed the Husband's and that her company have dwarfed the Company.
49. Hence, on the evidence before me, whilst I am unable to conclude that the Company has as contended by Mr. Beel shifted substantial part of its business to M, I, however, am of the view that it is likely that the relationship of the Husband or the Company and M is not as distanced and their entities as separate as he wished this court to believe. I find that the Husband for various reasons be it for tax purpose or for diversification or otherwise has used M to better develop and serve his personal interest.

50. Apart from the beneficial interest I find the Husband likely to have in M, I further find that the Husband has failed miserably in the disclosing his real financial situation. According to the Husband's evidence, the Company has only one bank account with the SC Bank, from which account, the Husband said the monthly mortgage payments of the matrimonial home in the sum of about \$6,000 were paid. However, Mr. Beel contended that as the only bank account of the Company disclosed by the Husband for the period of September 2006 to 30th December 2006 and including his personal accounts - did not show any mortgage payments, he therefore submitted that the Husband must have concealed some other accounts from this court.
51. Mr. Beel's complaint is not without merit. According to the land search of the said property, there was an all moneys mortgage issued by the SC Bank. The Husband however had not produced any legal charge. The mortgage documents according to the Husband were in the form of a facilities letter of January 1999 granted to Company. According to this letter, the SC Bank granted two facilities to the Company a secured overdraft facility and a trust receipt facility which facilities were secured by the matrimonial home. However, neither the SC Bank statements of the Company or the said facilities letter are in fact mortgage documents. The Husband could have easily produced the mortgage deed or some recent mortgage accounts showing outstanding principal and interests, but he has not done so.
52. In my view, an absence of any mortgage documents or documents showing mortgage payments do not by themselves matter. However, a lack of documents as in this case tends to have a consequence of creating an overall impression that the Husband has not been too forthcoming in disclosing his true financial situation to this court.
53. In order to find out the financial position of the Husband, I need to examine inter alia the Husband's personal accounts as well as the Company
- s. The Husband has two personal credit cards while the Company has not got any. However, I note from the Company's SC Bank account, debits for settling credit card expenses. As the Company did not have any credit card, these debits could therefore only be for the purpose of settling his personal credit card expenses. According to the Husband, he had caused all the expenses of the matrimonial home such as mortgage payments, management fees, rates and telephone charges and utilities expenses to be paid for by the Company.
54. Apart from the expenses of the matrimonial home, the Husband's personal expenses (including, inter alia, his travelling and entertainment expenses) and directors emoluments in the total sum of \$260,000 per annum as well as the overdraft interest of the Company's bank account are all booked to the Company's expenses.

55. A brief examination of the expenditure pattern discussed above seems to show that the Husband has been using the Company to service his family and personal expenses. The tendency of the Husband to blur the expenses of the Company with his personal expenses is further reflected by the Husband having used the Company to pay for the periodical payments to the Wife, which payments according to the Original Order were to be borne by the Husband personally.
56. As the Husband has clearly used the Company to service almost his entire personal and living expenses, I therefore find that the big overdraft of the SC Bank account of the Company is not a true indicator of the Company's financial situation. The said arrangement by the Husband, in my view, is probably due to a desire by the Husband to reduce tax liabilities.
57. For this reason, I find it impossible to properly assess the Husband's financial situation without an examination of the Company's financial position as well.
58. The Husband, by referring to the Company business turnover and loss of profit in paragraph 22 above, submitted that the Company was clearly impecunious. As the Company was his only source of income, his financial resources had also greatly diminished. However a closer examination of the Company's accounts reveals that the loss of profit of the Company has not been worsening as claimed by the Husband. For example, in 2002, when the business turnover was in the amount of \$5,000,000, the loss was in a staggering sum of \$600,000. On the other hand, in 2006 when the turnover had dropped by about 68% to \$1.6 million, the loss of profit, instead of having grown by a proportional percentage, had shrunk by 46% and the amount of loss of profit was reduced to \$320,000. Thus the said figures do not seem to bear out the Husband's assertion and the Company seems to have been only trading less actively rather than suffering from a declining profit margin.
59. Further, as previously discussed, as a result of the Husband's use of the Company to pay for his personal expenses, the Company's book loss was also escalated as a result. Furthermore, according to the Company's balance sheets, the Husband had been owing the Company a relatively large amount of money. According to the amounts shown in the balance sheets, the percentages of the Company's assets comprising the amount due from the Husband have been steadily increasing. The amounts are set out below : Amount due from the Husband \$ 190,000 \$ 470,000 \$ 678,000 \$ 962,000 \$1, 238,000
60. As the Husband had been drawing a modest amount of salary from the Company, the above amounts owed by the Husband would most likely be borrowings from the Company, which amounts have clearly been increased by leaps and bounds. This pattern reflects a tendency by the Husband to milk the Company with a consequence that the Company's real financial situation is materially distorted. It is therefore not surprising that notwithstanding his alleged poor financial state - the Husband's personal bank accounts he produced show that they were all in credit, albeit small the amounts. As the Husband said in his evidence that all his living expenses are being paid for by the Company, including the maintenance

payments, it shows that the Husband had funds available for his spending. Hence, the Husband's personal expenses and his overall financial circumstances look questionable.

61. In the circumstances, had the Company been truly declining financially as claimed by the Husband, I conclude that on the evidence I have found the decline was largely induced by the Husband as a result of his having used the Company for his personal benefit at the expense of the Company.
62. A discussion of the Husband's financial position would not be complete without considering the financial circumstances of M, a BVI company purportedly owned and controlled by the second wife solely. The share register of M shows that the second wife had been issued with the only one share worth of US\$1. According to the financial statements of M for the year ended 31st December 2005 produced by the Wife, M had paid in 2005 dividend in the amount of HK\$2,000,000 per share on the only 1 share of the company. The second wife, being the owner of the only issued 1 share of M, thus was effectively the only recipient of the said sum of dividend. The trading volumes were also shown to be extremely impressive. In years 2004 and 2005, the revenues of M were respectively in the sum of HK\$42 million and HK\$37 million and the amount of cash and bank balance were HK\$7 million and HK\$ 8.5 million respectively.
63. The above figures extracted from the said financial statements show that M is anything but a thriving company. According to the Husband, the second wife previously a Mainland resident with no right of abode in Hong Kong only settled in Hong Kong permanently in 2003. The impressive performance of M as discussed above seems to suggest that the second wife has, within a relatively short period since her settlement in Hong Kong, completely overtaken the Husband. Without any evidence from the second wife, and coupled with the manifestly inadequate disclosure by the Husband, I believe that I will never be able to fully grasp the real financial matrix and the relationship between M and the second wife on one hand, and that of the Company and the Husband on the other. However, after having considered the totality of the evidence, I find that the Husband has failed to disclose his real financial circumstances. Further, the strong financial position of M in contrast to the Company means that the Husband could look to M and / or the second wife to help him shoulder the financial burden of his new family, thus freeing some of the Husband's resources. The Wife's financial needs
64. The Husband took no issue with B's expenses. Initially the Husband had complained about the lack of proof to confirm if B was in full time education. When documentary proof was subsequently available, the Husband apart from reliving, with much bitterness, the unhappy episode of how he had been cut off from B and the estranged father-daughter relationship had not challenged the reasonableness of the expenses and said that he would be prepared to pay for B's maintenance should he have the means, which he claims he lacks.

65. One of the more controversial issues in respect of the Wife's needs is her failure to account for the Lump Sum payment she had received under the Original Order. From the evidence, there is no dispute that at the time when the Lump Sum was paid to the Wife, it was for the purpose of enabling her to buy a property. The Wife explained that the reason why she had not used the money to buy a home for herself and B because the amount was simply insufficient.
66. I find the said explanation given by the Wife does not ring true. Firstly, when the parties were negotiating for the terms of the financial settlement, they were both legally represented and that the parties by that time had also made fairly detailed financial disclosure before the Original Order. Thus, it is reasonable to infer that the Wife must have received proper legal advice on matters regarding her needs and the cost of a reasonable accommodation she had intended to buy before she finally agreed to accept the amount of the Lump Sum payment.
67. Secondly, it is to be noted that the Lump Sum of \$2,975,000 is not a round figure, but an odd number. Hence, the only logical explanation for the said odd number, and in the absence of any contemporaneous correspondence of how this amount was arrived at, I am inclined to believe that the amount of the Lump Sum must have been calculated with reference to the cost of a specified type of property the Wife had had intended to acquire at the time when she agreed to the amount of the Lump Sum. The veracity of the Wife's evidence is thus undermined by this odd number in the Lump Sum.
68. Thirdly, regarding the explanation by the Wife that he had used a portion of the Lump Sum for debt repayment in the region of \$1,740,000 to her younger brother and sister and the legal fees she claimed to have paid with the Lump Sum was not corroborated at all. Besides, I further observe that her evidence is in fact contradicted by her earlier affirmation filed in November 1998 in support of her application for maintenance pending suit. In the said affirmation, the Wife said that after she had resigned from the Company in 1993, she worked in a travel agent until late 1998, earning a monthly salary of \$8,500. During the said period when she lived with her younger brother and his family in Tsim Sha Tsui, the Wife deposed that her brother had not asked her for any rent or contributions for household expenses. Furthermore, in the said affirmation, the Wife had not mentioned any liabilities owed to her younger brother or sister.
69. Fourthly, regarding the remaining balance of the Lump Sum, the Wife claimed that she had spent it partly for paying her legal fees and substantially for paying the amount of shortfall of maintenance paid by the Husband, which was allegedly be in the sum of \$15,000 per month. However, from the personal bank accounts the Wife had produced, I am unable to see how the Wife had allegedly depleted the amount of Lump Sum she had received.
70. In the circumstances, I also cannot be satisfied that the Wife has made full and frank disclosure regarding her past and present financial situation. Whether the Husband's financial circumstances have deteriorated?

71. The Husband- as shown above has failed to make full and frank disclosure of his true financial circumstances, which failure leads me to infer that the Husband has the means or financial resources to continue maintaining the Wife and B.
72. Likewise, the financial circumstances of the Company on which the Husband relies to pay for his personal and family expenses as well as the periodical payments to the Wife and B are also shown to be largely distorted as a result of a deliberate manipulation of the Company's financial statements by the Husband.
73. Further, the impressive performance of M and its close relationship with the Husband or the Company which relationship I find to have existed - lead me to draw an inference unfavourable to the Husband.
74. Hence, my finding above means that I would answer the question in Issue (1) above in the positive that the Husband should have the means to pay the existing amounts of periodical payments. The Husband's financial obligation towards the new family
75. The answer to this question must be in the positive that the Husband does have obligations towards his new family. However, any increase in his financial burden as a result of the new family ought to be viewed in the context of the true financial circumstances of the Husband's second wife.
76. According to one of the principles discussed above, a court should take into account of the financial situation of a new spouse. However the financial situation of a new spouse, in my view, should not be just considered in isolation but be looked at in the context of the entire family unit- which would include consideration of whether the new spouse is financially dependent requiring financial provisions from a husband, or a spouse with means sufficient to help support the new family. On the evidence, there is ample evidence to enable me to infer that the second wife does not only have the financial resources of supporting herself, but also the means to help share the Husband's obligation towards the new family. In coming to this view, I am not suggesting that the second wife should be expected to help the Husband maintain the Wife and B, I am simply saying that I find it reasonable to expect the Husband's financial burden of maintaining the new family with the contributions made by the second wife or the handsome profits derived from M be substantially reduced.
77. In the circumstances, in respect of the second issue posed above, I would say that the Husband has obligation to the new family. However in view of the inadequate financial disclosure and the contributions the new wife are able to make to the new family, I do not think it is reasonable in this case to allow the Husband's obligation towards the new family to override his obligation to the Wife and B. The Wife's (including B
s) financial needs
78. I am satisfied that the Wife presently has no income. In view of her age and health, I find that the Wife would have to continue to depend on the Husband for financial support. However the failure by the Wife to make full and frank disclosure regarding her past and

present financial circumstances makes my task of assessing her real needs highly difficult. Having taken into account of the incomplete disclosure in respect of the alleged depletion of the Lump Sum, I am inclined to infer that it is likely the Wife should still have some means or financial reserves such as bank savings - to help partially defray (though not necessarily completely) her living expenses. This should warrant some reduction of her periodical maintenance.

79. As for B's needs, I do not think that there is any real dispute. As she has been hitherto receiving full time tertiary education, it is reasonable that the Husband should continue to maintain her until she leaves Oxford in summer when she should become financially independent shortly afterwards. All the circumstances of the case
80. In this case, a proper consideration of the parties means is hampered by their having failed in making proper disclosure. As I have found that the Husband has the means to pay the existing periodical payments, the only matter therefore remains for me to decide is whether it is fair, in all the circumstances of the case, for the Wife to include the monthly rental for her accommodation as part of her reasonable needs after having had regard to her failure to fully account for the Lump Sum. Had she used the Lump Sum to purchase a home for herself as originally intended, the Wife would have no need to incur any expenses on rent. Accordingly, I take the view that it is just and fair that I should have regard to the said matter in assessing her reasonable needs *de novo*.
81. Thus, looking at her monthly expenses in the round, I should therefore take out the rental expenses from the assessment of the Wife's reasonable needs. The monthly sum of \$5,000 as expenses on food for herself and her mother should be cut back to \$3,000 a month as the Husband has no obligation to maintain the Wife's mother. Pocket money for the Wife's mother in the sum of \$1,000 cannot be justified for the like reason. There is also no explanation as to why the Wife still needs to incur an expense for traveling to London when B is about to finish her full time education. Thus the amount of \$500 for airfare expenses should also be deducted. The remaining expenses in the amount of about \$8,000 are not challenged and appear reasonable.
82. As a consequence of the Wife's failure to make full disclosure as to her present means, the reasonableness of the Wife's needs however ought to be further considered. Although I have found that the Wife might still have some resources which she has failed to disclose, I however cannot fully estimate the actual means she may have. That said, however, whatever amount of money that she may still be left of the Lump Sum or whatever means she may have, I surmise it would only be modest. In the circumstances, I am of the view that in order to achieve fairness in this case, I will further reduce the Wife's reasonable needs to reflect the said finding. Doing the best I can, I deduct a nominal amount of \$500 from her reasonable needs.

83. To conclude therefore, I find that the financial dependence of B in the sum of \$13,000 will not cease until the completion of her full time education in June this year. The Wife's periodical payments should be reduced to \$7,500 per month.

Conclusion

84. In view of the matters foregoing, I conclude that the Husband should continue to pay maintenance for B in the sum of \$13,000.
85. As for periodical payments for the Wife, I would reduce the payment from \$12,000 per month to \$7,500, commencing from 1st February 2007.
86. As for costs, according to the Husband, he had, prior to the Application, openly offered, through his solicitors, to pay reduced periodical payments of the Wife and B in the amounts \$2,000, and \$3,000 respectively. The said offer is clearly well below the amounts I have now ordered the Husband to pay. In the circumstances, the Husband should therefore pay for the costs of the Application.
87. Further, as a result of the Husband's default in complying with the Original Order since September last year, the Wife had taken out enforcement proceedings by issuing a judgment summons against the Husband, which summons has now been adjourned pending for the outcome of the Application. I should therefore make it clear that the findings I made herein against the Husband are without prejudice to the future proceedings for the said judgment summons for the reason that the burden of proof of two proceedings is different. In view of the decision I have made, I hope the parties should now sensibly deal with the outstanding judgment summons by giving time to the Husband to settle the arrears by installments so that further costs and expenses of attending another hearing of the said judgments summons can be saved. Procedural Matter
88. One last point on procedure. I observe that the Application is by way of Notice of Application, which application- according to the rules
- should have been made by way of a summons. As Mr. Beel has taken no issue on this procedural matter, I would therefore treat the Wife pursuant to Order 2 rule 1 of the Rules of the High Court - of having waived any procedure irregularity, Order
89. The Petitioner's (the Husband
- s) application dated 13th February 2007 to vary the order made by Deputy Judge Geiser (as he then was) dated 27th November 1999 is varied as follows :
- (1) The sum of \$12,000 stated in paragraph 2 of the said order is varied to \$7,500 per month, commencing from 1st February 2007;
 - (2) The sum of \$13,000 stated in paragraph 3 of the said order shall continue until 1st June 2007 (that is, the last payment being on 1st June 2007).

- (3) A costs order nisi that the Petitioner do pay the costs of the Application, including all costs previously reserved, with certificate for counsel, which costs are to be taxed if not agreed. (K. Levy) Deputy District Judge Mrs. Irving, counsel, instructed by Messrs Joseph C. T. Lee & Co, for the Petitioner Mr. Beel, counsel, instructed by Messrs Massie & Clement. for the Respondent Lewis v Lewis [1977]3 All ER 992 Baker v Baker [1995]2FLR829 W v W [2005]1HKFLR53 Grainger v Grainger [1954] 1 WLR 1270 Ballenden v Satterwaite [1948 1 ALLER 343 Wakeford v Wakeford [1953] 2 All ER 827 and Howard v Howard [1945] P.1 G v S (2001)4 HKCFAR419 Thomson v Thomson [1991] 2 HKC119 Rayden & Jackson on Divorce and Family Matters (18 ed.) para.18.25 White v White [2000] 3 WLR 1571 See Rule 77 of Matrimonial Cause Rules (Cap.179A) See Rules 68 and 114 of the Matrimonial Cause Rules PAGE PAGE &`#\$ r%<~ r%<~ " % & ' 2 t% Normal.dot setup Microsoft Word 9.0 Title ;I ;I ;I Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 25 October 2026 · Esheria